STATE OF MICHIGAN

COURT OF APPEALS

ALDELANO CORPORATION OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED July 20, 2006
v	No. 267620 Kent Circuit Court
HARTFORD FIRE INSURANCE COMPANY, Defendant-Appellee.	LC No. 05-001407-NZ

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

This appeal arises out of insurance coverage stemming from a fire, which occurred in a factory in Tennessee and caused damages in excess of $1,750,000. The building was owned by Proctor & Gamble Corporation (P&G), but plaintiff used the majority of the plant for its packaging operations.

We review de novo the trial court's grant of summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing an order granting summary disposition under MCR 2.116(C)(10), a reviewing court examines all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material facts exists on which reasonable minds could differ. *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden, supra* at 120.

I

On appeal, plaintiff first asserts that the trial court erred when granting summary disposition to defendant because there was sufficient evidence to establish that plaintiff did not "occupy" the plant in order to trigger the Commercial General Liability (CGL) insurance policy's exclusion provision. Specifically, plaintiff asserts it did not "occupy" the plant because it only used 80% of the plant, while the other 20% remained under the sole control of the owner,

P&G. We disagree. The exclusion provision in question provides an exclusion for "Property damage" to:

> Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention or injury to a person or damage to another's property.

An insurance policy is much the same as another contract; it is an agreement between the parties. *Heath v State Farm Mutual Automobile Ins Co*, 255 Mich App 217, 218; 659 NW2d 698 (2002). It should be read as a whole and meaning given to all terms. *Id.* The terms of an insurance policy are given their commonly used meanings, unless clearly defined in the policy. *Twichel v MIC General Ins Corp*, 469 Mich 524, 534; 676 NW2d 616 (2004). An ambiguity is not created because the definition of a word that has a common usage has been omitted. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

On the record before us, we reject plaintiff's argument that it did not "occupy" the plant as defined by the exclusion provision. Exclusions are strictly construed in favor of the insured, but clear and specific exclusions must be enforced. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001); *Group Ins Co v Czopek*, 440 Mich 590, 597; 489 NW2d 444 (1992). The policy did not define "occupy," so the trial court correctly established the meaning of the term through a dictionary definition. *Morinelli, supra* at 262. The court, looking to *Webster's Ninth New Collegiate Dictionary*, defined "occupy" as "1. to engage the attention or energies of; 2. to take up (a place or extent in space); 3. to take or hold possession or control of."

Applying the ordinary definition of "occupy" to the term of the insurance contract, we conclude that there was no genuine issue of material fact that plaintiff did occupy the plant. Plaintiff used 80% of the plant and kept administrative and maintenance offices on the second floor. This was the sole facility that plaintiff operated in Tennessee, and it had used the plant building for 10 years. Plaintiff's employees and management could directly access the building, and plaintiff also supplied the plant with janitorial supplies. These factors suggest that, at the very least, plaintiff did "take up" a place in or "take control" of the plant. As such, plaintiff did "occupy" the plant, and we affirm the trial court's grant of summary disposition, finding that the exclusion applied and defendant was not entitled to coverage under the CGL for damage to the building.[1]

II

[1] We reject plaintiff's reliance on the meaning of "occupancy" since that word is not used in the exclusion. Additionally, as the trial court noted, the exclusion says, "own, rent, or occupy." This language suggests that the exclusion covers property that the insured has a legal interest in (own or rent) and that it does not (occupy).

Plaintiff next asserts that the motion for summary disposition was improperly granted in favor of defendant because other insurance policies exist that cover at least a portion of the loss claimed. Specifically, plaintiff claims that personal property was covered under the CGL and under a Property Choice policy. However, plaintiff did not allege in its complaint that additional coverage under the Property Choice policy might cover the loss. And, while plaintiff attempted to amend its complaint to include a claim under that policy, the motion to amend was denied, and plaintiff did not appeal that decision. No issue relating to the Property Choice policy was ever before the trial court for decision. Thus, there is no issue for us to decide with respect to that policy. We also note that plaintiff conceded in the trial court that the issue of personal property was not before the trial court in the summary disposition motions, and with respect to personal property coverage under the CGL, plaintiff conceded that there was no coverage under an exclusion dealing with personal property in the CGL. A party cannot concede or waive an issue in the trial court and then raise a challenge on the issue on appeal. *Marshall Lasser, PC v George,* 252 Mich App 104, 109; 651 NW2d 158 (2002).[2]

The appeal in this case involves the trial court's October 12, 2005, order determining that there was no property coverage under the CGL. Thus, we decline to address plaintiff's issues regarding personal property coverage.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Christopher M. Murray

[2] Further, this Court does not render advisory opinions on issues unnecessary to the resolution of the appeal. *Rozankovich v Kalamazoo Spring Corp,* 44 Mich App 426, 428; 205 NW2d 311 (1973).