STATE OF MICHIGAN

COURT OF APPEALS

SHORE POINTE ENTERPRISES, LLC, Plaintiff-Appellant, v MICHIGAN MILLERS MUTUAL INSURANCE COMPANY, Defendant-Appellee.	UNPUBLISHED December 16, 2004 No. 249771 Wayne Circuit Court LC No. 03-302797-CK
SHORE POINTE SYSTEMS, LLC, Plaintiff-Appellant, v MICHIGAN MILLERS MUTUAL INSURANCE COMPANY, Defendant-Appellee.	No. 250235 Wayne Circuit Court LC No. 03-320186-CK

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

In Docket No. 249771, plaintiff appeals as of right an order granting summary disposition in favor of defendant. In Docket No. 250235, plaintiff appeals as of right a July 22, 2003 order dismissing its complaint in that case based on the earlier grant of summary disposition.[1] We reverse. These consolidated cases are being decided without oral argument under MCR 7.214(E).

[1] Plaintiff in each of these consolidated cases is actually the same company. It appears that plaintiff used an incorrect name for itself in the complaint in Docket No. 249771.

These appeals arise out of a dispute over the business income loss provision in an insurance policy issued by defendant to plaintiff. The policy provided coverage during a "period of restoration" following an event such as the fire at plaintiff's initial business location. However, the policy provided that the period of restoration would end on the date "when business is resumed at a new permanent location."[2] The policy did not include a definition of the terms "permanent" or "permanent location."

Plaintiff argues that the trial court erred by granting summary disposition in favor of defendant on the ground that the critical location of its business, i.e., the second of its three relevant locations, was a "permanent location" of that business. We agree. Because the trial court looked beyond the pleadings in granting defendant's motion for summary disposition, it is apparent that, although not expressly stated, its grant of summary disposition was under MCR 2.116(C)(10). We review such a grant of summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). We consider the facts in the light most favorable to the nonmoving party. *Id*. Also, interpretation of an insurance contract is reviewed de novo as a question of law. *Twichel v MIC General Ins Corp*, 469 Mich 524, 533; 676 NW2d 616 (2004).

"An insurance policy is enforced in accordance with its terms." *Twichel*, *supra*, 469 Mich at 534. A term that is not defined in a policy is accorded its commonly understood meaning. *Id*. It is manifest that the commonly understood meaning of "permanent location" is a location that is not merely temporary. Indeed, as plaintiff has referenced, our Supreme Court has stated that "[a]s commonly accepted 'temporary' is an antonym of 'permanent.'" *Fleckenstein v Citizens' Mutual Automobile Ins Co*, 326 Mich 591, 597; 40 NW2d 733 (1950).

In this case, plaintiff offered evidence to reasonably support a conclusion that its operation at its second location was merely temporary. In particular, there was evidence to reasonably support a finding that plaintiff's owner sought and obtained an agreement from the landlord who owned that location for a lease provision that allowed him to cancel the lease agreement after a period of approximately one year. Further, plaintiff's owner sent a letter to defendant close in time to entering that agreement that expressly referred to signing a lease for a temporary location. In addition, the undisputed fact that plaintiff moved to a third location ten months after moving to the second location provides further support for a conclusion that the second location was merely a temporary location for its business. Thus, we conclude that the trial court erred by granting summary disposition in favor of defendant on the ground that the second location was a permanent location. At minimum, the evidence raised a genuine issue of material fact as to whether the second location was a temporary location as opposed to a permanent location.

Defendant argues that interpreting the phrase "permanent location" from an insured's subjective viewpoint would inappropriately allow an insured to dictate the length of time it could obtain insurance coverage for business income losses "purely my moving from one location to

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[2] The policy also included a provision regarding the "period of restoration" being ended by the repair, rebuilding, or replacement of the original property, but that is immaterial to the present case.

the next, asserting each move is only temporary in nature." However, this is a result oriented argument that lacks a reasonable connection with the ordinary meaning of the term "permanent" as used in the insurance policy. Even if the insurance policy as drafted provides an undesirable incentive for an insured to use temporary locations following a covered loss, that does not provide a legal basis for slanting construction of the term "permanent" in favor of defendant.

Defendant also argues that the trial court properly refused to consider the subjective intent of plaintiff's owner with regard to whether its lease for the second location was intended to be temporary because of the parol evidence rule. But this argument is simply flawed. The authority regarding the parol evidence rule as presented by defendant pertains to the general principle that parol evidence such as prior oral statements cannot be used to change the clear and unambiguous meaning of contractual language. However, the proper construction of the lease agreement between plaintiff and the landlord at the second location, to which defendant is not even a party, is not at issue. Further, plaintiff has not argued that parol evidence should be used to alter the provisions of that lease agreement, but rather has submitted evidence related to its intent to support its position that the second location of its business was only a temporary, rather than a permanent, location. Accordingly, the issue at hand is whether there was a genuine issue of material fact as to whether the second location was not a "permanent location" of plaintiff's business, not construction of any disputed term in the lease agreement for that location. Thus, the parol evidence rule is inapposite.

We reverse the orders being appealed and remand these cases to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens