STATE OF MICHIGAN

COURT OF APPEALS

PIONEER STATE MUTUAL INSURANCE COMPANY, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED August 24, 2001
v	No. 220477 Presque Isle Circuit Court
TIMOTHY C. SPLAN and DEIDRA SPLAN, Defendants/Counter-Plaintiffs-Appellants.	LC No. 95-002005-CZ

Before: Holbrook, Jr., P.J., and McDonald and Saad, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting summary disposition to plaintiff Pioneer State Mutual Insurance Company (hereinafter Pioneer). We reverse and remand.

When defendants bought their modular home in 1982, it was thirteen years old. Defendants insured their home with Pioneer beginning in 1982 and throughout the subsequent years. Defendants made considerable improvements and additions to the home in the first year they owned it. These included expansion of the bathroom, the addition of new sub-flooring, the addition of a laundry room and an attached two-car garage. A couple of years later, defendants installed a galvanized roof. Finally, in 1990 a large addition that included four bedrooms and a family room was added.

Ultimately, what began as minor cracks in the drywall ceiling of defendants' living room, developed into what defendants characterized as "gaping" separations. The consulting engineer hired by Pioneer to survey the damage noted severe sagging in the outside roof. This expert also concluded that "enough serious structural deficiencies were noted to raise concern for the safety of the occupants of this building." Defendants assert that twenty different contractors within a one hundred mile radius also told defendants that the damage could not be repaired. Ultimately, defendants received a repair estimate in the amount of $74,638.51 from D & T Construction in Indian River.

The proof of loss defendants submitted to Pioneer stated that the collapse was the result of a buildup of snow and ice. Based on the reporting of their consulting engineer, Pioneer concluded that the damage was caused by structural defects that pre-dated the defendants'

ownership of the home. The engineer specifically concluded that snow and ice did not cause the damage.

Defendants' roofing contractor agreed with Pioneer's engineer regarding the existence of the structural defects, and that these defects caused the damage. However, defendants' contractor disagreed with the engineer's conclusion that the ice and snow did not contribute in causing the damage. Nonetheless, defendants' contractor concluded that had the defects not been present, the roof would have been able to bear a "tremendous" amount of snow.

Pioneer insured defendants' home under three successive versions of its homeowner's insurance policy. Defendants first argue that the trial court erroneously based its coverage ruling on the second, or 1989 version of the policy. Defendants claim that the correct policy was the 1971 version that preceded the 1989 revision. We disagree. Defendants' claim was first discovered in December 1993. Defendants claim that the 1971 version was still in effect in December 1993 because it was a "continuous renewal" policy. However the 1971 version expressly authorizes and contemplates unilateral revisions by Pioneer of the policy, endorsements, and forms. When the policy was revised in 1989, that version became applicable to defendants no later than their next renewal date and remained in effect until the next revision in 1994. Therefore, the policy applicable to and governing that claim is the 1989 version.

Defendants also argue that reversal is warranted because the trial court's grant of summary disposition based on the language of the policy was predicated on the wrong policy. Specifically, defendants argue that the trial court considered the language found in the 1994 version, not the 1989 version that was applicable when the damage was discovered. Pioneer admits that it erroneously attached the 1994 version to its briefs below. However, Pioneer argues that this error was harmless in that the relevant language is identical in the 1989 and 1994 versions of the policy. We agree.

Pioneer relied on various provisions of the insurance contract in denying defendants' insurance claim. Pioneer argued that the coverage provision itself states that the insurer does not insure loss caused by "inherent vice, latent defect, [or] mechanical breakdown." Pioneer also pointed to the coverage exclusion for loss caused by "faulty, inadequate or defective . . . design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction." Finally, Pioneer noted that while coverage for damage due to collapse is mentioned in the "Additional Coverages" section of the policy, the term "collapse" is defined as not including "settling, cracking, shrinking, bulging or expansion." The trial court granted Pioneer's motion for partial summary disposition on the coverage issue under MCR 2.116(C)(10). This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

Viewing the evidence in a light most favorable to defendants as the non-moving party, the trial court concluded that summary disposition was warranted, in part, because "[t]he policy clearly excludes loss to property caused by faulty, inadequate or defective design, repair, workmanship and construction," and because "[t]he policy clearly excludes loss caused by settling, cracking, shrinking, bulging or expansion and specifically provides that the word "collapse" does not include any of the above."[1]

