

STATE OF MICHIGAN
COURT OF APPEALS

FARM BUREAU MUTUAL INSURANCE
COMPANY OF MICHIGAN,

UNPUBLISHED
January 12, 2006

Plaintiff-Appellant,

v

HASTINGS MUTUAL INSURANCE
COMPANY,

No. 264930
Jackson Circuit Court
LC No. 05-002052-CZ

Defendant-Appellee.

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Plaintiff Farm Bureau Mutual Insurance Company of Michigan sued defendant Hastings Mutual Insurance Company for contribution toward a settlement arising out of a residential property insurance policy. The trial court granted summary disposition in favor of Hastings. Farm Bureau appeals as of right. We affirm.

Hastings provided residential property insurance to the seller of real property and Farm Bureau provided residential property insurance to the buyers. The purchase agreement provided the buyer was to “assume all risk of loss or damage not caused by acts of negligence of the Seller from date of closing.” The closing was scheduled for October 24, 2002. On that date, the seller and the buyers performed all acts required on their part to complete the real estate transaction. The closing agent indicated that the balance of the payment had not been received from the buyers’ lender and would be transferred to the title company by the mortgage company the next morning. The seller signed title over to the buyers and conveyed title to the property by warranty deed into escrow. After the closing the buyers took possession of the property. The following morning, the house on the property was damaged by fire. Farm Bureau paid the buyers \$158,771.96 for the property loss. After Hastings refused to contribute toward the loss, Farm Bureau filed the present action alleging that Hastings is liable for contribution to the settlement paid. The trial court granted Hastings’ motion for summary disposition, finding that a closing occurred on October 24 and that the risk of loss passed to the buyers at the time.

The issue Farm Bureau raises on appeal is whether the real estate transaction “closed” on October 24, 2002, despite the fact that the purchase money was not received from the buyers’ lender on that date.

This court reviews a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). Summary disposition is proper only when the court, drawing all factual inferences in favor of the nonmoving party, can conclude there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. In this case, there is not issue as to any fact and, therefore, we need only concern ourselves with the applicable question of law. *Id.* Similarly, the interpretation of a contract is also a question of law. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

Farm Bureau does not dispute that the seller's insurable interest in the property would end on the date of closing. Farm Bureau does dispute, however, whether closing occurred on October 24. But Farm Bureau cites no authority in support of its holding that a real estate closing does not occur until the moment when full payment is received by the seller. The purchase agreement referred simply to "closing" in identifying the date at which the risk of loss would pass to the buyers. There is no dispute that the scheduled closing was held on October 24, 2002. The evidence shows that both the seller and the buyer performed all acts required on their part to complete the real estate transaction on October 24, and the buyers' lender was prepared to deliver the loan funds the following day. No further action on the part of the sellers or the buyer was required. The executed warranty deed, as well as the buyers' down payment, was placed into escrow, and the buyers took possession of the property. At that point the risk of loss passed to the buyers under the plain terms of the purchase agreement. The trial court properly granted summary disposition in favor of Hastings.

Farm Bureau argues that the trial court should not have granted summary disposition in favor of Hastings before Farm Bureau completed discovery and had the opportunity to "discover [the seller's] understanding of the meaning of the terms used in the Purchase Agreement." But because the language of the purchase agreement is not ambiguous, extrinsic evidence of the seller's understanding of the meaning of the term is not permitted. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White