

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT PICHULO,

Plaintiff-Appellant,

v

AUTO OWNERS INSURANCE COMPANY and  
AL BOURDEAU INSURANCE SERVICES,  
INC.,

Defendants-Appellees.

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UNPUBLISHED  
December 1, 2005

No. 262653  
Genesee Circuit Court  
LC No. 04-079042-CK

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders granting summary disposition in favor of defendants. We affirm.

On January 30, 2002, plaintiff sustained fire damage to his rental property, and Auto Owners paid for the loss pursuant to the parties' insurance contract. Almost two years later, plaintiff sustained additional loss to the same property due to vandalism, which Auto Owners again paid for. Auto Owners then inspected the premises. The inspector found that they were vacant, and the repairs from the original fire had not yet been completed. Auto Owners decided to cancel plaintiff's insurance contract on that residence. Plaintiff had several other properties insured with Auto Owners, and plaintiff conceded that Auto Owners made no attempt to cancel policies on any of those properties. Plaintiff sought an extension, which Auto Owners denied after consulting with Al Bourdeau, plaintiff's insurance broker. Plaintiff then filed this suit.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider all evidence submitted by the parties in the light most favorable to the nonmoving party and grant summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120. We review de novo as a question of law the proper interpretation of a contract, including a trial court's determination whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

Plaintiff first argues that the cancellation clause of the parties' insurance contract absolutely precludes Auto Owners from canceling the contract. We disagree. The cancellation clause provides as follows:

We [Auto Owners] may cancel this policy by mailing or delivering written notice stating the reason for cancellation to you at your last address known to us or our authorized agent. This notice shall be mailed or delivered:

1. at least 10 days prior to the effective date when cancellation is for nonpayment of premium; or
2. when cancellation is for a reason other than nonpayment of premium, at least 30 days prior to the effective date.

If you occupy the dwelling located at the described premises, we may cancel this policy for reasons which conform to our underwriting rules.

Plaintiff argues that "if you occupy the dwelling located at the described premises, we may cancel this policy..." leads to the conclusion that "if you do not occupy the dwelling located at the described premises, we may not cancel this policy." Presuming the last paragraph of the cancellation clause can be read in isolation, it does not logically preclude cancellation if the insured does not occupy the dwelling, because the inverse of a true statement is not necessarily true. Ordinarily, "may" indicates permission, but it can be mandatory if the context so indicates. *Mill Creek Coalition v South Branch of Mill Creek Intercounty Drainage Dist*, 210 Mich App 559, 565; 534 NW2d 168 (1995). This case is an example of such a situation. A rational reading of this paragraph is that it is intended as a protection for homeowners against arbitrary cancellations, rather than a protection for landlords against *any* cancellations. The only rational purpose for its existence is as a limitation on Auto Owners' ability to cancel insurance contracts for "homeowners who occupy the dwelling." It does not explicitly apply to plaintiff, nor does it apply to plaintiff by logical implication.

Plaintiff next argues that Auto Owners did not cancel the insurance for a permissible reason. We disagree.

MCL 500.2123(4) provides that "termination of insurance shall not be effective unless the termination is due to reasons which conform to the underwriting rules of the insurer for that insurance." The primary reason Auto Owners stated for the cancellation was that the premises were vacant. The insurance contract does not define the term "vacant," so we give it its proper legal meaning. *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 58-59; 698 NW2d 900 (2005). Otherwise, contracts are to be interpreted to effectuate the intent of the parties, with the presumption that neither party intended to impose an unjust or absurd condition on the other. *Knox v Knox*, 337 Mich 109, 119-121; 59 NW2d 108 (1953).

Black's Law Dictionary (8<sup>th</sup> ed) defines "vacant" as empty or unoccupied, noting that "vacant" is sometimes distinguished from "unoccupied" in that vacancy refers to being *completely* empty, whereas unoccupied refers merely to "not routinely characterized by the presence of human beings." Michigan courts have apparently not directly defined the term, but our Supreme Court has implicitly treated the two terms as synonymous while holding that

temporary absences from the premises do not make the premises either vacant or unoccupied. *Stupetski v Transatlantic Fire Ins Co*, 43 Mich 373, 374-375; 5 NW 401 (1880). “The necessity for temporary absences on business, or for family convenience or pleasure, is recognized, and the insured is understood to contemplate an assent to them.” *Shackelton v Sun Fire Office*, 55 Mich 288, 292; 21 NW 343 (1884). We have explained that occupancy is a continuum:

On the one hand, where residents of a house are physically inside the dwelling at the very moment of the incident resulting in the loss, it is apparent that the building is not “vacant or unoccupied.” On the other hand, where the building stands totally vacant, devoid of all signs of human habitation when the loss is suffered, it is equally clear that the building is “vacant or unoccupied.” A plethora of other possible uses is manifest, however, and the quality or extent of any given use may not readily lend itself to categorization as either vacant or full, occupied or unoccupied. [(*Smith v Lumbermen’s Mut Ins Co*, 101 Mich App 78, 83; 300 NW2d 457 (1980)).]

Plaintiff conceded that the repairs necessitated by the fire were not actually completed until well after this suit was commenced. We conclude that the premises were “vacant” for approximately 27 months when Auto Owners sent its notice of cancellation.

Plaintiff does correctly note that the contract *limits* the term “vacant” to premises that are not “under construction or undergoing reconstruction or remodeling.” We adopt as persuasive the reasoning of the Seventh Circuit, which observed that a sixteen-month period of vacancy after a fire while the building was being renovated allowed the insurer to deny coverage because “[t]he ‘construction’ period cannot go on forever.” *Myers v Merrimack Mut Fire Ins Co*, 788 F 2d 468, 472 (CA 7, 1986). In that case, the insurance contract at issue also exempted buildings under construction from its vacancy exclusion. *Id.*, 470. “Such a clause balances a willingness to extend coverage through the construction period with a desire to guard against excessive vandalism that occurs when a dwelling is vacant.” *Id.*, 472. Auto Owners did not contract to cover the increased risk of loss associated with indefinitely vacant premises, and it would be unjust and commercially unreasonable to interpret the contract to the contrary. *Knox, supra* at 119-121. The exclusions in the contract for dwellings “under construction or undergoing reconstruction or remodeling” cannot be read as blanket exclusions under which a building may remain vacant indefinitely so long as the insured can claim that some work is being performed thereon.

We are not called upon to decide what length of time is reasonable because plaintiff only argues that the contract precludes cancellation for vacancy in the abstract. The underwriting rules say “vacant dwellings are not eligible” for the Premier Program under the policy, and they say “do not bind if vacant” under the Standard Program. The underwriting rules unambiguously indicate that Auto Owners does not intend to provide insurance coverage under this contract for vacant premises. Therefore, vacancy as a reason for cancellation is a reason that conforms to the underwriting rules. We need not reach the remaining issues on appeal regarding alternative grounds for cancellation. We also need not reach the issue of Al Bourdeau’s liability, because plaintiff conceded below, as he must, that if the cancellation was reasonable he had no cause of action against Al Bourdeau.

Affirmed.

/s/ Alton T. Davis

/s/ E. Thomas Fitzgerald