STATE OF MICHIGAN

COURT OF APPEALS

PROTO-CAM, INC., Plaintiff-Appellant/Cross-Appellee, v TRANSAMERICA TITLE INS CO, Defendant-Appellee/Cross-Appellant.	UNPUBLISHED June 26, 2008 No. 275505 Kent Circuit Court LC No. 05-010929-CZ
PROTO-CAM, INC., Plaintiff-Appellant, v TRANSAMERICA TITLE INS CO, Defendant-Appellee.	No. 276443 Kent Circuit Court LC No. 05-010929-CZ

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

In Docket No. 275505, plaintiff appeals, and defendant cross appeals, from an order of the circuit court granting defendant summary disposition on plaintiff's seeking to recover benefits under a title insurance policy issued by defendant to plaintiff. In Docket No. 276443, plaintiff appeals the trial court's award of sanctions under various court rules. We affirm.

This dispute has its origins in plaintiff's purchase of certain real estate located in the city of Grand Rapids. At the time of plaintiff's purchase of the property, defendant issued an owner's title insurance policy, with plaintiff as the named insured. Thereafter, plaintiff transferred title to Tennine Corporation by quitclaim deed. As part of the transaction, Tennine leased the property back to plaintiff. Plaintiff and Tennine share common ownership and Tennine functions as a real estate holding and management company for plaintiff. Following this transaction, plaintiff became involved in a dispute with a neighboring property owner, 940 Monroe, LLC, and a contractor, Pioneer Incorporated, regarding the latter's use of a vacated street, Walbridge, which had run adjacent plaintiff's property, during construction on 940 Monroe's property. Plaintiff

claimed ownership in fee of the north half of the vacated street and an exclusive right of ownership in the south half pursuant to an easement granted by another adjoining property owner.

In the underlying litigation, the trial court ruled in favor of 940 Monroe regarding plaintiff's claim to the north half of vacated Walbridge, but ruled in plaintiff's favor regarding the claim of easement to the south half. Plaintiff tendered the costs of litigation to defendant, claiming that it was entitled under the title insurance policy to a defense provided by defendant. Defendant denied the claim and the instant litigation ensued. Ultimately, the trial court in this case granted summary disposition to defendant, concluding that coverage under the title insurance policy ended when plaintiff transferred ownership to Tennine. Plaintiff appeals.

Plaintiff's only argument on appeal regarding summary disposition is that the trial court erred in concluding that the title insurance policy no longer provided coverage after plaintiff quit claimed the property to Tennine. We disagree.

We review the grant or denial of summary disposition de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Similarly, the construction and interpretation of an insurance contract presents a question of law that is also reviewed de novo. *Id.*

At issue is the following provision in the title policy:

> The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land . . . .

Plaintiff argues that it remained an insured after it transferred the property to Tennine by quit claim deed by virtue of the provision in the policy defining "Insured":

> "Insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

Plaintiff's primary argument is that the policy remained in effect after the execution of the quit claim deed because Tennine was an insured because it gained title by operation of law. That is, plaintiff's argument is that Tennine is an insured because it gained title by operation of law and, therefore, because an insured (Tennine) retained an interest in the property, the policy remained in force. We disagree.

Plaintiff's argument that the transfer to Tennine was by operation of law is premised on the argument that the policy does not define "by operation of law" beyond distinguishing it from a "purchase" and, because the transfer of the property to Tennine did not constitute a purchase, the transfer must have been by operation of law. We disagree. First, plaintiff's argument ignores the fact that the policy does provide examples of what it intends the term "by operation

of law" to mean, such as a succession in interest by heirs, devisees, personal representatives, etc. Indeed, it is very relevant that the policy uses the term "succeed to the interest" rather "transfer" or "convey." We believe that the policy clearly and unambiguously envisions the term "by operation of law" to encompass what is essentially an involuntary transfer—such as when an heir takes title to a property by inheritance—triggered by some legally significant event largely unrelated to a real property transaction—such as the death of the named insured and title holder. This is in contrast to a voluntary transfer of property to achieve the aims of the parties to the transaction, whether the nature of the transaction is a true arm's-length purchase for value or a transfer between related parties to achieve some legal or financial advantage.

For these reasons, we agree with the trial court that this was not a transfer by operation of law and, therefore, Tennine did not become an "insured" within the meaning of the policy and, therefore, did not satisfy the requirement that there be an insured who retained an interest in the estate or land in order to maintain coverage under the policy.[1]

Plaintiff also argues that it remained an insured under the policy because it did not convey an interest in the north half of vacated Walbridge to Tennine and, therefore, retained an interest in the property which was the subject of the underlying litigation and which was covered by the title insurance policy. This argument must fail, however, because the legal description in the title insurance commitment matches the legal description of the property conveyed to Tennine by the quit claim deed. In other words, plaintiff conveyed to Tennine the entire interest in the property that was insured by defendant. In short, if plaintiff retained an interest in the property that it did not convey to Tennine, then that is an interest which defendant did not insure.

Finally, plaintiff argues that it retained an interest in the land even after the transfer to Tennine by virtue of its leasehold interest. In making its argument, plaintiff primarily relies upon an unpublished, out-of-state decision of a New Jersey court. Aside from the fact that plaintiff has failed to comply with MCR 7.215(C)(a) by attaching a copy of the unpublished opinion to its brief, we do not find an unpublished opinion of the New Jersey Superior Court to be persuasive in this action. In any event, we reject the premise of plaintiff's argument: that the lease back to plaintiff constituted retention of an interest in the land, thus satisfying the requirement for coverage to remain in force. While it may be said that plaintiff retained an interest in the use and enjoyment of the land, plaintiff did not retain an interest in the land itself. Rather, it transferred its interest in the land itself to Tennine.

For these reasons, we conclude that the trial court did not err in granting summary disposition to defendant. In light of the resolution of this issue, we need not consider the issues raised in defendant's cross appeal, regarding whether the trial court erred in denying defendant's earlier motion for summary disposition.

---

[1] This does raise a side issue which we note, but need not address, and that is that it would seem that if plaintiff's argument does have merit, then it would have been Tennine that should have maintained the underlying action and Tennine, as an insured under the policy under plaintiff's reasoning, that would have the claim against defendant, not plaintiff.

Turning to the second appeal, plaintiff argues the trial court erred in awarding sanctions to defendant. The trial court entered an order granting defendant sanctions under MCR 2.114(D) and (E) and MCR 2.313 in the amount of $23,279.20. The order further provided that, if the award under those court rules was reversed on appeal, defendant was awarded $8,900.00 in case evaluation sanctions under MCR 2.403(O). Ultimately, however, we need not resolve the question whether the trial court properly handled the sanctions issue. While plaintiff's brief on appeal challenges the award of sanctions under MCR 2.114(D) and (E), it never challenges the award of sanctions under MCR 2.313. Therefore, even if we were to agree with plaintiff that the trial court erred in granting sanctions under MCR 2.114, the entire sanction award would remain in tact under the alternate grounds of MCR 2.313 because plaintiff does not argue that the trial court erred on that basis.

Similarly, while plaintiff raises some interesting issues regarding the case evaluation sanctions, we need not address them because no case evaluation sanctions were awarded unless this Court reversed the grant of sanctions above. Because we are not reversing that award of sanctions, the award of case evaluation sanctions does not occur and any error by the trial court in calculating those sanctions is moot.

Affirmed. Defendant may tax costs.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy