

Court of Appeals, State of Michigan

ORDER

Magdalena Predeteanu v Auto-Owners Insurance Company and
CEMCARE, Inc.

Docket No. 267718

LC No. 2003-053509-CK

Kathleen Jansen
Presiding Judge

William B. Murphy

Karen M. Fort Hood
Judges

On the Court's own motion, the opinion issued September 7, 2006 is hereby VACATED,
and a new opinion will be issued forthwith.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 11 2006

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

MAGDALENA PREDETEANU,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee,

and

CEMCARE, INC.,

Defendant.

UNPUBLISHED
September 7, 2006

No. 267718
Oakland Circuit Court
LC No. 2003-053509-CK

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff alleges that the trial court erred in granting summary disposition because there was a distinction between water and mold damage, mold damage fell within the definition of pollutant coverage, and penalty interest should have been awarded where there was no reasonable dispute regarding coverage. We disagree.

Appellate review of a summary disposition decision is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail do not satisfy the burden in opposing a motion for summary disposition. *Quinto, supra.*

Plaintiff failed to create a genuine issue of material fact regarding water damage. The affidavit of plaintiff's public adjuster failed to meet the specificity requirements set forth in *Quinto, supra*, but merely contained conclusory allegations that are insufficient to preclude summary disposition. The policy language expressly excluded coverage for mold regardless of the potential for concurrent causes. *Hayley v Allstate Ins Co*, 262 Mich App 571, 575-576; 686 NW2d 273 (2004). Plaintiff's attempt to rely on the definition of "pollutants" is without merit. Plaintiff ignores the definition of the term "mold," but rather, alleges without citation to authority that "mold" is a "contaminant," which qualifies as a "pollutant." An exercise in semantics will not operate to create a question of fact. *Camden v Kaufman*, 240 Mich App 389, 397; 613 NW2d 335 (2000). Finally, the question of coverage was reasonably in dispute, and therefore, plaintiff was not entitled to penalty interest. See MCL 500.2006.

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood