

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**FREMONT INSURANCE COMPANY,
individually and as Subrogee of
ART CONCEPTS, LLC,
Plaintiffs,**

v.

**Case No. 15-145876-CB
Hon. James M. Alexander**

**TRAVELERS INSURANCE COMPANY, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant Travelers Insurance Company’s motion for partial summary disposition. In its motion, Defendant seeks dismissal of Plaintiff’s claim for unjust enrichment because the same is statutorily barred by MCL 500.3030.

This action arises following a March 7, 2013 fire in a multi-unit industrial complex owned by Defendant Star-Batt, Inc. Plaintiff’s insured, Art Concepts, LLC, leased one space, and Defendant’s insured, Defendant OPW, LLC, leased another. The First Amended Complaint alleges that the fire began in OPW’s space and caused damage to Art Concepts’ space.

Plaintiff claims that OPW’s and/or Star-Batt’s negligence caused the fire and subsequent damage to Art Concepts’ property and is suing to recover some \$176,309 that it paid its insured for said damage.

To its end, Plaintiff alleges two counts against Travelers directly – one for penalty interest under the Michigan Uniform Trade Practices Act, MCL 500.2006 *et seq*, and one for

unjust enrichment. Travelers now moves for summary of Plaintiff's unjust enrichment claim under MCR 2.116(C)(8).

A (C)(8) motion tests the legal sufficiency of the complaint. When considering such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A motion under this subrule may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding such a motion, the court considers only the pleadings. MCR 2.116(G)(5).¹

In its motion, Travelers claims that Plaintiff's unjust enrichment claim "is specifically barred by MCL 500.3030." This is so because "Travelers' only duties were owed to its insured, not Plaintiff or its insured." And, Travelers argues, "Plaintiff's cause of action, if any, lies against Travelers' insured, OPW, but Plaintiff cannot sue Travelers **directly** for what ultimately might be liability on the part of its insured." (emphasis added).

In support, Travelers cites to MCL 500.3030, which provides, in relevant part:

In the original action brought by the injured person, . . . the insurer shall not be made or joined as a party defendant, nor, except as otherwise provided by law, shall any reference whatever be made to such insurer or to the question of carrying of such insurance during the course of trial.

Plaintiff responds that the cited statute only applies to "casualty insurance," and as a result, is inapplicable in this case. In support, Plaintiff cites to *Granite State Insurance Co v Carnes*, 75 Mich App 388, 255 NW2d 16 (1977). In *Granite State*, an insurer who issued a fire policy objected to adding it as a defendant in a fire-damage case. The insurer argued that MCL

¹ For purposes of the cited Court Rule, under MCR 2.110 (emphasis added), "The term "pleading" **includes only**: (1) a complaint, (2) a cross-claim, (3) a counterclaim, (4) a third-party complaint, (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and (6) a reply to an answer."

500.3030 barred impleader of casualty insurance carriers. But the Court of Appeals found that the cited statute was inapplicable because the insurer issued a fire policy and not a casualty policy, reasoning:

Casualty insurance is defined in MCLA 500.624; MSA 24.1624 and does not include fire insurance. Fire insurance is included in the definition of property insurance, MCLA 500.610; MSA 24.1610. No similar bar to impleader is contained in the chapter of the code pertaining to fire insurance contracts, Chapter 28, MCLA 500.2804 et seq.; MSA 24.12804 et seq. We must conclude that the Legislature consciously varied these provisions in order to limit the scope of the bar against impleader to those contracts of casualty insurance embraced by Chapter 30 of the code. *Granite State*, 75 Mich App at 389.

In its Reply Brief, Travelers makes no effort to explain why *Granite State's* reasoning regarding the applicability of MCL 500.3030 would not apply in this case. Instead, Travelers simply **argues** that it should not be included in this lawsuit until liability of its insured, OPW, is established. But Michigan law is clear that, "A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Because Travelers fails to establish that it is entitled to dismissal of Plaintiff's Count IV, its motion for summary disposition under MCR 2.116(C)(8) is DENIED.

IT IS SO ORDERED.

July 29, 2015
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge