STATE OF MICHIGAN

COURT OF APPEALS

FRAME HARDWOODS, INC., Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED December 21, 2006
v	No. 271053 Washtenaw Circuit Court
INDIANA LUMBERMENS MUTUAL INSURANCE COMPANY, Defendant/Counter-Plaintiff-Appellee.	LC No. 05-532-CK

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiff[1] appeals as of right the trial court's grant of defendant's motion for summary disposition. We affirm.

Plaintiff, a manufacturer of pre-finished hardwood flooring, and defendant, an insurer, entered into a contract whereby defendant provided worker's compensation insurance coverage to plaintiff from April, 2000 to April, 2004. On the calculation of premiums, the contract reads in pertinent part:

> A. Our Manuals
> All premiums for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.
>
> B. Classifications
> Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an

[1] Although plaintiff is the corporation Frame Hardwoods, where we refer to Frame's owner David Frame, we will also use the designation "plaintiff" for ease of reference.

> estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

According to plaintiff, defendant misclassified the production employees in plaintiff's operation under the Debarking Mill classification when the production employees should have been classified under the Cabinet Making Operation code. Plaintiff asserts that although the debarking mill classification applies to the making of unfinished flooring, Frame makes finished flooring using machinery and processes more similar to those used in the manufacture of finished cabinetry. The difference in risk between the two kinds of operations results in a significant difference in insurance premiums, with cabinet making being about half as costly to insure as debarking mill.

Insurance companies in Michigan are not governed by state regulations as to the classifications used; rather, underwriters have discretion to classify workers. This discretion is guided, although not bound, by a list of definitions copyrighted by the Michigan Workers' Compensation Placement Facility, which both parties appended to their briefs on appeal. The Introduction to this list of definitions states

> This manual has been created for the use of the Facility, the Division of Insurance of the Office of Financial and Insurance Services, servicing carriers, agents, and insureds to provide some definitions of how classifications are applied by the Michigan Workers' Compensation Placement Facility. . . .
> We hope that his manual will also be helpful to voluntary market carriers in understanding how classifications are applied in Michigan and in providing some definition of the Michigan special classifications although these definitions are specific to the Facility.

The classification applied by defendant to plaintiff's operation is 2731, titled: "Barking Mill; Barrel Stock Mfg; Excelsior Mfg; Flooring Mfg – Wood; Furniture Stock Mfg; Last Block Mfg; Lath Mfg – Wood; Pencil Stock Mfg; Picture Frame Molding Mfg; Planing or Molding Mill; Saw Mill; Shingle Mfg – Wood; Snow Fence Mfg; Cut Lath From Logs; Stave Mfg - Wood." The definition of that classification includes this language: "Code 2731 applies to the operations involved in the manufacture of the items listed above . . .."

The classification applied by plaintiff's successor insurer is 2812, titled: "Cabinet Works; Incubator Mfg – Wood; Refrigerated Showcase Mfg – Wood; Showcase Mfg – Wood." The definition of that classification includes this language: "Code 2812 applies to the operations involved in the manufacture of wood cabinets, showcases, store and office fixtures, and other similar items."

In March of 2004, plaintiff wrote defendant asking for a revised quotation for insurance coverage for the period from April, 2004 through March, 2005, specifying that he believed defendant had put his workers "in the wrong workers comp class." William Osborne, an employee of defendant insurance company, stated in an affidavit that when plaintiff disputed the classification, he "made sure that our underwriting department researched this issue thoroughly," and concluded that the classification was correct. Osborne stated: "Insureds such as Frame Hardwoods are classified by what they do, not by how clean or safe their operations are.

Because Frame Hardwoods was a manufacturer of hardwood flooring, it belonged in the 2731 classification. Code 2812 did not apply because Frame Hardwoods is not a cabinet manufacturer."

In April of 2004, plaintiff entered into a contract with a different insurer, Michigan Insurance Company, which classified plaintiff's production employees under the cabinet making operation code. However, the insurer that preceded defendant, Michigan Construction Industry Mutual Insurance Company, classified plaintiff's employees under a different classification than either defendant or defendant's successor, and charged plaintiff an even higher rate.

On June 15, 2004, defendant sent plaintiff a final audit for the policy term April, 2003 to April, 2004, requesting plaintiff pay a final total additional premium of $15,109.00.[2] Plaintiff refused to pay the additional premium, and instead filed the complaint underlying this appeal, seeking a judgment against defendant "in the amount of $88,336.00, together with the Plaintiff's costs, expenses and attorney fees." Plaintiff alleged in its complaint:

> 9. That for the entire four year period during which the Defendant provided workers' compensation insurance to the Plaintiff, the proper classification of the Plaintiff's business was and is 'cabinet manufacturing.'
>
> . . .
>
> 12. As a result of the misclassification of the Plaintiff's production worker by the Defendant, the Plaintiffs [sic] has paid the Defendant $88,336 in excess of the proper classification as provided by the policy and contract between the parties.
>
> . . .
>
> 14. The Defendant has failed and refused to correct the Plaintiff's classification or to refund premiums in excess of the proper classification.

Defendant filed a counterclaim asserting that plaintiff owed $15,109.00 as a result of the final audit at the end of the policy period.

Defendant filed a motion for summary disposition under MCR 2.116(C)(10). After oral arguments, the trial court issued an order dismissing plaintiff's claim with prejudice and granting a judgment in favor of defendant on its counterclaim in the amount of $15,109.00. Plaintiff filed this appeal.

