STATE OF MICHIGAN

COURT OF APPEALS

HARRY I. MAST,

Plaintiff-Appellant,

v

THE TRAVELERS INSURANCE COMPANY,

Defendant-Appellee,

and

DEGRAFF & BUITEN AGENCY, INC., and VALERIE HOWARD,

Defendants.

UNPUBLISHED
November 15, 1996

No. 185551
LC No. 93-080836-CZ

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition[1] to defendant The Travelers Insurance Company. Plaintiff claims that defendant improperly paid insurance proceeds to a named insured under an insurance policy that plaintiff purchased when defendant knew that plaintiff would not settle the claim for the amount paid and the other named insured did not have an insurable interest in the damaged property. We affirm.

At the trial court, plaintiff argued that he should have received the insurance proceeds when the front-end loader he purchased and leased to the partnership he co-owned was vandalized because, although he was the owner of the loader and his ex-partner had no "insurable interest" in the loader, his ex-partner received and cashed the settlement check. See *VanReken v Allstate Ins Co*, 150 Mich App 212, 219; 388 NW2d 287 (1986). We disagree.

Plaintiff incorrectly contends that he has the only "insurable interest" in the vandalized loader. An "insurable interest" is not determined by title, possession or any other label attached to the insured's

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* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

property right; rather, the existence of an insurable interest depends upon whether the insured will suffer a loss by the destruction of the property or gain an advantage due to the interest's existence. *VanReken, supra* at 219. In *Capital Mortgage Corp v Michigan Basic Property Ins Ass'n*, 78 Mich App 570, 574; 261 NW2d 5 (1977), this Court cited *Crossman v American Ins Co*, 198 Mich 304, 308-309; 164 NW 428 (1917), as follows:

> "The question is not what is his title to the property, but rather, would he be damaged pecuniarily by its loss. If he would, he has an insurable interest. That interest may be derived by possession, enjoyment, or profits of the property, security or lien resting upon it, or it may be other certain benefits growing out of or dependent upon it. It was said by Mr. Justice Gray, speaking for the Court in Harrison v Fortlage, 16 US 57 (16 Sup Ct 488) [161 US 57, 65; 16 S Ct 488, 490; 40 L Ed 616, 619 (1897)]:
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> > "'It is well settled that any person has an insurable interest in property, by the existence of which he will gain an advantage, or by the destruction of which he will suffer a loss, whether he has or has not any title in, or lien upon, or possession of the property itself.'"

Absent an insurable interest, insurance policies would be founded upon mere hope and expectation, thereby making them objectionable as a form of gambling. *Secura Ins Co v Pioneer State Mutual Ins Co*, 188 Mich App 413, 415; 470 NW2d 415 (1991).

In the case at bar, plaintiff admits that the loader was used to mine sand and gravel for the VerMeulen/Mast Corporation, a legal partnership. Although plaintiff purchased the loader, he loaned it to VerMeulen/Mast and declared VerMeulen/Mast d/b/a Doug VerMeulen and Harry Mast as named insureds on the insurance policy he purchased from defendant. When the loader was vandalized, VerMeulen/Mast Corporation most likely suffered losses as a result of not having a loader at its disposal or at least by having one less loader available for its mining operations. Under the test set forth in *Crossman, supra,* we find no genuine issue of material fact regarding VerMeulen/Mast's insurable interest in the loader. Indeed, upon reviewing the pleadings de novo and accepting all factual allegations as true, we believe that plaintiff's claim against defendant is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery because VerMeulen/Mast Corporation, the first named insured under the policy, through Doug VerMeulen cashed defendant's settlement draft on behalf of VerMeulen/Mast. See, generally, *Vargo v Sauer*, 215 Mich App 389, 398; 547 NW2d 40 (1996); *ETT Ambulance Service Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395-396; 516 NW2d 498 (1994). Plaintiff's appeal must therefore fail.

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Thomas Giles Kavanagh

[1] Although the trial court granted defendant's motion under MCR 2.116(C)(8), the court considered the parties affidavits and documentary evidence pursuant to MCR 2.116(C)(10) but found the evidence "unavailing." We will therefore apply a traditional (C)(8) analysis.