STATE OF MICHIGAN

COURT OF APPEALS

GARY M. JOHNSON, Plaintiff-Appellant,	UNPUBLISHED July 28, 2011
v	No. 298048 St. Clair Circuit Court
FARM BUREAU INSURANCE COMPANY, Defendant-Appellee.	LC No. 09-002542-CK

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(7) in favor of defendant Farm Bureau Insurance Company. We affirm.

This case arises from a July 23, 2008, fire that destroyed an outbuilding on plaintiff's property. Farm Bureau insured plaintiff's property under a "Country Estate" policy that provided coverage for his residence and residential personal property, but not for any farm buildings or farm property with the exception of property that was specifically scheduled for coverage. There is no dispute that the outbuilding[1] was scheduled under the policy, that the value of the building loss was in excess of the $50,000 policy limit for the structure, and that Farm Bureau tendered the full policy limit to plaintiff for loss of the building.

At issue in this case are certain items that were stored in the outbuilding when it burned, including fence posts, fencing, gates, and other fence related hardware. Plaintiff asserted that these items should be covered under the policy as residential personal property. Farm Bureau maintained that these items were not covered under the policy because they were of a farming nature and eligible for farm property coverage, which plaintiff elected not to purchase.

According to an activity log prepared for the date of September 5, 2008, Farm Bureau claims representative Jackie Bligh verbally informed plaintiff that the fencing materials were not covered under Coverage C for residential personal property because the items are of a farming nature and eligible for farm personal property coverage. Bligh also informed plaintiff that the

[1] The outbuilding was listed as "Pole Barn/Storage."

items were not covered under a separate policy provision [section IV] that provided coverage for materials purchased or delivered in the 90 days preceding the loss.[2]

In a letter to Bligh dated September 14, 2008, plaintiff stated, "I understand it is your position that these items are not covered personal property." Plaintiff also offered an explanation why he believed the fencing materials should be covered. This letter was apparently not received by Farm Bureau before Bligh sent a letter to plaintiff with regard to the residential personal property claim. In Bligh's letter dated September 18, 2008, Bligh stated in pertinent part:

> A draft for $4,826 is being processed and will be sent to you shortly. The amount represents the actual cash value of your personal property claim.
>
> Enclosed is a copy of the inventory. You will notice all building materials related to fence building have been deleted from the inventory. Section IV coverage covers building materials only for 90 days after purchase. Also farm related fences have to be scheduled on the policy.[3]

In a letter dated September 29, 2008, Bligh responded to plaintiff's September 14, 2008, letter. As relevant to the residential personal property claim and the items for which Farm Bureau paid actual cash value of $4,826, Bligh explained:

> In reference to your inventory, we have depreciated it according to the type of item on the inventory and the age of the item described. You have received the actual cash value of these items. If you would like to apply for the replacement cost of these items submit the receipts for the items and you will be compensated the balance due on the contents.

Plaintiff continued to dispute Farm Bureau's partial denial of the residential personal property claim with respect to the fencing materials. In an October 27, 2008, letter to Bligh's supervisor, David Moorish, plaintiff acknowledged that coverage for the fencing materials had been denied. In that letter, plaintiff wrote with regard to the fencing materials:

> [S]he [Bligh] did subsequently deny these items, stating they were of a farm environment. . . . then said the items were stored for more than 90 days and thus were not covered.

Plaintiff went on to explain why he believed the fencing materials should be covered as residential personal property. Moorish replied to this letter by way of a letter dated October 31, 2008. As pertinent to the issue of the fencing materials, Moorish wrote:

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[2] According to plaintiff, the fencing items had been in the outbuilding since 2004.

[3] The letter also advised plaintiff that he had 180 days from the date of the draft to submit actual receipts to show the completed repair or replacement cost of the covered personal property if he wished to be reimbursed for the difference between the property's actual cash value and its repair or replacement cost. Plaintiff was advised to contact Bligh if he had any questions.

> Issue two relates to a request for payment of fences and other items stored in the burned outbuilding. You did not purchase Section III coverage with our policy which may have covered some of the 600 fence posts, steel gates, and other materials related to the fence materials. These items are not usual and incidental to the occupancy of a dwelling, which would be found under contents coverage.

Plaintiff filed the present action for breach of contract, violation of MCL 500.2006, and requesting equitable or declaratory relief, on September 29, 2009. Farm Bureau moved for summary disposition under MCR 2.116(C)(7). Farm Bureau asserted that Bligh issued a formal and final decision regarding coverage for residential personal property damaged by the fire on September 18, 2008, and specifically denied coverage for the fencing materials. Thus, Farm Bureau maintained that the contractual one-year period of limitations expired before plaintiff filed this lawsuit.

Following a hearing on the motion, the trial court issued a written opinion and order granting defendant's motion for summary disposition. The court concluded that the statute of limitations expired on September 18, 2009, and "since Plaintiff did not file the present action until September 29, 2009, it is barred by MCL 500.2833(1)(q)."

On appeal, plaintiff argues that the trial court erred by dismissing plaintiff's complaint under MCR 2.116(C)(7) because a question of fact existed with regard to the date that Farm Bureau formally denied plaintiff's residential personal property claim with regard to the fencing materials. This Court reviews de novo a trial court's decision to grant summary disposition. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 371; 761 NW2d 353 (2008). This Court also reviews de novo the proper interpretation of statutes. *State Farm Fire & Casualty Co v Corby Energy Services, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006).

A party is entitled to summary disposition under MCR 2.116(C)(7) if the opposing party's claim or claims are barred under the applicable statute of limitations. The parties may support or oppose a motion for summary disposition under MCR 2.116(C)(7) with affidavits, depositions, admissions, or other documentary evidence. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008); MCR 2.116(G). In reviewing motions under MCR 2.116(C)(7), this Court will accept the plaintiff's well-pleaded factual allegations as true unless contradicted by the parties' supporting affidavits, depositions, admissions, or other documentary evidence. *Odom*, 482 Mich at 466. This Court will construe the parties' submission in the light most favorable to the non-moving party. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). However, if no material facts are in dispute and reasonable minds could not differ on the legal effect of those facts, whether the statute of limitations bars the plaintiff's claim is a matter of law for the Court. *Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121 (1997).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). "If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *USAA Ins Co v Houston Gen Ins Co*, 220 Mich App 386, 389; 559 NW2d 98 (1996). Nothing will be read into a clear statute that is

not within the manifest intent of the Legislature as derived from the language of the statute itself. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002), citing *Omne Fin, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).

The only issue presented in this case is whether the trial court erred by finding that plaintiff's cause of action is barred by the applicable statute of limitations. Whether Farm Bureau acted properly in partially denying plaintiff's claim for residential personal property is not implicated in this appeal.

MCL 500.2833(1)(q) provides:

> (1) Each fire insurance policy issued or delivered in this state shall contain the following provisions:
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> * * *
>
> (q) That an action under the policy may be commenced only after compliance with the policy requirements. An action must be commenced within 1 year after the loss or within the time period specified in the policy, whichever is longer. *The time for commencing an action is tolled from the time the insured notifies the insurer of the loss until the insurer formally denies liability*. [Emphasis added.]

Thus, it is the rule in Michigan, under the clear language of this provision, that fire insurance policies provide a "mandatory limitation period [for filing a lawsuit] of at least one year, with tolling, unless a longer period is specifically set forth in the insurance policy." *Randolph v State Farm Fire & Cas Co*, 229 Mich App 102, 106–107; 580 NW2d 903 (1998). The statute makes the centerpiece for determining when the limitations period begins to run the point at which an insurer has formally denied liability. *Saad v Citizens Ins Co of America*, 227 Mich App 649, 652; 576 NW2d 438 (1996). The receipt of a formal denial will "unequivocally impress[ ] upon the insured that the extraordinary step of pursuing relief in court must be taken," *Lewis v Detroit Auto Inter–Ins Exchange*, 426 Mich 93, 101; 393 NW2d 167 (1986), overruled on other grounds in *Devillers v Auto Club Ins Ass'n*, 473 Mich 562; 702 NW2d 539 (2005), and the statute, accordingly, embodies this concept. Our appellate courts have already considered the meaning of the term "formal denial." "A denial of liability need not be in writing to be formal, but it must be explicit." *Mt Carmel Mercy Hosp v Allstate Ins Co*, 194 Mich App 580, 587; 487 NW2d 849 (1992) (citation omitted).

Here, it is undisputed that the loss occurred on July 23, 2008, and that plaintiff promptly tendered proof of loss to Farm Bureau. There is also no dispute that the building claim was promptly paid at policy limits. Subsequent to payment on the building claim, Farm Bureau tendered payment to plaintiff in an "amount represent[ing] the actual cash value of [his] personal property claim." The September 18, 2008, letter preceding the payment noted that all building materials related to fence building had been deleted from the inventory and clearly stated the reason why these items were not included in the inventory and were not paid. At that point,

pursuant to the clear and unambiguous terms of MCL 500.2833(1)(q), the claim for fencing materials was denied and the one-year limitations period for bringing suit was no longer tolled and the limitations period began to run.[4]

In a less than clear argument, it appears that plaintiff also argues that Farm Bureau did not formally deny plaintiff's claim on September 18, 2008, because subsequent correspondence from Farm Bureau (in response to correspondence from plaintiff) identified new reasons for denying the claim for coverage of the fencing material. However, nothing in the subsequent correspondence altered Farm Bureau's denial of coverage for the fencing materials that had been communicated in the September 18, 2008, letter. No unresolved claims for coverage existed after Farm Bureau made a determination on the personal property claim.[5]

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause

[4] Despite this formal denial, plaintiff continued to send correspondence to Farm Bureau urging it to reconsider its denial of coverage for the fencing materials, rather than filing suit. Additionally, subsequent correspondence related to carrying out the coverage decision made with regard to covered items, such as actual cash value on the covered items of personal property and a claim on the covered items for depreciation if and when those items were replaced. Farm Bureau never requested plaintiff to submit additional information regarding those items for which coverage had been denied.

[5] Plaintiff's reliance on *Johnson v Parker & Sons Roofing & Chimney, Inc*, unpublished opinion per curiam of the Court of Appeals, Docket No. 271779 (issued February 22, 2007), is misplaced as that case is both factually distinguishable and non-binding.