

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

PREMIER BUILDING PRODUCTS  
OF HOLLAND, INC.,

Plaintiff,

Case No. 14-04864-CKB

vs.

HON. CHRISTOPHER P. YATES

JCVE PROPERTIES, LLC,

Defendant.

OPINION AND ORDER GRANTING SUMMARY DISPOSITION TO  
PLAINTIFF PREMIER BUILDING PRODUCTS UNDER MCR 2.116(C)(10)

Divorce often produces emotional casualties, but this offshoot of a divorce case requires the Court to consider the meaning of the word “casualty” in the insurance context. Years ago, a court divided the marital property of Cathy and Jeffrey Van Eck, awarding the family business – Plaintiff Premier Building Products of Holland, Inc. (“Premier”) – to Jeffrey and a property holding company – Defendant JCVE Properties, LLC (“JCVE”) – to Cathy. As a result, Cathy essentially became the landlord for Jeffrey’s business, obtaining the right to receive rent from Premier in exchange for the duty to maintain the premises. On April 12, 2014, a storm caused substantial damage to the roof of the building that housed Jeffrey’s business, so Premier demanded that JCVE repair the roof. When JCVE failed to undertake the repairs, Premier paid to fix the roof and then filed this lawsuit seeking reimbursement for the costs of the repairs. Because the Court concludes that Premier simply had to maintain “casualty insurance” on the premises, and casualty insurance does not cover maintenance of the building, the obligation to pay for the repairs belongs exclusively to JCVE. Consequently, the Court shall grant summary disposition in favor of Premier pursuant to MCR 2.116(C)(10).

## I. Factual Background

Both sides have moved for summary disposition under MCR 2.116(C)(10). “In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties[.]” See Maiden v Rozwood, 461 Mich 109, 120 (1999). Accordingly, the Court must assay the entire record in order to determine whether either side is entitled to relief pursuant to MCR 2.116(C)(10).

On December 15, 2004, Judge Daniel V. Zemaitis entered a judgment of divorce that not only ended the marriage of Cathy and Jeffrey Van Eck, but also divided the family business between the divorcing spouses. See Brief in Support of Plaintiff’s Motion for Summary Disposition, Exhibit A (Judgment of Divorce). Specifically, the judgment of divorce awarded Plaintiff Premier to Jeffrey, see id. (Judgment of Divorce at 5), but gave Defendant JCVE to Cathy. Id. (Judgment of Divorce at 6). To implement this division of property, JCVE and Premier entered into a lease that assigned responsibilities to both corporate entities. See id., Exhibit B (Lease for 2151 S. Harvey Street). That lease provided for monthly rent payments of \$8,500, see id. (Lease, § 3.1), but stipulated that JCVE “shall be responsible for structural maintenance of the foundations, exterior walls, and roof of the building.” See id. (Lease, § 6.1). Thus, JCVE plainly bore responsibility for maintaining the roof. Nevertheless, the lease stated that Premier “shall maintain casualty insurance with respect to loss or damage to the Premises and any personal property thereon, and liability insurance with respect to any injury or loss of life thereon[.]” See id. (Lease, § 7.1). Finally, the lease imposed upon JCVE a duty to restore the premises in the event of damage, stating: “Landlord shall repair, restore, or rebuild the Premises or the part thereof so damaged, as nearly as possible to the value, condition and character the same was in immediately prior to such damage or destruction[.]” See id. (Lease, Article VIII).

On April 12, 2014, the roof of the building suffered significant damages due to a storm. See Brief in Support of Plaintiff’s Motion for Summary Disposition, Exhibit D (photographs of storm-related damages). Defendant JCVE took no action to address the damages, so Plaintiff Premier had the repairs made at a cost of more than \$25,000. See id., Exhibit G (bills and invoices). JCVE did not reimburse Premier for those costs, so Premier filed this action seeking recovery from JCVE on theories of breach of contract, *i.e.*, the lease, and specific performance. Although Premier no longer requires specific performance because the necessary repairs have been made, Premier insists that it must be reimbursed by JCVE for those repairs under the terms of the parties’ lease. But JCVE takes the position that Premier must bear the repair costs because Premier neglected to fulfill its duty under the lease to obtain insurance that would have covered the storm-related loss. Thus, the Court must decide which party should pay the costs of repairs to the building that JCVE leased to Premier.

## II. Legal Analysis

Plaintiff Premier and Defendant JCVE both assert a right to summary disposition pursuant to MCR 2.116(C)(10) on Premier’s claim for breach of the parties’ lease. “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” West v General Motors Corp, 469 Mich 177, 183 (2003). Such “[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.” Id. Here, the outcome of the parties’ competing summary-disposition motions depends upon the interpretation of their lease agreement. Under Michigan law, “unambiguous contracts are not open to judicial construction and must be *enforced as written.*” Rory v Continental Ins Co, 473 Mich

457, 468 (2005). Conversely, “the meaning of an ambiguous contract is a question of fact that must be decided by the jury.” Klapp v United Ins Group Agency, Inc, 468 Mich 459, 469 (2003). Thus, the Court’s ability to award summary disposition to either side turns upon whether the parties’ lease agreement unambiguously dictates the outcome of their dispute.

The parties’ lease agreement leaves no doubt that, in the absence of insurance coverage, the obligation to repair damages to the building belonged to Defendant JCVE. See Brief in Support of Plaintiff’s Motion for Summary Disposition, Exhibit B (Lease, § 6.1 & Article VIII). But the lease agreement required Plaintiff Premier to “maintain casualty insurance with respect to loss or damage to the Premises and any personal property thereon, and liability insurance with respect to any injury or loss of life thereon[.]” See id. (Lease, § 7.1). Moreover, the lease agreement tempered JCVE’s obligation to make repairs by stating as follows:

Landlord shall repair, restore, or rebuild the Premises or the part thereof so damaged, as nearly as possible to the value, condition and character the same was in immediately prior to such damage or destruction, provided Landlord shall not be obligated to expend an amount greater than the insurance proceeds recovered as a result of such damage unless the damage was caused by Landlord[.]

Id. (Lease, Article VIII). Therefore, Premier’s “casualty insurance” served as the primary source of funding for repair projects, but any repair projects outside the “casualty insurance” coverage became the obligation of JCVE, rather than Premier. See id.

Michigan law recognizes distinct types of insurance for different types of losses. Property insurance provides coverage “on dwelling houses, stores and all kinds of buildings . . . against loss or damage by fire, earthquake, lightning, wind and water[.]” See MCL 500.610. Thus, a property-insurance policy would almost certainly have covered the storm damage to the building at issue here. In contrast, liability insurance ordinarily covers “loss or damage on account of the bodily injury or

death by accident of any person,” see MCL 500.624(1)(b), so a liability-insurance policy would have been useless in addressing the storm-related loss. The nature and scope of casualty insurance in this context, however, cannot be so easily described.<sup>1</sup> Nonetheless, Michigan law uses the term “casualty insurance” broadly to identify a variety of coverages, see MCL 500.624, but none of those coverages has anything to do with the storm-related losses at issue here. See MCL 500.624(1)(a)-(i). Indeed, “casualty insurance” in its modern-day form addresses “losses caused by injuries to persons and legal liability imposed upon the insured for such injury or for damages to the property of others.” E.g., McCarthy v Bainbridge, 739 A2d 200, 203 (Pa Super 1999), aff’d, 774 A2d 1246 (Pa Sup Ct 2001). And although the Court recognizes the paucity of authority in Michigan defining the term “casualty insurance,” the Court confidently concludes that property insurance and casualty insurance do not provide similar coverages in Michigan or any other jurisdiction. See, e.g., Woodward v Farm Family Casualty Ins Co, 796 A2d 638, 646 (Del Sup Ct 2002).<sup>2</sup> Accordingly, the Court finds that Plaintiff Premier has the better argument on the matter of insurance coverage as a substitute for Defendant JCVE’s obligation under the lease agreement to repair storm-related damages to the building.

The Court’s analysis is fortified by the manner in which the lease agreement allocates duties to Plaintiff Premier and Defendant JCVE. Specifically, the lease assigns to JCVE the responsibility for maintaining the building, see Brief in Support of Plaintiff’s Motion for Summary Disposition, Exhibit B (Lease, § 6.1 & Article VIII), whereas Premier bears the obligations to provide for its own

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<sup>1</sup> The term “casualty insurance” traditionally referred to “[a]n agreement to indemnify against loss resulting from a broad group of causes such as legal liability, theft, accident, property damage, and workers’ compensation.” See Black’s Law Dictionary at 920 (10th ed). But the term’s meaning “has become blurred because of the rapid increase in different types of insurance coverage.” Id.

<sup>2</sup> Both out-of-state decisions cited by the Court have also been cited with approval in COUCH ON INSURANCE, § 1:28. **Casualty Insurance** (3d ed 2014).

personal property, see id. (Lease, Article VIII), and insure the premises, as opposed to the building,<sup>3</sup> against “casualty” and “liability” events. See id. (Lease, § 7.1). The hole in insurance coverage left by the absence of “property insurance” should have been filled by JCVE, which was obligated under the terms of a mortgage to “procure and maintain comprehensive general liability insurance [and] such other insurance, including but not limited to hazard, business interruption and boiler insurance as [its] Lender may require.” See id., Exhibit C (Mortgage at 3-4). Despite its contractual duty to obtain insurance that would have covered the loss at issue here, JCVE never secured the insurance coverage contemplated by its mortgage. JCVE’s decision to shirk that responsibility does not give JCVE the right under the lease agreement to shift to its tenant, Premier, the costs required to repair the building that JCVE had to insure under its mortgage, see id., and maintain under the terms of the lease agreement. See id., Exhibit B (Lease, § 6.1 & Article VIII). Accordingly, the Court must grant summary disposition to Premier under MCR 2.116(C)(10) on its claim that JCVE breached the lease agreement by failing to repair the storm-related damages to the building.<sup>4</sup>

IT IS SO ORDERED.

Dated: January 20, 2015



HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge

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<sup>3</sup> Article VI of the lease agreement draws a clear distinction between the “building,” which Defendant JCVE must maintain, see Brief in Support of Plaintiff’s Motion for Summary Disposition, Exhibit B (Lease, § 6.1), and the “premises” other than the building, which Plaintiff Premier must maintain. See id. (Lease, § 6.2).

<sup>4</sup> The Court shall schedule a status conference to determine how damages should be assessed. The Court’s decision on summary disposition simply establishes liability under MCR 2.116(C)(10).