Plaintiff argues on appeal that the classification assigned to plaintiff's production workers by defendant was not the correct classification, and that defendant owed plaintiff a duty to assign the proper classification. Plaintiff asserts that defendant had a contractual duty to determine the

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[2] The insurance policy issued by defendant to plaintiff included this term: "The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you."

proper classification, that defendant's agents assumed a special responsibility to advise plaintiff about the proper classification, and that defendant is under a statutory duty to determine a fair premium.

We review de novo a trial court's decision on a motion brought under MCR 2.116(C)(10). *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). A trial court may properly grant a motion for summary disposition brought under MCR 2.116(C)(10) if, after reviewing all of the documentary evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The moving party bears the initial burden of supporting its position by documentary evidence, and then the burden shifts to the non-moving party to establish the existence of a material factual dispute. *Id.* at 455. If the non-moving party would bear the burden of proof on a dispositive issue at trial, allegations and denials in pleadings are insufficient; the non-moving party must set forth specific facts showing that a genuine issue of material fact exists. *Id.*

After hearing arguments from the parties on the motion for summary disposition, the trial judge stated:

> It's clear that the Court's authority here is limited to what the contract provides. And, this Court has no authority to modify that contract or to enforce any rights that are encompassed[3] in it.
>
> So, based on the nature of the contract and the provision in it allowing the insurer to make the classification, the Court grants defendant summary disposition.

We agree.

This matter is governed by basic contract law; the four corners of the contract control. Unambiguous contract provisions are presumed to reflect the parties' intent and will be enforced as written, without interference by any "judicial assessment of reasonableness." *Rory v Cont'l Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). Here, the contract unambiguously provided that "[a]ll premiums for this policy will be determined by [defendant's] manuals of rules, rates, rating plans and classifications." The contract also unambiguously provided that classifications would be assigned based on an estimate of exposures, and that if the insured's "actual exposures are not properly described by those classifications," the insurer "will assign proper classifications." We agree with the trial court that it is clear that the contract for defendant to provide insurance coverage to plaintiff allowed defendant to determine the appropriate classifications. Although this finding disposes of the appeal, we will briefly review plaintiff's arguments.

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[3] Presumably, the trial judge meant to say "any rights that are not encompassed in it."

Plaintiff argues that defendant assumed a contractual duty to deal in good faith in determining the proper classification of employees. We note first that plaintiff has proffered no evidence of bad faith by defendant, but has provided only its own opinion and that of its successor insurer that a different classification was more appropriate. The contract includes a provision that if the insured's "actual exposures are not properly described by [the estimated] classifications, we will assign proper classifications." This provision indicates that the insurer will look at the operation once to estimate the correct classification, and then look at it again if there is reason to believe the estimate is incorrect. But it does not indicate that if the insurer and the insured disagree, the insurer must change accordingly. Beyond that provision for fair dealing by giving the estimated classification a second look if needed, the contract does not speak directly to an obligation of good faith and fair dealing. And despite plaintiff's argument to the contrary, "Michigan does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing." *Fodale v Waste Mgmt of Mich, Inc*, 271 Mich App 11, 35; 718 NW2d 827 (2006) (citing *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 476; 666 NW2d 271 (2003)).

Plaintiff next argues that defendant owed a duty to advise plaintiff about the proper classification because defendant's agent established a special relationship with plaintiff. Plaintiff acknowledges the general rule that an insurance agent has no duty to advise the insured regarding the adequacy of insurance, but cites *Harts v Farmers Ins Exch*, 461 Mich 1, 11; 597 NW2d 47 (1999) for the proposition that this general rule is inapplicable in some cases:

> the general rule of no duty changes when (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured.

Plaintiff argues that this special relationship arose when plaintiff asked defendant's agent to review his classification, and the agent promised to do so. Defendant states that upon receiving this request, a "thorough review" of the classification was completed. Plaintiff argues that because no evidence of that review was provided during discovery, no such review was completed. Here, defendant has supported with an affidavit its position that it investigated plaintiff's question, while plaintiff has only an unsupported allegation that defendant did not do so. Unsupported allegations are insufficient to create questions of material fact.

Plaintiff next argues that MCL 500.2400, describing the purposes of the Casualty Insurance Rates chapter of the Insurance Code of 1956, sets a standard for determining rates and classifications: "To protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory rates" MCL 500.2400(2)(a). However, a few sections later, the code states that

> Rates shall not be excessive, inadequate, or unfairly discriminatory. A rate shall not be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist with respect to the classification, kind, or type of risks to which the rate is applicable. MCL 500.2403(1)(d).

In this case, the insured was covered by three successive insurers, and each assigned a different classification and a different rate. A reasonable degree of competition clearly does exist, and the insured was free to, and did, choose another provider if dissatisfied with what one offered.

Finally, plaintiff argues that the classification assigned by defendant did not properly describe plaintiff's exposures. Plaintiff argues that this position is supported by its new insurance agent's finding that a different classification "most appropriately represents" plaintiff's operation, and by the opinion of a former insurance agent, now consultant/expert witness, that the classification used by defendant was "improperly assigned" and that plaintiff was overcharged for many years. Ultimately, the opinions of these persons are irrelevant to this appeal. There is healthy competition in the insurance market. Plaintiff was free to contract with any provider, year after year. Plaintiff chose to contract with defendant for four years in a row, having by Mr. Frame's own deposition admission left the prior insurance provider for a better rate with defendant, and having left defendant for a better rate, among other reasons, with a successor insurer. That plaintiff decided nearly four years into the contract that the classification that had been assigned the whole time was incorrect and needed to be reevaluated does not invalidate the contract for any of the time period when it controlled. Defendant is not required to refund any of the premiums paid under that contract, and plaintiff may not simply decline to pay the remaining balance under that contract.

Affirmed.

/s/ Stephen L. Borrello
/s/ Janet T. Neff
/s/ Jessica R. Cooper