STATE OF MICHIGAN

COURT OF APPEALS

BRETON INSURANCE AGENCY, INC., Plaintiff-Appellant,	UNPUBLISHED June 26, 2018
v	No. 339428 Kent Circuit Court
SECURA INSURANCE COMPANY, Defendant-Appellee.	LC No. 16-000581-CBB

Before: MURRAY, C.J., and MARKEY and TUKEL, JJ.

PER CURIAM.

In this case arising from the termination of an agency relationship between plaintiff and defendant, plaintiff appeals as of right the trial court's order that granted summary disposition in favor of defendant. For the reasons provided below, we affirm.

The relevant facts are not in dispute. Plaintiff is an independent insurance agency that sells insurance policies to customers on behalf of several insurance companies. Defendant is a mutual insurance company that offers property and casualty insurance to businesses and individuals through independent agents in 12 states, including Michigan. In 1988, plaintiff and defendant entered into an agency agreement. The parties agreed that plaintiff would act as an agent for defendant, which granted plaintiff the authority to bind defendant to insurance agreements with insureds. Pertinent to this case, the agreement also contained the following provisions:

> **Termination of Agreement**
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> 8. This Agreement may be terminated by either party giving written notice to the other party specifying the date when such termination is to be effective . . . .
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> **Ownership of Expirations**
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> 9. Agency's records and use and control of expirations shall be the property of Agency and left in Agency's undisputed possession; provided, however, that if Agency is in default, under this Agreement or any other Agreement with Company or any of Company's affiliates, on the effective date of termination, the records and use and control of said expirations shall be vested in the Company. . . .

In a letter dated October 17, 2013, defendant terminated the agency agreement effective October 16, 2013. In the letter, defendant agreed to allow its insureds to renew through plaintiff for a 180-day period following the date of termination. Defendant also recognized plaintiff's "rights with respect to the ownership of policy expirations pursuant to paragraph 9 of the Agency Agreement." It was defendant's understanding that plaintiff would "be responsible for placing these expiring policies with other insurers following the time periods set forth in paragraph 8 of the Agency Agreement," and if plaintiff did not agree, it was to contact defendant immediately. Defendant also noted in the letter that upon the request of the insureds and through authorized agents, it would renew policies of insureds who wished to remain insured with defendant.

Following the 180-day period after the termination, defendant sent notices to those it insured through plaintiff's agency. The notices stated, in pertinent part:

> Your insurance coverage, provided by the policy shown above, expires at 12:01 a.m. legal time on [insert applicable date for recipient]. Your agent is no longer a SECURA representative with respect to the type of policy referenced above. We recommend you contact your agent immediately concerning continued insurance coverage beyond the expiration. With your permission, your agent can arrange insurance protection for you with a different company or can explain the procedures for obtaining coverage, if necessary, from [the Michigan Automobile Insurance Placement Facility or the Michigan Basic Property Insurance Association].
>
> If you wish to renew your insurance policy with SECURA, you may select another SECURA agent in your area. If needed, you may contact us at the address shown above, by telephone (toll free 1-800-558-3405), or at our website at www.secura.net/fndtemp.htm for locations of SECURA agents near you. If you choose another SECURA agent, s/he will notify us of your decision. Renewal will be subject to you meeting our current underwriting standards.
>
> Unless you contact another SECURA agent and renew your policy through that agency, your policy will not be renewed with us upon its expiration.

Plaintiff thereafter filed the instant suit. Plaintiff's complaint set forth six counts: (I) breach of contract related to the misappropriation of the expirations, (II) breach of contract related to the termination of the agency agreement, (III) breach of contract based on a breach of the duties of good faith and fair dealing, (IV) tortious interference with a business expectancy, (V) common law conversion, and (VI) statutory conversion.

The parties filed competing motions for summary disposition. Defendant moved for summary disposition on all counts, and plaintiff moved for summary disposition on its count II.

Defendant first argued that counts II and III should be dismissed because the termination was not wrongful because MCL 500.1209(2)(e) of the Michigan Insurance Code, MCL 500.100 *et seq*., allows insurance companies to terminate agency agreements if the agency did not submit at least 25 applications for automobile and home insurance during the 12-month period preceding termination. And according to defendant, the evidence showed that plaintiff submitted

no more than five applications for insurance during the period from 2012 through 2013. Defendant claimed that while plaintiff may have requested more than 25 quotes for insurance during this 12-month period preceding termination, rate quotes are distinct from actual applications for insurance. Defendant also argued that the remaining counts should be dismissed because its sending of the expiration letters was proper, as such notice was required under Michigan law. Additionally, defendant asserted that such notices cannot be wrongful and do not infringe upon an agent's rights to the "expirations."

Plaintiff argued that because defendant would only accept applications through defendant's online MILE-STONE system, which in turn only accepted *bundled* home and auto insurance applications, the 25-application threshold found in MCL 500.1209(2)(e) did not apply. Accordingly, plaintiff asserted that without this statutory authority, defendant's termination of the agency agreement was wrongful. Plaintiff further argued that the termination was in violation of MCL 500.1209(2)(e) in any event because, contrary to defendant's view, plaintiff had submitted at least 45 applications in the 12-month period preceding the termination. Plaintiff also argued that a reasonable jury could conclude that defendant's expiration notices maliciously interfered with plaintiff's property rights. Specifically, while plaintiff acknowledged defendant's right to send notices, plaintiff took exception to the particular language used. Plaintiff pointed out that the notice mentioned defendant's name, in all capital letters no less, and did not mention plaintiff's name. Further, defendant's contact information was provided, but plaintiff's was not. Moreover, plaintiff alleged that many of its customers were confused by the letters.

The trial court granted defendant's motion on all counts under MCR 2.116(C)(10). The court initially noted that the claims in counts II and III together recited a single breach of contact claim related to the termination of the agreement. The court found that there was no question of fact that plaintiff did not submit the requisite 25 applications for insurance in the 12-month period preceding the termination. The court held that, contrary to plaintiff's view, mere requests for rate quotes do not constitute applications for insurance. Accordingly, because the evidence showed that plaintiff submitted one application in 2013 and four in 2012,[1] defendant was statutorily permitted to terminate the agency agreement.

The trial court also ruled that plaintiff's claims related to the expiration notices were deficient. Regarding the breach of contract claim related to the sending of the notices, the court ruled that the evidence did not show that defendant did anything to divest plaintiff of its "records and use and control of expirations," which were the property of plaintiff under ¶ 9 of the agency agreement. Although they are not part of this appeal, the court further dismissed the tortious interference claim and the two conversion claims.

[1] The trial court also noted that even if these applications for bundled home and auto insurance were counted as two applications each, this total still fell well short of the 25-minimum requirement.

II. STANDARDS OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205; 815 NW2d 412 (2012). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 206. In deciding on a motion under this subrule, the court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* The motion is properly granted if there are no genuine issues regarding any material fact and the moving party is entitled to judgment as a matter of law. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

Questions concerning the proper interpretation and application of an insurance contract are questions of law that we review de novo. *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39, 42; 795 NW2d 229 (2010). This case also involves the proper interpretation of a statute, which we review de novo. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009). The primary rule of statutory interpretation is that we are to give effect to the intent of the Legislature. *Stanton v Battle Creek*, 466 Mich 611, 615; 647 NW2d 508 (2002). "To achieve this task, we must first examine the statute's language. If the language is clear and unambiguous, we assume the Legislature intended its plain meaning, and the statute is enforced as written." *Id.* (citation omitted).

III. ANALYSIS

The trial court granted summary disposition in favor of defendant on all of plaintiff's counts. Notably, in its brief on appeal, plaintiff only addresses two particular causes of action: (1) breach of contract with respect to the alleged wrongful termination of the agency agreement and (2) breach of contract with respect to the sending of the expiration notices. Accordingly, only the trial court's decisions regarding these two claims are before us. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

A. TERMINATION OF AGENCY AGREEMENT

Although the agency agreement between plaintiff and defendant provided that either party could cancel the agreement at any time, the Insurance Code places restrictions on when an insurer can terminate such an agreement. MCL 500.1209(2) provides, in pertinent part:

> As a condition of maintaining its authority to transact insurance in this state, an insurer transacting automobile insurance or home insurance in this state shall not cancel an insurance producer's contract or otherwise terminate an insurance producer's authority to represent the insurer with respect to automobile insurance or home insurance, except for 1 or more of the following reasons:
>
> * * *
>
> (e) Submission of less than 25 applications for home insurance and automobile insurance within the immediately preceding 12-month period.

Plaintiff first argues that because the MILE-STONE online system that defendant implemented for issuing insurance policies only accepted bundled home and auto insurance requests, defendant essentially increased the 25-application minimum threshold. Although not fully fleshed out in its brief on appeal, we take plaintiff's argument to mean that because the MILE-STONE system only accepted bundled home and auto policies, if one had to submit 25 of these types of bundled applications, it would correlate to 50 actual policies, instead of the 25 required by the statute. We need not determine whether such a bundled application should count as an application for *two* policies because, assuming this were the case, the evidence shows that plaintiff only submitted five bundled applications to defendant in the 12-month period preceding the termination, for a total of 10 applications, which is still well below the 25-minimum threshold.

To the extent that plaintiff suggests that it satisfied the 25-minimum requirement by submitting 45 requests for quote for bundled policies during this 12-month period, that position is untenable. At issue is what constitutes "submission[s]" of "applications for home insurance and automobile insurance" under MCL 500.1209(2)(e). This Court in *Beckett-Buffum Agency, Inc v Allied Prop & Cas Ins Co*, 311 Mich App 41; 873 NW2d 117 (2015), provided the answer to this question. At issue for the *Beckett-Buffum* Court was whether policy renewals qualified as "applications" for insurance under MCL 500.1209(2)(e). *Id.* at 44. In answering this question in the negative, the Court consulted a dictionary to ascertain the meaning of MCL 500.1209(2)(e):

> At its most basic in this context, an "application" is a "request" or "petition." *Merriam-Webster's Collegiate Dictionary* (2014). "Submission" in this context indicates "an act of submitting something (as for consideration or inspection)[.]" *Id.* "Submitting" means "present[ing] or propos[ing] to another for review, consideration, or decision[.]" *Id.* And finally, the term "insurance" generally denotes "coverage by contract whereby one party undertakes to indemnify or guarantee another against loss by a specified contingency or peril[.]" *Id.* [*Beckett-Buffum*, 311 Mich App at 45.]

Putting these definitions together, the Court held that "MCL 500.1209(2)(e) plainly envisions that to continue its Agency Agreement, an insurance producer would present for the insurer's consideration requests for *insurance contracts* providing home and automobile coverage." *Id.* (emphasis added).

Here, plaintiff submitted evidence that it sent 45 bundled home/auto requests for quote to defendant through the MILE-STONE system. But a request for a quote is not the same as a request for an insurance contract. Indeed, the MILE-STONE system that plaintiff used made this clear. After a quote was generated in the system, a separate window would pop up that contained a button named "Submit Application." Thus, it was evident to all who used the system that an "application" was not submitted until that button was pressed. Plaintiff acknowledges that it only submitted five such bundled applications in the year leading up to the termination.

More importantly, the Legislature, which created the safe-harbor provision in MCL 500.1209(2) of the Insurance Code, distinguishes in the Code between an insurance agent's duty to provide requests for *quotes* for coverage and requests for *coverage*. MCL 500.2116(1) states, in relevant part:

> A duly licensed insurance agent licensed to represent 1 or more insurers shall, as a condition of licensure, do all of the following:
>
> (a) *Provide each eligible person seeking automobile insurance or home insurance a premium quotation* for the forms or types of insurance coverages that are offered by the insurers represented by the agent and that are sought by the eligible person.
>
> (b) Inform the eligible person of the number of insurers that he or she represents. If the agent represents additional insurers from which the eligible person may obtain insurance, the agent may provide additional premium quotations as requested by the eligible person.
>
> (c) Not attempt to channel an eligible person away from an insurer or insurance coverage with the purpose or effect of avoiding an agent's obligation to submit an application or an insurer's obligation to accept an eligible person.
>
> (d) On request, *submit an application of the eligible person for automobile insurance or home insurance to the insurer* selected by the eligible person. [Emphasis added.]

Under subsection (1)(a), therefore, an insurance agent has a duty to provide *quotes* for insurance coverage and, under subsection (1)(d), the agent has a separate duty to submit an *application* for insurance coverage. Accordingly, because the Insurance Code makes it clear that the obtaining of quotes is an act that is separate and distinct from the submission of an application for insurance coverage, plaintiff's argument that submitting information for rate quotes qualifies as an "application" under the statute is unavailing. Simply put, if the Legislature had intended for requests for quotes to be the basis for the safe-harbor provision found in MCL 500.1209(2)(e), it would have used language similar to that found in MCL 500.2116(1)(a) instead of the "application" language found in MCL 500.2116(1)(d). "When the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, 'the use of different terms within similar statutes generally implies that different meanings were intended.' " *US Fidelity & Guar Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009) (citation omitted). Indeed, "[i]f the Legislature had intended the same meaning in both statutory provisions, it would have used the same word." *Id.*

Plaintiff further contends that defendant's actions, by imposing the use of the MILE-STONE system, prohibited plaintiff from satisfying the requirements of MCL 500.1209(2)(e).[2]

[2] As the trial court recognized, there was conflicting evidence as to whether plaintiff had the ability or authority to bind defendant to solitary home or solitary auto policies through means outside the MILE-STONE system. But because plaintiff's claim fails even if we presume that defendant did preclude plaintiff from submitting non-bundled applications, this question of fact does not preclude the grant of summary disposition. In other words, this genuine issue of fact is

Specifically, plaintiff claims that an agency can fall under the safe harbor of MCL 500.1209(2)(e) if it submits 25 home policies, 25 auto policies, or a combination of 25 home and auto policies. Consequently, according to plaintiff, when defendant's system limits the submission to only bundled policies, defendant impermissibly is precluding "two of the three ways contemplated under the statute." We disagree. First, there are not "three different ways" in which an agent can satisfy this 25-minimum requirement. Instead, there is only one: an agent can submit a combination of 25 home and auto policies.[3] Second, and more importantly, plaintiff has not identified any provision of the Insurance Code or the agency agreement that prohibits defendant, as an insurance carrier, from engaging solely in bundled policies, and we have found none. Instead, plaintiff relies on Bulletin No. 93-01 issued by the Department of Insurance and Financial Services in 1993, which provides that an insurer should refrain from several acts that "could be" a violation of the act. One of those listed acts was:

> The establishment of quotas for agents for applications from eligible persons for automobile insurance in those situations where the insurer is not writing or has not received applications for both the automobile and home insurance for that eligible person.

Plaintiff does not fully explain how this provision is applicable, let alone controlling. Indeed, these types of bulletins appear to be analogous to attorney general opinions, which are not binding on this Court. See *Attorney General v Powerpick Club*, 287 Mich App 13, 34; 783 NW2d 515 (2010). Moreover, assuming this bulletin had the force of law, plaintiff does not identify any "quota" that defendant established. The only supposed quota referenced by defendant is the 25-minimum applications established by the Michigan Legislature in MCL 500.1209(2)(e). However, defendant's reliance on that portion of the statute cannot be deemed to constitute *defendant* "establish[ing]" any quota.

Therefore, we hold that the trial court properly granted summary disposition on this count in favor of defendant.

B. SENDING OF EXPIRATION NOTICES

At issue is whether defendant's mailing of its notices to its insureds violated ¶ 9 of the agency agreement. Paragraph 9 states, in pertinent part, "Agency's records and use and control of expirations shall be the property of Agency and left in Agency's undisputed possession." The term "expirations" was not defined in the agreement, but our Supreme Court has noted the following:

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not a genuine issue of a *material* fact. See *Black's Law Dictionary* (10th ed) (defining "material fact" as "a fact that makes a difference in the result to be reached in a given case").

[3] Plaintiff's examples of using only 25 home policies or only 25 auto policies both fall under the umbrella of "a combination of 25 home and auto policies."

> "In the insurance filed the term 'expirations' has a definite meaning. As to this it has been stated: 'The record known in insurance circles as expirations is in effect a copy of the policy issued to the insured, which contains the date of issuance, name of the insured, expiration, amount, premiums, property covered and terms of insurance.' " [*Woodruff v Auto Owners Ins Co*, 300 Mich 54, 59-60; 1 NW2d 450 (1942) (citation omitted).]

Thus, the agency agreement merely provides that plaintiff is to retain the copies of the policies it had issued on behalf of defendant. It does not state that defendant could not contact its clients after any termination. Indeed, looking at the notices defendant sent, there is nothing wrong about them. Importantly, the notices state nothing factually incorrect, and they simply provide the available options to the insured, now that plaintiff no longer represents defendant. It is notable that the very first suggestion that defendant offered to its insureds is that they are to contact plaintiff to obtain coverage through another insurance carrier. Only at the end of the letter does defendant give instructions on what the insureds should do if they wish to maintain their policies with defendant.

We agree with the trial court that these suggestions did not violate ¶ 9 of the agency agreement. Nothing defendant presented acted to divest plaintiff of its "records and use and control of expirations." Indeed, the record shows that defendant, on its own initiative, provided plaintiff a list of its customers upon termination. Also, defendant instructed plaintiff to move these policies to another insurance carrier within 180 days after the termination, and defendant only contacted those whose policies remained after this 180-day period. We also are mindful that defendant had the obligation to contact all of its customers because, despite defendant revoking plaintiff's *actual* authority to represent defendant, plaintiff nonetheless retained *apparent* authority to bind defendant. See *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001) ("Under fundamental agency law, a principal is bound by an agent's actions within the agent's actual or apparent authority."). And "[a]pparent authority may arise when acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992). Thus, if defendant did not want to be bound by plaintiff's apparent authority to act on behalf of defendant, it had to notify

its insureds about the termination of the agency agreement it had with plaintiff. See also *Woodruff*, 300 Mich at 63 (stating that the defendant insurer had a right to advise policyholders of the termination of its agency agreement with the plaintiff because, otherwise, the defendant could have been bound by the plaintiff agency).

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Jonathan Tukel