

STATE OF MICHIGAN
14TH CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
BUSINESS COURT DIVISION

CRAIG M. HANSON

Plaintiff,

File No. 12-485576-CK
Hon. Neil G. Mullally

FREMONT MICHIGAN INSURACORP, INC.
a/k/a FREMONT INSURANCE, THE WHITE
AGENCY, INC. and LISA REICHLE,

Defendants.

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OPINION

In this case, the Defendants, The White Agency, Inc., and Lisa Reichle have filed a Motion for Summary Disposition pursuant to MCR 2.116(C) (8) and (10).

MCR 2.116(C) (8) allows for summary disposition when the Plaintiff "has failed to state a claim upon which relief can be granted."

MCR 2.116(C)(10) allows summary disposition when "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

The primary issue in this litigation is whether the Plaintiff is entitled to insurance proceeds from an insurance policy issued to cover residential premises that he had owned

with his wife prior to their divorce on May 9, 2011. The home was located at 2785 Brunswick Road, Holton, MI 49425. The home was damaged by fire on September 18, 2010.

The Plaintiff had moved out of the above home on or about March 2, 2010, and he never resided there again. (Sworn statement of Plaintiff, Craig Hanson, January 28, 2011, p. 76. Hereinafter this statement will be referred to as "Plaintiff's Statement.") When he moved out of the home, the Plaintiff had no intention of returning. (Plaintiff's Statement, p. 12). Shortly after moving, the Plaintiff changed his legal address for his driver's license and social security to 5698 Stillwater Trail, Fruitport, Michigan, which was the new address at his mother's home where he had moved. (Plaintiff's Statement, p. 13). The Plaintiff continued to reside at that address until November 15, 2010, when he moved to 2938 Black Creek Road. (Plaintiff's Statement, p. 11). Based upon those statements of the Plaintiff, there is no question that he was not a resident of 2785 Brunswick Road when the fire occurred on September 18, 2010.

Under Michigan law, insurance policies are contracts that are interpreted and construed in accordance with the rules of contract construction. *Hendersen v State Farm Fire and Cas. Co.*, 460 Mich 348 (1999). An insurance policy should be read as a whole to determine what the parties intended to agree upon, and should be construed to give effect to each word, clause, and phrase. *McKusick v Travelers Indemnity Co.*, 246 Mich App 329 (2001). Words contained in an insurance policy are to be given their commonly understood, ordinary, and plain meaning. *Allstate Ins. Co. v Tomsaszewski*, 180 Mich App 616 (1989). If an insurance policy's terms are clear and unambiguous, the Court cannot rewrite the plain and unambiguous language to create coverage. *Allstate Ins. Co. v Freeman*, 432 Mich 656 (1989); *Fremont Mutual Ins. v Wieschowski*, 182 Mich App 121 (1989); *Edgar's Warehouse, Inc. v United States Fidelity and Guaranty Co.*, 375 Mich 598 (1965); *Eghotz v Cruch*, 365

In this case the Fremont Insurance Co.'s homeowners' insurance policy #03348400SP was issued with an effective date of August 20, 2010, more than five months after the Plaintiff moved out of the residence; the insured residence premises' address was 2785 Brunswick Rd., Holton, MI 49425. (Insurance policy declaration, page 1). "Residence premises" is defined in the policy as:

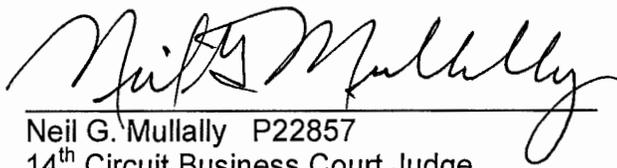
8. a. the one family dwelling, other structures, and grounds, or
- b. that part of any other building where **you** reside and which is shown as "**residence premises**" in the Declarations (Insurance policy, page 2, bold type in the original.)

The insurance policy's residence requirements are clear and unambiguous. Because the Plaintiff was not a resident of the insured premises at the time of the fire loss, on September 18, 2010, his damages are not covered by the fire insurance policy. *Heniser v Frankenmeth Mut. Ins. Co.*, 449 Mich 155, 534 NW 2d 502 (1995); *McGrath v Allstate Ins. Co.*, 290 Mich App 434, 802 NW 2d 619 (2010); *Null v Auto-Owners, Ins. Co.*, Mich App Docket No. 308473, October 22, 2013. For that reason, the Court grants the Defendants' the White Agency, Inc. and Lisa Reichle's Motion for Summary Disposition pursuant to MCR 2.116 (10).

Based upon this decision, there is no need for the Court to address the other issues raised in this litigation.

An Order shall be prepared and submitted in accordance with this Opinion and Michigan Court Rules.

Dated: January 23, 2014


Neil G. Mullally P22857
14th Circuit Business Court Judge