

STATE OF MICHIGAN
COURT OF APPEALS

PERCH RESEARCH INTERNATIONAL, INC.,

Plaintiff-Appellee,

v

WESTFIELD INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

August 30, 2005

No. 252758

Saginaw Circuit Court

LC No. 02-044559-CK

Before: O’Connell, P.J. and Schuette and Borrello, JJ.

SCHUETTE, J. (*dissenting*).

I respectfully dissent and would reverse the trial court’s denial of defendant’s motion for summary disposition.

Plaintiff maintains that the power outage may have resulted from an equipment failure on its premises, but nominates no specific device on its land as the culprit. Instead, plaintiff points out that Consumers Power records indicate the substation lost power at “approximately 6:12 p.m.,” while plaintiff’s alarm company put the time of plaintiff’s loss at 6:08 p.m., in other words a few minutes earlier. Plaintiff’s facility contained a security system installed by Stanley Alarm Systems who had a contractual obligation to notify plaintiff of any power failures so that plaintiff could manually activate its generators. However, plaintiff did not receive notice of the power outage at his facility, which Stanley Alarm recorded at 6:08 p.m. on July 22, 2001, because its dispatcher forgot to call. Plaintiff further points out that the same two references indicate a restoration of power only a minute apart. Plaintiff notes that the one-minute differential in this regard contrasts with the four-minute differential concerning when the respective outages began, and argues that the different intervals indicate separately caused power interruptions, not merely unmatched clocks. However, aside from the obvious implications of reports differing by only a minute concerning when power was restored, the difference of four minutes concerning when it was lost is not significant, in that Consumers Energy reported a loss beginning at *approximately* 6:12 p.m., which time is in fact a close approximation of 6:08 p.m. Plaintiff’s strained interpretation of these timing differentials is not sufficient to call into doubt the obvious explanation for plaintiff’s specific loss of power as part of the general failure of the substation. This leaves the question of the trial court’s concern that “a genuine issue of material fact exists as to the exact location of the downed line and whether it was, in fact, away from Plaintiff’s premises.”

There is not only no evidence that any electrical lines on plaintiff's premises fell on the night in question, but there is no evidence that specifically a "high voltage" line, as described by Consumers Energy, existed there at all. In this case, only pure speculation could place the origins of the equipment failure that led to the substation's failure specifically at plaintiff's location. Defendant satisfied its duty to show that the exclusion applied, by showing that plaintiff lost power because of a remotely located substation's failure; if plaintiff wished to challenge the evidentiary basis for invoking the utility exclusion, plaintiff was obliged to produce evidence to show that some initial failure on its own premises triggered what was a widespread, four-hour, power outage.

Plaintiff has offered only a strained interpretation of the evidence of when it, and the substation serving it, respectively, lost power, along with an unsupported and unlikely theory that the high-voltage line whose failure in turn caused the substation to fail happened to fall on plaintiff's premises. Thus, I would hold that the trial court erred in denying defendant's motion for summary disposition.

I would reverse.

/s/ Bill Schuette