

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

YUMMY GALAXY CHOCOLATE & GIFT, INC,
A Michigan Corporation,

Plaintiff,

-v-

Case No. 15-001024-CK

THE HARTFORD STEAM BOILER INSPECTION
AND INSURANCE COMPANY and FREMONT
INSURANCE COMPANY, Jointly and Severally,

Defendants.

Hon. Daniel P. Ryan 15-001024-CK

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CATHY M. GARRETT

/s/ Michelle Howard

OPINION

This case is before the Court on Defendant Hartford Steam Boiler Inspection and Insurance Company's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10).

For the reasons stated below, the Court will deny the motion.

1. Facts and Procedural History

Plaintiff Yummy Galaxy operates a retail store in Dearborn, Michigan, selling chocolate candies, other perishable items, and items imported from the Middle East. On January 22, 2014, Plaintiff lost power and suffered a property loss. On August 14, 2014, Plaintiff suffered further lost due to flooding and a power outage.

Plaintiff initiated this case on January 26, 2015 against Hartford and Fremont, alleging that it had insurance policies with both companies, and that both companies breached the contracts when they refused to pay for claims made under the policies. Defendant Hartford filed the instant motion for summary disposition in lieu of an answer to the Complaint.

2. Standard of Review

Defendant bring its motion pursuant to MCR 2.116(C)(8) and (10). A motion brought under MCR 2.116(C)(8) should be granted only where the complaint is so legally deficient that

recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Only the pleadings may be considered when deciding a motion under MCR 2.116(C)(8). *Id* at 119-120.

In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corely v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden, supra*. “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

3. Analysis

Defendant argues that it is entitled to summary disposition under both MCR 2.116(C)(8) and (10) because it did not have an insurance policy with Plaintiff. Rather, Defendant asserts that it was merely a reinsurer, and there is no right of action between an insured and a reinsurer.¹

In response, Plaintiff argues that Defendant has come forward with no evidence establishing that Plaintiff did not have a direct policy with Defendant. Notably, Plaintiff’s Complaint alleges that a copy of its insurance policy with Defendant is in Defendant’s possession, and discovery has not been completed in this case.

First, the Court notes that Defendant has failed to establish that it is entitled to summary disposition under MCR 2.116(C)(8). The Court must take all well-pleaded allegations as true,

¹ “When an insurer decides to transfer some of the risk it has undertaken in a policy, the insurer cedes a portion of the risk to another insurance company, which is the reinsurer.” *Michigan Tp Participating Plan v Fed Ins Co*, 233 Mich App 422, 427; 592 NW2d 760 (1999).

and Plaintiff alleges that it had a contract with Defendant, and that Defendant breached the contract. Accordingly, Plaintiff has not failed to state a claim upon which relief can be granted.

The Court also finds that Defendant is not entitled to summary disposition under MCR 2.116(C)(10). In deciding this motion, the Court must consider all the documentary evidence in the light most favorable to Plaintiff. *Corely, supra*. In this case, Defendant has failed to submit any documentary evidence supporting its argument that it was merely a reinsurer and did not have a direct insurance contract with Plaintiff. On the other hand, Plaintiff has submitted evidence of two communications it received from Defendant. In one of the letters from Jared McClelland on behalf of Defendant, McClelland references a claim and policy number, an investigation Defendant made of the damaged premises, a conclusion that a video surveillance system and two heating units were a covered loss, and a note that “the policy is susceptible to a \$500 deductible.” In the second letter, McClelland once again references a claim and policy number and indicates that if he does not hear from Plaintiff within 30 days, the claim will be closed due to lack of activity.

Given the documentary evidence presently before the Court, the fact that the Court must consider all the evidence in the light most favorable to Plaintiff, and the fact that discovery has just started in this case, the Court is constrained to deny the motion for summary disposition under MCR 2.116(C)(10) because there remains a genuine issue of material fact as to whether Plaintiff had a direct insurance policy with Defendant or Defendant was a reinsurer.

/s/ Daniel P. Ryan

Circuit Judge

DATED: 6/1/15