

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

BECKETT-BUFFUM AGENCY, INC.,

Plaintiff,

Case No. 12-07629-CZB

vs.

HON. CHRISTOPHER P. YATES

ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

There is nothing new under the sun, as the old aphorism goes. Indeed, diligent legal research almost invariably establishes that purported cases of first impression simply present issues that have been explored before. This case, in contrast, truly requires the Court to confront two issues of first impression under MCL 500.1209(2)(e), which allows “an insurer transacting automobile insurance or home insurance in this state” to “cancel an insurance producer’s contract or otherwise terminate an insurance producer’s authority to represent the insurer” if that insurance producer submits “less than 25 applications for home insurance and automobile insurance within the immediately preceding 12-month period.” The Court concludes that any combination of home-insurance and automobile-insurance “applications” can satisfy the 25-application threshold, but a request to reinstate a lapsed policy does not constitute an “application.” Accordingly, because Plaintiff Beckett-Buffum Agency, Inc. (“Beckett-Buffum”) submitted fewer than 25 applications for home insurance and automobile insurance within a 12-month period, Defendant Allied Property and Casualty Insurance Company (“Allied”) had the right to terminate its relationship with Beckett-Buffum.

I. Factual Background

Defendant Allied has requested summary disposition under MCR 2.116(C)(10), which “tests the factual sufficiency of the complaint[.]” Corley v Detroit Board of Education, 470 Mich 274, 278 (2004), and requires the Court to consider “the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” Id. Thus, in setting forth the factual background of this dispute, the Court must present the record in the light most favorable to Plaintiff Beckett-Buffum.

According to an “Independent Agency Agreement” of January 7, 2010, between Defendant Allied and Plaintiff Beckett-Buffum, the parties entered into an arrangement for Beckett-Buffum to serve as an agent for Allied in the insurance industry. But on December 6, 2011, Allied sent Beckett-Buffum a letter that served “as official 90-day notice of the termination” of the agency agreement. See Defendant’s Brief in Support of Its Motion for Summary Disposition, Exhibit 1. According to the letter, that termination was “due to lack of production under the Michigan Essential Insurance Act.”¹ Id. More specifically, Allied took the position that Beckett-Buffum had failed to submit “25 applications for home insurance and automobile insurance within the immediately preceding 12-month period[.]” as contemplated by MCL 500.1209(2)(e). In Allied’s view, that lack of production justified termination of Beckett-Buffum as an insurance producer for Allied.

On August 17, 2012, Plaintiff Beckett-Buffum filed this action, contending that Defendant Allied had no right under Michigan law to terminate its relationship with Beckett-Buffum. That is,

¹ Curiously, both sides consistently refer to the disagreement in this case as predicated upon the Essential Insurance Act. But in citing MCL 500.1209(2)(e), the parties have relied upon a statute other than a provision of the Essential Insurance Act, which is codified at MCL 500.2101, *et seq.* See Husted v Auto-Owners Ins Co, 459 Mich 500, 506 (1999). Thus, the Court shall simply refer to the statute at issue in this case, rather than the broader statutory scheme in which it can be found.

Beckett-Buffum alleges that Allied violated MCL 500.1209(2)(e) in terminating the relationship for lack of productivity. Allied ultimately moved for summary disposition under MCR 2.116(C)(10) on the theory that Michigan law expressly authorized termination because Beckett-Buffum failed to submit “25 applications for home insurance and automobile insurance” during the 12-month period leading up to the termination on December 6, 2011. The parties have supplied the Court with all of the necessary details concerning Beckett-Buffum’s activities as an independent insurance agency on behalf of Allied, so the Court must now decide whether MCL 500.1209(2)(e) authorized Allied to terminate its relationship with Beckett-Buffum.

II. Legal Analysis

“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). “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 parties seem to agree on the facts underlying their dispute, but they disagree about the result dictated by those facts under MCL 500.1209(2)(e). In simple terms, Defendant Allied believes that Beckett-Buffum had to submit 25 new applications for home insurance and 25 new applications for automobile insurance within a 12-month period in order to avail itself of statutory protection against termination. In contrast, Plaintiff Beckett-Buffum contends that it simply had to submit a combination of home insurance and automobile insurance applications – including renewals of lapsed policies – that added up to 25 submissions in a 12-month period. The Court must address each of the two issues embedded within this dispute.

A. Aggregation of Home and Automobile Insurance Applications.

By all accounts, Plaintiff Beckett-Buffum did not submit to Defendant Allied 25 applications for home insurance as well as 25 applications for automobile insurance within the 12-month period leading up to Allied's termination of its relationship with Beckett-Buffum. Allied contends that this shortcoming warranted the termination of the relationship for lack of productivity. Beckett-Buffum asserts that MCL 500.1209(2)(e) allows for aggregation, thereby requiring submission of nothing more than 25 applications for some combination of automobile insurance and home insurance. The language of the statute favors Beckett-Buffum. Specifically, MCL 500.1209(2) states as follows:

As a condition of maintaining its authority to transact insurance in this state, an insurer transacting automobile insurance *or* home insurance in this state shall not cancel an insurance producer's contract or otherwise terminate an insurance producer's authority to represent the insurer with respect to automobile insurance *or* home insurance, except for 1 or more of the following reasons:

....

(e) Submission of less than 25 applications for home insurance and automobile insurance within the immediately preceding 12-month period.

See MCL 500.1209(2)(e) (emphasis added). Recognizing that an insurer might sell only automobile insurance or home insurance, our Legislature referred twice in the statute to "automobile insurance or home insurance." Subsection (e), in contrast, speaks of "25 applications for home insurance *and* automobile insurance." Given our Legislature's recognition that an insurer may sell only one or the other type of insurance, subsection (e) cannot logically be interpreted to require a producer to submit 25 applications for home insurance as well as 25 applications for automobile insurance. Although Allied urges the Court to read subsection (e) in that fashion, the interpretation urged by Allied cannot be squared with the varying product lines of insurers contemplated by MCL 500.1209(2).

Defendant Allied relies almost entirely upon our Legislature’s use of the word “and” – rather than “or” – in subsection (e) of MCL 500.1209(2) to support its position. “While, generally, ‘or’ is a disjunctive term indicating a choice between alternatives and ‘and’ means in addition to, the terms are often misused.” Titan Ins Co v State Farm Mutual Auto Ins Co, 296 Mich App 75, 85 (2012). Here, our Legislature’s reference in subsection (e) to “[s]ubmission of less than 25 applications for home insurance and automobile insurance” manifestly contemplates aggregation of the two types of insurance to reach the 25-application threshold. Indeed, if our Legislature had intended to require 25 applications for each type of insurance, subsection (e) would refer to “25 applications for home insurance and 25 applications for automobile insurance.” In sum, the Court concludes that Plaintiff Beckett-Buffum had to submit at least 25 applications for some combination of home insurance and automobile insurance in order to maintain its relationship with Allied.

B. Renewal of Lapsed Policies.

The parties agree that Plaintiff Beckett-Buffum submitted applications to Defendant Allied from fewer than 25 new customers, but Beckett-Buffum insists that six renewals of lapsed policies must also be counted as “applications” under MCL 500.1209(2)(e).² Thus, the outcome of this case turns upon whether a renewal of a lapsed policy should be treated as an “application.” Although the statute itself, *i.e.*, MCL 500.1209(2)(e), affords no assistance in defining the term “application,” the Insurance Code of 1956, MCL 500.100, *et seq*, contains statutory provisions that draw a distinction

² The parties have engaged in a debate about whether two applications for insurance coverage for recreational vehicles should be regarded as “automobile insurance” applications, but resolution of that issue has no bearing upon the outcome of the case. Simply stated, the inclusion of those two applications does not enable Plaintiff Beckett-Buffum to satisfy the 25-application threshold if the six renewals are not counted as “applications.” Therefore, Beckett-Buffum’s claim stands or falls on its argument that renewals of lapsed policies constitute “applications” under MCL 500.1209(2)(e).

between an “application” and a renewal of a lapsed policy. For example, MCL 500.3037 contains one subsection dealing with “an initial written application” for automobile insurance and a separate subsection addressing “the renewal of a private passenger nonfleet automobile insurance policy[.]” Compare MCL 500.3037(1) with MCL 500.3037(6). To be sure, the renewal of a lapsed insurance policy typically involves more paperwork than the timely renewal of a policy, but that fact does not render renewal of a lapsed policy synonymous with application for an entirely new policy.

Defendant Allied has highlighted the difference between the renewal of a lapsed policy and the application for a new policy through the affidavit of Jessica Zaugg, an Allied representative who has knowledge of Allied’s underwriting procedures. See Defendant’s Brief in Support of Its Motion for Summary Disposition, Exhibit 4 (Affidavit of Jessica L. Zaugg, ¶ 2). Ms. Zaugg not only states that “Allied does not treat renewals of existing policies the same as applications for insurance[.]” see id. (Affidavit of Jessica L. Zaugg, ¶ 4), but also explains that Allied does not treat lapsed or cancelled policies “the same as applications for insurance[.]” Id. (Affidavit of Jessica L. Zaugg, ¶ 5). Beyond that, Ms. Zaugg points out that, “generally, an insured does not have to submit a signed application before the policy is reissued and/or rewritten.” Id. Finally, Ms. Zaugg provides details of each one of the renewals of lapsed policies upon which Plaintiff Beckett-Buffum relies to reach the threshold of 25 applications. See id. (Affidavit of Jessica L. Zaugg, ¶¶ 8-13). In each of those six instances, “[a] signed application was not submitted by or on behalf of [the insured] to Allied before the policy was” renewed, reissued, or rewritten. See id. Accordingly, as a matter of fact, Beckett-Buffum did not submit an “application” to Allied for any of the six renewed, reissued, or rewritten policies, so Beckett-Buffum cannot assert, as a matter of law or fact, that it submitted 25 applications for home insurance and automobile insurance within the 12-month period immediately preceding termination

of its relationship with Allied.³ Therefore, based upon the language of MCL 500.1209(2)(e), Allied had the right to terminate the relationship for lack of production. And for that reason, the Court must grant summary disposition in favor of Allied under MCR 2.116(C)(10) because Beckett-Buffum's claims against Allied are unsustainable under Michigan law.

III. Conclusion

For the reasons set forth in this opinion, the Court concludes that Plaintiff Beckett-Buffum failed to submit "25 applications for home insurance and automobile insurance" within the 12-month period preceding Defendant Allied's termination of its relationship with Beckett-Buffum. See MCL 500.1209(2)(e). Therefore, Michigan law authorized Allied to terminate the relationship, so Beckett-Buffum has no claim against Allied for that termination.

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: March 11, 2014



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

³ On March 3, 2013, in the wake of oral argument on the motion for summary disposition, Plaintiff Beckett-Buffum submitted a document styled as "Plaintiff's Supplemental Exhibits to Brief in Opposition to Summary Disposition." That document includes an exhibit containing purported applications for insurance, but those materials do not affect the Court's analysis for three reasons. First, the materials do not relate to the renewal policies submitted to Defendant Allied during the 12-month period at issue, *i.e.*, December 1, 2010, through November 30, 2011. Second, the record does not contain evidence that those materials were submitted to Allied. Third, none of the materials bear the signature of an insured. A separate exhibit attached to the supplemental submission provides the Court with commission schedules indicating that Allied compensated Beckett-Buffum for renewals, but that has no bearing upon whether renewals constitute applications for insurance. Thus, nothing in the commission schedules alters the analysis of the issue at the heart of the parties' dispute.