We turn first to Pioneer's claim that the grant of summary disposition was proper given that defendants are not covered for damage under the collapse provisions of the policy. Despite the limiting language found in the collapse provision, we conclude that the term "collapse" is ambiguous. "Ambiguous terms in an insurance policy must be construed against the drafter and in favor of the insured." *Wilkie v Auto-Owner Ins Co*, 245 Mich App 521, 524; 629 NW2d 86, 88 (2001). Accordingly, we construe the term to include any substantial impairment of the structural integrity of the covered home. See *Vormelker v Oleksinski*, 40 Mich App 618; 199 NW2d 287 (1972). The home need not be reduced to a pile of rubble for it to be considered to be in a state of collapse. See 71 ALR 3d 1072, § 5 (1976).

A similar argument to that being posed by Pioneer was made in *Dagen v Hastings Mut Ins Co*, 166 Mich App 225; 420 NW2d 111 (1987). In that case, an expert contractor testified that the home was damaged by the builder's failure to install adequate moisture barriers and ventilation in the crawl space. *Id.* at 228. This resulted in severely rotted floor joists, block sills, and subflooring, and severely sagging floors. *Id.* The expert "concluded that the house had very significant structural defects and was unsound." *Id.* The insurance company claimed there was no "collapse," relying on the policy limitation that "'collapse does not include cracking, shrinkage, bulging or expansion.'" *Id.* at 226. Relying on the expert's opinion and the policy limitation, the trial court granted summary disposition to the insurance company. *Id.* at 228.

The *Dagen* Court reversed the trial court's grant of summary disposition, holding that under the facts of the case, there had been a collapse. Relying on *Vormelker*, the *Dagen* Court held that the plaintiff had raised a genuine issue of material fact on whether her home had collapsed, despite the limiting language. *Id.* at 231. The Court concluded that it was reasonable to infer from the testimony presented "that the supporting superstructure [of the plaintiff's home] has been so impaired as to destroy the efficiency of the home as a habitation." *Id.* Thus, in essence, the *Dagen* Court drew a distinction between mere "settling, cracking, shrinkage, bulging, or expansion" that does not impair the structural integrity of the home, and like damage that substantially impairs the structural integrity of the home. See *Beach v Middlesex Mut Assurance Co*, 532 Ad 2d 1297, 1300; 205 Conn 246 (1987).

Similarly, in this case the experts agreed that defendants' home suffered severe structural defects and was unsafe to live in without repairs. Accordingly, we believe that defendants have raised a genuine issue of material fact as to whether their home had collapsed, and was thus covered by the collapse provisions of the policy.

[1] The trial court later granted Pioneer's motion for summary disposition on defendants' estoppel and misrepresentation counterclaim. While it is from this second order that defendants appeal, defendants' arguments relate back to the initial grant of partial summary disposition with regard to the coverage issue.

We next turn to the trial court's conclusion that summary disposition was supported by language in the policy that "clearly excludes loss to property caused by faulty, inadequate or defective design, repair, workmanship and construction." The coverage language of the 1993 policy broadly provides coverage under several categories. First, coverage is provided for the "dwelling" under Coverage A. Therefore, on the issue of initial coverage, there is separate, independent and parallel coverage for the dwelling under Coverage A, and separate coverage for "collapse" under the "Additional Coverages" section of the policy. Pioneer notes, that the "PERILS INSURED AGAINST" section of the policy specifically provides that there is no coverage for "loss . . . caused by . . . inherent vice, latent defect, mechanical breakdown." However, the clear language of the "PERILS INSURED AGAINST" section provides that it is limited to coverage under sections A, B and C, and thus does not affect the additional coverage for "collapse" found in the "Additional Coverages" section of the policy.

Similarly in the "EXCLUSIONS" section of the policy there is an exclusion for "loss . . . caused by . . . faulty, inadequate or defective . . . design, specification, workmanship, repair, construction, renovation, remodeling, grading, compaction." Again, this exclusion is expressly limited to coverage under sections A and B and does not affect the additional coverage for collapse.

In light of our holding, we need not address the remaining issues concerning the counter-complaint.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad

McDonald, J., did not participate.