STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

JAMES M. SALVATI,

Defendant-Appellee.

UNPUBLISHED
October 25, 1996

No. 162053
LC No. 92-011934-CZ

DENNIS DUBUC,

Plaintiff-Appellant,

v

JAMES SALVATI,

Defendant-Appellee.

No. 166071
LC No. 91-011515-CZ

Before: MacKenzie, P.J., and Jansen and T.R. Thomas,* JJ.

PER CURIAM.

Plaintiffs Auto-Owners Insurance Company and Dennis Dubuc appeal as of right from judgments of no cause of action entered on February 10, 1993, following a bench trial in the Livingston Circuit Court. We affirm.

Dubuc, the owner of a commercial building, filed suit in pro per against defendant, the lessee of the building, claiming damages for waste to the property, breach of the lease, and wrongful removal of

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* Circuit judge, sitting on the Court of Appeals by assignment.

equipment (a paint spray booth). At trial, the court granted defendant's motion for a directed verdict, finding that Dubuc had failed to provide evidence regarding the amount of damages allegedly incurred in repairing the building. Following trial, the court entered a judgment of no cause of action, ruling that Dubuc had failed to prove the amount of unpaid rent and that Dubuc had no claim for reimbursement of the insurance deductible because it was not paid by Dubuc, but by Green Oak Industries, Inc., a corporation owned by Dubuc.

No. 162053

Auto-Owners raises only one issue on appeal. It argues that the trial court erred in ruling that it was not a real party in interest to the present action and in dismissing its cause of action.

We find that the trial court did not err when it ruled that Auto-Owners had no cause of action because Green Oak Industries had no insurable interest to which Auto-Owners could succeed as a subrogee. Specifically, the trial court found that Green Oak Industries had no insurable interest in the property because the financial loss from the damage to the building was owned by Dennis and Carol Dubuc and only applied to them. The uncontroverted evidence at trial was that Dennis and Carol Dubuc were the owners of the building leased by Salvati. Green Oak Industries was not a party to the lease. Accordingly, there can be no recovery on the insurance policy by Auto-Owners as the subrogee because the claimant (Green Oak Industries) did not have an insurable interest in the building. *Secura Ins Co v Pioneer State Mutual Ins Co*, 188 Mich App 413, 415; 470 NW2d 415 (1991). Contrary to Auto-Owner's claim, the mere payment of a claim cannot confer validity on an insurance policy. See *id.*

Further, Green Oak Industries and the Dubucs are not interchangeable for purposes of this case as argued by Auto-Owners. The insurance adjuster for Auto-Owners admitted at trial that it did not verify ownership of the building before issuing the policy to Green Oak Industries. He also admitted that the proof of loss statement was signed by Dubuc in his individual capacity and that a valid proof of loss statement must include the signature of the policyholder, in this case Green Oak Industries. Under these circumstances, Auto-Owners cannot be granted relief for its own mistake, especially where it would undermine the public policy concerns set forth in *Secura*.

Accordingly, the trial court did not err in ruling that Auto-Owners had no cause of action against defendant because it was not a real party in interest.

No. 166071

Dubuc first argues that the trial court failed to sufficiently state its reasons on the record for granting defendant's motion for a directed verdict, as required by MCR 2.517(A)(1). A review of the record reveals lengthy discussions between the trial court and Dubuc in which the court repeatedly asked Dubuc to point to evidence in the record that showed the amount of damages. Dubuc was unable to do so and indicated to the court that it would have to "arbitrarily pick a figure to see if there was any damages." Proof of the amount of damages may not be found on conjecture or speculation. *Strzelecki v Blaser's Lakeside Industries of Rice Lake, Inc*, 133 Mich App 191, 197; 348 NW2d

311 (1984). The record shows that the trial court was aware of the issues in the case, correctly applied the law, and articulated a legitimate legal basis for granting defendant's motion. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Dubuc next contends that the trial court made clearly erroneous findings of fact. We do not agree and find that the trial court's factual findings were all supported by the record. Testimony at trial indicated that it was defendant who originally undertook to sell the paint spray booth and who was initially responsible for its ultimate removal. Further, the insurance policy was never admitted into evidence as an exhibit, thus the trial court was correct when it stated that no insurance policy naming Dennis and Carol Dubuc as additional insureds was admitted into evidence. The trial court also did not clearly err in finding that there was insufficient evidence regarding the amount of rent allegedly owed by defendant. Accordingly, we find that the trial court's factual findings are not clearly erroneous. MCR 2.613(C).

Dubuc also argues that the trial court abused its discretion in excluding evidence of his amended list of damages and utility bills. We find no abuse of discretion. No proper foundation was laid to authenticate the documents. MRE 901(a). Therefore, the trial court did not abuse its discretion in excluding this evidence.

Dubuc also contends that the trial court's verdict was against the great weight of the evidence. In light of the fact that the trial court's factual findings are all supported by the record, we reject Dubuc's contention in this regard.

Finally, we conclude that the trial court did not abuse its discretion in denying Dubuc's motion for new trial. Dubuc has not identified any bases to justify a new trial.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas