

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH MACDONALD and DEIDRE
MACDONALD,

UNPUBLISHED
August 11, 2005

Plaintiffs-Appellants,

v

No. 253085
Saginaw Circuit Court
LC No. 03-047281-NZ

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiffs Kenneth and Deidre MacDonald appeal as of right the trial court's order granting summary disposition in favor of defendant Auto-Owners Insurance Corporation under MCR 2.116(C)(10). This case arises out plaintiffs' request for a declaratory judgment on the availability of coverage under an insurance agreement executed between the parties. We affirm. This case is being decided without oral argument under MCR 7.214(E).

While plaintiffs were having the sewer line to their home replaced, their basement walls were damaged. Plaintiffs filed a claim with defendant seeking coverage for the damage. Defendant denied the claim, resulting in the instant action. Plaintiffs contend that the trial court erred in concluding that no genuine issue of material fact existed concerning whether their home's basement walls "collapsed" within the meaning of their insurance agreement. We disagree.

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is appropriate under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." The interpretation of contractual language is also reviewed de novo on appeal. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463, 469; 663 NW2d 447 (2003).

"Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "An insurance policy is

enforced in accordance with its terms. Where a term is not defined in the policy, it is accorded its commonly understood meaning.” *Twichel v MIC General Ins Corp*, 469 Mich 534, 534; 676 NW2d 616 (2004).

The homeowners insurance policy in issue provides coverage for the collapse of a part of a building, other than a foundation, if the collapse is caused by “defective material or defective methods used in construction, reconstruction, renovation or remodeling.” The policy does not define what constitutes a collapse, but does state that a collapse “does not include settling, cracking, shrinkage, bulging, or expansion.”

The fact that the term “collapse” is not defined in the policy does not render it ambiguous. *Pioneer State Mut Ins Co v Splan*, 467 Mich 903; 653 NW2d 414 (2002). This Court may look to the dictionary definition of a term to determine its meaning. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). The term “collapse” has been defined in relevant part as meaning “to fall or cave in; crumble suddenly . . . to break down, fail utterly.” *Random House Webster’s College Dictionary* (2000).

Defendant presented evidence that the basement walls were only cracked and bulging. In response, plaintiffs asserted that defendant’s photographic evidence did not depict all of the damage that occurred, and plaintiffs offered the affidavit of a contractor who asserted that plaintiffs’ basement walls “collapsed.” However, plaintiffs failed to offer any specific facts stating what damage occurred to their home besides that depicted in the photographs, and the contractor’s affidavit failed to allege on what facts he based his opinion that a collapse occurred. We conclude that plaintiffs’ unsubstantiated assertions that a collapse occurred are insufficient to withstand a motion for summary disposition. MCR 2.116(G)(4). Plaintiffs have failed to come forward with any specific facts establishing that their basement walls fell down, caved-in, or suddenly crumbled. Therefore, the trial court properly granted summary disposition in favor of defendant under MCR 2.116(C)(10).¹

Because plaintiffs failed to show that a genuine issue of material fact exists concerning whether a collapse occurred, we need not reach the secondary question of whether the basement walls constituted the home’s foundation.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens

¹ Notably, plaintiffs have not alleged that the damage to their home was so extensive as to render it uninhabitable. Thus, this case is distinguishable from *Dagen v Hastings Mut Ins Co*, 166 Mich App 225; 420 NW2d 111 (1987), and *Vormelker v Oleksinski*, 40 Mich App 618; 199 NW2d 287 (1972).