

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

KENNETH RAHRIG and IONE RAHRIG, d/b/a
HERITAGE MANOR INN,

UNPUBLISHED
June 9, 2000

Plaintiffs-Appellees,

v

EDWARD LAMSE,

No. 215551
Allegan Circuit Court
LC No. 97-021248-CZ

Defendant-Appellee,

and

MICHIGAN MILLERS MUTUAL INSURANCE
COMPANY,

Defendant-Appellant,

and

OTTAWA-KENT KOOP LAMSE INSURANCE
AGENCY, BRIAN JAEGER, JILL JAEGER, and
BRIAN RICHARDSON,

Defendants.

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Defendant Michigan Millers Mutual Insurance Company (Michigan Millers) appeals by leave granted from an order of the circuit court granting partial summary disposition in favor of plaintiffs in this insurance contract dispute. We reverse.

Plaintiffs own a bed and breakfast inn, the Heritage Manor Inn, in Fennville. In 1991, plaintiffs obtained insurance for the building with Michigan Millers through Edward Lamse, an insurance agent. In 1993, plaintiffs constructed a gazebo on their property; however, the gazebo was destroyed by fire on September 4, 1995. Plaintiffs filed a claim to recover for the loss to the gazebo, but Michigan Millers denied coverage on the ground that it was not covered under the insurance policy. Plaintiffs then filed suit on August 28, 1997, alleging that the negligence of Brian and Jill Jaeger¹ caused the fire, that Lamse was aware of the gazebo but did not inform plaintiffs that it needed to be added separately under the insurance policy, and that Michigan Millers wrongfully refused to pay under the insurance policy.

Michigan Millers filed a motion for summary disposition, but the trial court ultimately granted summary disposition in favor of plaintiffs under MCR 2.116(C)(10). The trial court's ruling was premised on its findings that the gazebo was covered as a completed addition as set forth in the policy, and that the annual renewals of the policy constituted a new contract so that the coverage extension for newly constructed property (which provides that insurance coverage expired thirty days after the gazebo's construction began) did not apply in 1995 when the gazebo was destroyed by fire.

The relevant provisions in this commercial insurance policy are:

A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations cause by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations:

a. Building, meaning the building or structure described in the Declarations, including:

(1) Completed additions

* * *

5. Coverage Extensions

* * *

a. Newly Acquired or Constructed Property

* * *

(3) Insurance under this Extension for each newly acquired or constructed property will end when any of the following first occurs:

- (a) This policy expires.
- (b) 30 days expire after you acquire or begin to construct the property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date construction begins or you acquire the property.

We review de novo a trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10). *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Likewise, the construction and interpretation of an insurance contract is a question of law for a court to determine and is reviewed de novo. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Whether contractual language is ambiguous is a question of law which is reviewed de novo. *Id.*

An insurance policy, like most contracts, is an agreement between the parties and the court is to determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1991). An insurance policy must be enforced in accordance with its terms, and an insurer cannot be held liable for a risk it did not assume. *Henderson, supra*, p 354. Reviewing courts must interpret the terms of an insurance contract in accordance with their commonly used meanings. *Id.* Thus, the court should not create an ambiguity in an insurance policy where the terms of the policy are clear and precise. *Id.*

In the present case, the trial court found that the insurance policy was ambiguous because it could be interpreted in favor of either the insured or the insurer. An insurance policy is ambiguous when its provisions are capable of conflicting interpretations. *Farm Bureau Mutual Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). We find no ambiguity in the applicable provisions. The trial court found that the gazebo is a "completed addition" under A(1)(a)(1) of the insurance policy and was, consequently, covered by the policy. However, it is undisputed that the gazebo was a wholly separate structure and not attached in any way to the building structure (the bed and breakfast inn). A "completed addition" would be just that, an addition to the existing building. Since the meaning of a "completed addition" is clear and unambiguous, modifies the term "building" (which is the building and structure as described in the declarations of the policy), and there is no factual dispute that the gazebo was a wholly separate structure, the trial court erred in ruling that the gazebo was covered under the "completed addition" coverage provision.

The trial court also concluded that A(5)(a)(3) of the policy "could be interpreted to mean that the clause binds the insured to only the current policy." The trial court limited the application of this provision to the year of the gazebo's construction (1993), on the principle that each renewal of the insurance policy gave rise to a new contract so as to allow the gazebo to qualify as a completed structure in subsequent years. In other words, the trial court essentially ruled that a construction project

which is completed will be old at some point and that it becomes old at the end of the current policy. Therefore, the court concluded that with a new policy period in effect, the gazebo is again considered to be “newly constructed.” However, we find this interpretation to be an error of law because the provision is clear and unambiguous and must be enforced as written. Paragraph A(5)(a)(3) clearly provides that the policy extends coverage to newly constructed property until any of the following first occur: (1) the policy expires; (2) thirty days expire after the insured begins to construct the property; or (3) the insured reports the value of the new property, in which case the insured will be charged an additional premium from the date the construction began. Here, the policy did not expire and the insureds did not report the value of the gazebo to Michigan Millers. Thus, coverage extended for only thirty days after beginning construction of the gazebo.

The terms of the policy as in effect at the time of the fire must be applied. The coverage extension provision simply does not provide coverage for the gazebo because the thirty-day period had long expired. Each renewal of the policy cannot transform the nature of the “new construction.” The trial court’s interpretation of A(5)(a)(3) was an error of law because the provision is clear and unambiguous and must be applied as written. The coverage extension did not provide coverage for the gazebo at the time of the fire.

The trial court’s order granting summary disposition in favor of plaintiffs with respect to Michigan Millers is reversed because there is no coverage under the two provisions relied upon by the trial court.

Reversed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins

¹ Later, it was determined that Jill Jaeger and Brain Richardson (not Brain Jaeger) were using the gazebo at the time of the fire. Additionally, a fire investigator determined that the fire was started because of a defective flue in the fireplace that was on the gazebo. The fireplace was built by Kenneth Rahrig.