

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

HANSEN'S DISASTER
RELIEF, LLC,

Plaintiff,

vs.

Case No. 2015-1755-CB

ALTERRA AMERICA INSURANCE
COMPANY, TRANSPORTATION
RISK MANAGEMENT, INC., and
ROBERT S. GRIMM,

Defendants.

OPINION AND ORDER

Defendant Alterra America Insurance Company ("Movant") has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied. Defendant Transportation Risk Management ("Defendant Transportation") and Defendant Robert S. Grimm ("Defendant Grimm") (collectively, "Defendant Respondents") have also filed a joint response and request that the motion be denied. In addition, Movant has filed reply briefs to each of the responses.

I. Facts and Procedural History

This matter involves a fire on February 14, 2014 that completely destroyed a building located at 29167 Callahan Rd., Roseville, MI ("Subject Property"). On that date, Plaintiff was leasing the Subject Property. On the day of the fire, the building contained Plaintiff's personal and business property, as well as the property of various third parties ("Third Parties").

Movant issued a Warehouse Legal Liability Policy to Plaintiff that was effective on the day of the fire ("Warehouse Policy"). Plaintiff subsequently made a claim under the Warehouse Policy. In support of its claim, Plaintiff allegedly provided the agreements it had with the Third Parties. Movant ultimately denied the claim on the bases that: (1) there was no evidence that the fire was caused by Plaintiff's negligence and (2) Plaintiff had not provided "warehouse receipts" identifying the Third-Parties' property that had been destroyed.

On May 21, 2015, Plaintiff filed its complaint in this matter ("Complaint"). The sole claim in the Complaint against Movant is based on Plaintiff allegation that Movant breached the terms of the Warehouse Policy by denying its claim.

On February 29, 2016, Movant filed its instant motion for summary disposition. Plaintiff and Defendant Respondents have subsequently filed responses to the motion. In addition, Movant and filed their response to the motion. Movant has also filed reply briefs responding to each response. On March 21, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Graves v Warner Bros*, 253 Mich App 486, 491; 656 NW2d 195 (2002). Under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Id.* However, the nonmoving party must produce evidence showing a material dispute of fact left for trial in order to survive a motion for summary disposition under this rule. MCR 2.116(G)(4); *Village of Dimondale v Grable*,

240 Mich App 553, 566; 618 NW2d 23 (2000). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Wayne County Bd of Com'rs v Wayne County Airport Authority*, 253 Mich App 144, 161; 658 NW2d 804 (2002).

III. Arguments and Analysis

In its motion, Movant contends that Plaintiff's claim must be dismissed because it lacks standing and is not the real party in interest.

Both standing and the real-party-in-interest doctrine "are used to designate a plaintiff who possesses a sufficient interest in the action to entitle him to be heard on the merits." 6A Federal Practice and Procedure (2d ed), § 1542. A litigant's standing is determined simply by asking whether its "interest in the issue is sufficient to ensure sincere and vigorous advocacy. *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). In this case, Plaintiff is a party to the Warehouse Policy, and the party that would be potentially held liable to the Third-Parties in question for the destruction of their property in the absence of insurance coverage. Moreover, the Warehouse Policy itself anticipates and permits Plaintiff to pursue payment for damage to a third-party's property. (See Defendant Transportation's Response, at Exhibit 1.)

In this matter, Plaintiff has an interest in obtaining the full amount of coverage it is entitled to receive under the Warehouse Policy, and has a contractual right to seek coverage for third-party's property that was damaged and/or destroyed in the fire. Based on these facts, the Court is convinced that Plaintiff has standing to bring its claim in this matter, and is a real party in interest.

In its motion, Movant also avers that it only has a duty to provide coverage if warehouse receipts are issued for the property in question, and that in this case no such warehouse receipts were issued.

The Warehouse Policy provides that it provides coverage for the following property:

1. Coverage—[Movant] cover[s] direct physical loss caused by a covered peril to property of other than [Plaintiff] stored at [Plaintiff's] warehouse.
2. Coverage Limitations—[Movant] only cover[s] property of others:
 - a. While in storage in a warehouse building that is described on the "schedule of coverages" or within 100 feet of the described warehouse building; and
 - b. That is described in [Plaintiff's] "warehouse receipt".

(See Movant's Exhibit 6, at AAIC000184.)

Further, "warehouse receipt" is defined as:

[T]he receipt issued by [Plaintiff] to [Plaintiff's customer] acknowledging that property is being stored at [Plaintiff's] warehouse and includes:

- a. a description of the property;
- b. the weight or number of units being stored; and
- c. the limited liability assumed by [Plaintiff].

(*Id.*)

In this case, the only documents that potentially constitute "warehouse receipts" are seven "Warehouse and Distribution Agreements" ("Warehouse Agreements") executed by Plaintiff and the Third-Parties. (See Movant's Exhibits 7-15.) However, the Warehouse Agreements were all prepared and executed after the fire took place, and were only prepared after Plaintiff's principal was told that such documents were needed

in order to make a claim under the Warehouse Policy. (See Movants' Exhibit 2, at pp. 97-98, 107-108, 110, and 120.) Moreover, none of the Warehouse Agreements contain a description of the property to be stored or the weight or number of items being stored. (See Movant's Exhibits 7-15.)

Having reviewed the materials submitted by the parties, the Court is convinced that no genuine issue of material fact exists with respect to whether Plaintiff failed to satisfy the Warehouse Policy's requirement for obtaining coverage. Specifically, Movant has provided the Court with uncontested evidence that no warehouse receipts were prepared prior to the fire, and that the Warehouse Agreements failed to include the required description of the property at issue. Consequently, the Court is satisfied that Plaintiff failed to comply with the prerequisites for obtaining coverage under the Warehouse Policy. As a result, Movant's motion for summary disposition must be granted.

IV. Conclusion

Based upon the reasons set forth above, Defendant Alterra America Insurance Company's motion for summary disposition of Count I of the Complaint is GRANTED. This Opinion and Order neither resolves the last claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: MAY 13 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge