STATE OF MICHIGAN

COURT OF APPEALS

WYOMING LAND CORPORATION and SUNDANCE TANK & TRUCK WASH, INC.,

Plaintiffs-Appellants,

v

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
July 16, 1996

Nos. 194844, 194845
LC No. 91-105745-NZ
ON REMAND

Before: Murphy, P.J., and Jansen and Corrigan, JJ.

PER CURIAM.

This case is before us on remand from the Supreme Court for reconsideration in light of *Holloway Construction Co v Oakland Co Bd of Rd Comm'rs*, 450 Mich 608; 543 NW2d 923 (1996). The Supreme Court vacated our prior judgment. 451 Mich 892 (1996). We now affirm in part and reverse in part.

This case arises out of a fire that occurred on May 15, 1990, that destroyed a building owned by plaintiff Wyoming Land Corporation and leased to Sundance Tank & Truck Wash, Inc. Both plaintiffs were insured by defendant Michigan Basic Property Insurance Association against fire and other casualty loss for the building. After the fire, plaintiffs contacted defendant and reported the loss. Defendant sent an appraiser to investigate the building. Plaintiffs also retained a contractor to prepare an estimate for the loss. Plaintiffs' contractor estimated a loss of $400,705.08. Defendant disputed this amount, but offered to pay $208,251.09 as full settlement of the claim.

Plaintiffs indicated that they would accept $208,251.09 as partial payment. Although defendant initially sent the payment indicating that it was "final" on the face of the check, it admitted that the payment was intended as partial. The insurance policy contained a provision for an appraisal process[1] in the event that the parties did not agree to a payment amount. Appraisal under the policy was

demanded by plaintiffs on November 28, 1990, and plaintiffs designated an appraiser on November 30, 1990. Defendant refused to comply with the appraisal process.

Plaintiffs then filed a breach of contract suit in the Wayne County Circuit Court on March 5, 1991. Plaintiffs alleged breach of insurance contract and bad faith refusal to pay a claim. In July 1992, defendant finally made a written demand for an appraiser. The appraisers rendered a unanimous award for the loss of $360,541. Defendant then tendered the remaining payment of $152,289.91 to plaintiffs on November 25, 1992. In December 1992, plaintiffs filed a motion for entry of judgment and requested interest pursuant to MCL 500.2006(1); MSA 24.12006(1) and MCL 600.6013; MSA 27A.6013. The trial court entered the judgment awarded by the appraisers as requested by plaintiffs, but denied the request for interest.

Plaintiff appealed to this Court. In Docket No. 170223, plaintiffs argued that the trial court erred in granting defendant's motion for summary disposition on the bad faith breach of insurance contract claim. We affirmed the trial court's ruling in this regard, ruling that there is no independent tort action for bad faith breach of an insurance contract in this state. *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401, 423; 295 NW2d 50 (1980); *Taylor v Blue Cross and Blue Shield of Mich*, 205 Mich App 644, 657; 517 NW2d 864 (1994). Because the Supreme Court's opinion in *Holloway* does not involve any issues regarding a tort action for bad faith breach of an insurance contract, we reaffirm our prior decision in Docket No. 170223 that the trial court did not err in granting defendant's motion for summary disposition on the claim of bad faith breach of an insurance contract, for the reasons set forth in our prior opinion. *Wyoming Land Corp v Michigan Basic Property Ins Assoc*, unpublished opinion per curiam of the Court of Appeals, issued April 5, 1995 (Docket Nos. 161827, 170223), slip op, p 3.

In Docket No. 161827, plaintiffs raised issues relating only to the trial court's decision to not grant interest. Plaintiffs argued that the trial court erred in refusing to award 12% interest under MCL 500.2006(1); MSA 24.12006(1). We again note that the Supreme Court's decision in *Holloway* did not address or deal with in any manner an award of interest under MCL 500.2006(1); MSA 24.12006(1). Accordingly, we reaffirm our decision that the trial court did not err in denying plaintiff's request for 12% interest under §2006 for the reasons set forth in our prior decision. *Wyoming Land, supra*, slip op, p 2.

Plaintiffs also argued that the trial court erred in not awarding interest under MCL 600.6013; MSA 27A.6013. We ruled that the trial court did not err in denying interest under § 6013. In light of *Holloway*, and the cases cited therein, we now agree with plaintiffs that an award of interest under § 6013 is mandatory.

In *Holloway*, the Supreme Court held that preaward, prejudgment interest on an arbitration award is not statutorily required under MCL 438.7; MSA 19.4, where the arbitrators do not award it as part of the prevailing party's compensation. Preaward damage claims including interest are deemed to have been submitted to arbitration, unless there is an agreement providing otherwise. *Id.*, p 618.

However, the Supreme Court also ruled that "postaward, prejudgment interest and postjudgment interest under § 6013 are statutorily required." The Supreme Court specifically relied on its prior decisions in *Old Orchard by the Bay Associates v Hamilton Mut Ins Co*, 434 Mich 244; 454 NW2d 73 (1990) and *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488; 475 NW2d 704 (1991).

In *Old Orchard*, which involved an arbitration award, the Supreme Court stated that the "award of such statutory interest under MCL 600.6013; MSA 27A.6013 is mandatory, although the parties may vary the applicable interest rate within certain parameters." *Old Orchard, supra*, pp 250-251. In *Gordon Sel-Way*, a case also involving an arbitration award, the court stated that "[o]nce the complaint is filed, as long as it results in a money judgment, MCL 600.6013; MSA 27A.6013 is triggered by its terms." *Gordon Sel-Way, supra*, p 509. The court specifically held that in civil actions instituted to confirm an arbitration award and reduce it to judgment, § 6013 governs the award of interest from the date the complaint is filed and continues until the date the judgment is satisfied. *Gordon Sel-Way, supra*, p 510.

In the present case, plaintiffs instituted a breach of contract suit in circuit court. After the suit was filed, the parties agreed to utilize the appraisal process as set forth in the insurance policy. The appraisers issued a unanimous judgment, and plaintiffs moved for entry of judgment, which the trial court granted. Likewise, in *Holloway*, the plaintiff filed suit in circuit court and the parties later stipulated to binding arbitration. The circuit court confirmed the arbitration award in the plaintiff's favor. The Supreme Court concluded that postaward, prejudgment interest and postjudgment interest under § 6013 were statutorily required. *Holloway, supra*, p 618.

Accordingly, we conclude that the trial court erred in refusing to award interest under § 6013. Such postaward, prejudgment interest and postjudgment interest is statutorily required as stated in *Holloway*. We remand to the trial court for modification of the judgment consistent with this opinion.

Affirmed in part, reversed in part, and remanded to the trial court for the award on the judgment of postaward, prejudgment interest and postjudgment interest under § 6013. Jurisdiction is not retained.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Maura D. Corrigan

[1] The insurance policy sets forth the following regarding an appraisal:

> If we and you disagree on the values of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having

jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. pay its chosen appraiser; and

b. bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.