

STATE OF MICHIGAN
COURT OF APPEALS

DAVID JAJO, Individually and d/b/a
EASTERN MEAT MARKET,

Plaintiff-Appellant,

v

HARTFORD CASUALTY INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 26, 2002

No. 237955
Oakland Circuit Court
LC No. 2000-024579-CK

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff owned and operated the Eastern Meat Market, which was burned as a result of arson. Plaintiff brought this action when defendant failed to pay an insurance claim. The trial court granted summary disposition, finding that plaintiff failed to sufficiently complete a proof of loss form as required by the insurance policy, and he could not maintain a breach of contract action.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim, and is subject to de novo review. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The movant has the initial burden of supporting its position. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.*, 455.

Where an insurance policy so requires, failure to file a written notice of loss within 60 days of the loss bars a plaintiff from recovering under the policy. *Reynolds v Allstate Ins Co*, 123 Mich App 488; 332 NW2d 583 (1983). Michigan follows the substantial compliance performance of contract rule. *Gibson v Group Ins Co of Michigan*, 142 Mich App 271, 275; 369 NW2d 484 (1985). A contract is substantially performed when all the essentials necessary for full accomplishment of the purposes contracted for have been performed to such a degree that the party obtains substantially what is called for by the contract. *Id.*

In determining substantial compliance for a proof of loss statement, a court should consider three intended purposes of the proof of loss: (1) allowing the insurer an opportunity to investigate the loss; (2) allowing the insurer to estimate its rights and liabilities; and (3) preventing fraud. *Wineholt v Cincinnati Ins Co*, 179 F Supp 2d 742 (WD Mich, 2001). Failure to provide specific information regarding the cash value of an insurance loss indicates that the insured did not substantially comply with the proof of loss requirement. *Id.*

The proof of loss form submitted by plaintiff contained no information regarding the current value of the inventoried items or the amount of plaintiff's claim for each item. The information was necessary to allow defendant to evaluate the claim where there was no other method of determining the amount of the claimed loss. Plaintiff was informed twice that his proof of loss form was inadequate, and that additional information was required. Plaintiff failed to supply the information. The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski