KASS v. WOLF

212 Mich. App. 600 (1995)

538 N.W.2d 77

KASS

v.

WOLF

Docket No. 161673.

Michigan Court of Appeals.

Submitted January 3, 1995, at Lansing.

Decided August 11, 1995, at 9:20 A.M.

Irving F. Keene, for Lawrence G. Wolf.

Patrick, Johnson, King & Gilbert, P.C. (by *Paul H. Johnson, Jr.,* and *Judith A. Friday*), for Michigan Basic Property Insurance Association.

Before: FITZGERALD, P.J., and MARILYN KELLY and G.N. BASHARA, JR.,* JJ.

PER CURIAM.

Defendant Michigan Basic Property Insurance Association appeals as of right an order granting summary disposition for plaintiffs, Herman Kass and John C. Hopp, Jr., and cross-plaintiff, Laurence G. Wolf. The trial court ruled that plaintiffs, who held a mortgage interest in an apartment building destroyed by fire, were entitled to collect interest from the date of loss to the date of payment as a proper element of their insurance claim. The trial court also ruled that the mortgagor, Wolf, who sold the building on a land contract, was entitled to collect the interest that he would have collected under the land contract from the date of loss to the date of payment. However, defendant Basic was not required to pay any sums to plaintiffs in addition to what was due Wolf.[1] We reverse.

Plaintiffs' mortgage interest secured a promissory note executed by defendant/cross-plaintiff Wolf. Wolf was obligated to pay plaintiffs a principal amount of $175,000, to be paid in monthly installments of $1,500, which included payment for interest accruing at a rate of eight percent per annum. Wolf sold the property to Abdul Kahn on a land contract but retained obligation for the debt. The interest payment on the land contract accrued at a rate of eleven percent.

Defendant Basic insured the property under a policy issued to Kahn. The interests of Kahn, Kass, Hopp, and Wolf were all protected under the policy.

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On June 7, 1991, fire damaged the insured building in an amount exceeding the mortgage balance. On July 15, 1991, plaintiffs submitted a proof of loss, claiming the balance on the mortgage of $101,694.43 plus daily interest on the balance of $20.83 from July 15 to the date of payment. Wolf also submitted a proof of loss, claiming $186,797, the balance due on the land

contract. He also claimed interest on that balance from the date of loss. Wolf also directed the insurer to pay plaintiffs the mortgage balance and deduct it from the amount owed to him on the land contract.

On January 29, 1992, defendant Basic acknowledged an obligation of $186,797, the balance owed to Wolf on the land contact on the date of loss. Defendant Basic rejected that portion of Wolf's proof of loss that claimed interest after the date of loss. On March 18, 1992, defendant Basic sent a check for $158,777[2] as a compromise payment to comply with the Uniform Trade Practices Act, MCL 500.2001 *et seq.*; MSA 24.12001 *et seq.*, which requires an insurer to pay those parts of a claim supported by a proof of loss within sixty days or be subject to an interest penalty.

On April 1, 1992, plaintiffs filed a complaint against Wolf and Basic seeking payment from defendant Basic, including interest from the date of loss based on the mortgage contract. Wolf filed a cross-claim against defendant Basic, seeking both payment of the fifteen percent reserved for payment to the city, as well as interest accrued and accruing on the land contract at a rate of eleven percent from the date of loss until payment. Plaintiffs and Wolf moved for summary disposition on the ground that they were entitled to collect interest

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on the land contract and the mortgage from the date of loss until the date of payment.

The trial court, finding that the insurance policy protected the contract rights of the parties rather than their interests in the real property, determined that interest from the date of loss to the date of payment was a proper element of the claims of both the mortgagees and the land contract vendor. The court therefore ordered defendant Basic to pay interest on the principal balance of $186,797, which included Wolf's mortgage obligation to plaintiffs. Defendant Basic appeals from this ruling.

An insurance policy, like any other contract, is an agreement between the parties. *Auto-Owners Ins Co v Churchman,*440 Mich. 560, 566; 489 N.W.2d 431 (1992). When presented with a dispute, a court must determine what the parties' agreement is and enforce it. *Fragner v American Community Mutual Ins Co,*199 Mich.App. 537, 542-543; 502 N.W.2d 350 (1993). An insurance contract should be read as a whole and meaning given to all terms. *Churchman, supra* at 566.

The sole question presented is whether defendant Basic is liable under the insurance contract to pay interest that accrued on the land contract or mortgage obligations from the date of loss to the date of payment of the claim. The insurance contract provided in pertinent part:

> 7.b. We will pay for covered loss of or damage to building or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
>
> * * *
>
> e. If we pay the mortgage holder for any loss or damage and deny payment to you [Kahn] because of your acts or because you have failed to comply with the terms of this policy:
>
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>
> (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
>
> (2) the mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

> At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.[3]

Generally, the rights of insured parties are fixed at the time of the loss. *Booker T Theatre Co v Great American Ins Co of New York,*369 Mich. 583, 591; 120 N.W.2d 776 (1963); *Root v Republic Ins Co,*82 Mich.App. 446; 266 N.W.2d 842 (1978); see also 5 Couch, Insurance, 2d (rev ed, 1984), § 29.76. Given this general rule, Wolf's position that defendant Basic is liable for interest that accrued on the mortgage debt or land contract after that date is misplaced. There is no dispute that plaintiffs and Wolf had interests protected under the insurance policy. The nature of the interests was defined in the mortgage and land contract agreements, but the extent of the interests was determined at the date of loss. *Booker T, supra.* Indeed, other jurisdictions that have considered the issue have held that a mortgagee is not entitled to recover the contractual finance charge accruing since the date of a fire when "'[t]he amount payable as "interests may appear" under the mortgage clause of an insurance contract is measured by the indebtedness which the mortgagor owes under his note and mortgage at the time of the loss.'" *Midwest Federal Savings & Loan*

*Ass'n of Minneapolis v West Bend Mutual Ins Co,*407 N.W.2d 690, 696 (Minn App, 1987), quoting *Minnesota Federal Savings & Loan Ass'n v Iowa Nat'l Mutual Ins Co,*372 N.W.2d 763, 767 (Minn App, 1985); see also *Giberson v First Federal Savings & Loan Ass'n of Waterloo,*329 N.W.2d 9, 11 (Iowa, 1983), and *Ben-Morris Co v Hanover Ins Co,* 3 Mass App 779, 780; 333 N.E.2d 455 (1975). Wolf's position is essentially that the parties' interests on the date of the loss *included* ongoing interest that accrued until the debt was fully paid because its insured interest was having collateral for the debt, not an interest in the property itself. This position was rejected in *Grady v Utica Mutual Ins Co,*69 A.D.2d 668, 673; 419 N.Y.S.2d 565 (1979), which held that an insurance policy containing the standard mortgage clause "'accomplishes an insurance of the property and not of the debt, and the only importance of the debt is that it gives the mortgagee an insurable interest in the property,'" quoting *Fields v Western Millers Mutual Fire Ins Co,* 290 N.Y. 209, 213; 48 N.E.2d 489 (1943).

Thus, while Wolf's argument and the trial court's ruling are not untenable, there is no authority to support the ruling.[4] Accordingly, we conclude that the trial court erred in granting summary disposition against defendant Basic because its ruling ignores the general rule that liabilities are fixed at the date of the loss.

Reversed.

Footnotes

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

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1. It is assumed that the interest due on the mortgage was to be paid out of the interest paid on the land contract.

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2. $186,797 less fifteen percent reserved for the City of Highland Park under MCL 500.2845; MSA 24.12845 and a $250 deductible.

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3. Because the loss was greater than the mortgage interest, the principal amount to be paid to the mortgagees was the same regardless of which option defendant Basic elected.

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4. Wolf relied solely on *Booker T, supra,* in support of his position. *Booker T* is distinguishable, however, because the liability in that case was incurred before the date of the loss. In the present case, the interest at issue did not accrue until after the date of loss.

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