MICHIGAN COURT OF APPEALS

Bridging Communities, Inc. v. Hartford Casualty Insurance Company

Bridging Communities · No. 355955 · Decided March 2, 2023

SUMMARY

The Michigan Court of Appeals affirmed summary disposition for Hartford Casualty Insurance Company in an action concerning coverage for unsolicited fax advertisements that violated the Telephone Consumer Protection Act. The court held that the policy's statutory right to privacy exclusion barred personal and advertising injury coverage because the plaintiffs asserted only TCPA violations and identified no independent common-law liability. The court also concluded that the fax transmissions did not constitute a covered occurrence and, alternatively, that the expected-or-intended injury exclusion precluded property damage coverage.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	Anica Letica; James Robert Redford; Michelle M. Rick
JURISDICTION	Michigan
DECIDED	March 2, 2023
DOCKET	355955
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed as of right from an order granting Hartford's motion for summary disposition and denying plaintiffs' cross-motion for summary disposition in an insurance-coverage declaratory action.
STANDARD OF REVIEW	The court reviewed summary disposition de novo. Because the trial court considered documentary evidence, the order was reviewed under MCR 2.116(C)(10). Interpretation and application of the insurance policy, statutory construction, and whether policy language was ambiguous were also reviewed de novo.
PRECEDENTIAL VALUE	Published Michigan Court of Appeals opinion; precedential under Michigan law.
PARTIES	Bridging Communities, Inc., Gamble Plumbing & Heating, Inc. v. Hartford Casualty Insurance Company

TOPICS

insurance coverage · duty to indemnify · contract interpretation · appellate procedure · standard of review

PRACTICE AREAS

insurance law · contracts · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the policy's statutory right to privacy exclusion barred personal and advertising injury coverage for TCPA damages when plaintiffs had no viable common-law privacy claim independent of the TCPA.
2. Whether the transmission of unsolicited fax advertisements constituted an occurrence or accident under the policy's property damage coverage.
3. Whether the policy's expected-or-intended-injury exclusion independently barred property damage coverage.
4. Whether the statutory right to privacy exclusion was ambiguous because a later policy expressly referenced TCPA violations.

HOLDINGS

1. The statutory right to privacy exclusion barred coverage for the TCPA damages because plaintiffs failed to establish liability for damages that Top Flite would have had in the absence of the TCPA.
2. The statutory right to privacy exclusion was unambiguous and enforceable as written.
3. The intentional transmission of the fax advertisements was not an accident and therefore did not constitute a covered occurrence.
4. Even if the fax transmissions qualified as an occurrence, the expected-or-intended-injury exclusion independently precluded property damage coverage.

KEY QUOTATIONS

> *"What this essentially boils down to is that, if both the act and the consequences were intended by the insured, the act does not constitute an accident. On the other hand, if the act was intended by the insured, but the consequences were not, the act does constitute an accident, unless the intended act created a direct risk of harm from which the consequences should reasonably have been expected by the insured."* (9)

> *"The intentional acts in this case cannot be construed as accidental, and therefore, do not constitute occurrences covered under the policy."* (9)

FACTUAL BACKGROUND

In March 2006, Top Flite Financial hired a broadcasting service to send an advertising campaign by fax without first obtaining recipients' permission; 4,271 unique fax numbers received the advertisement, including plaintiffs' numbers. Plaintiffs brought a federal TCPA class action against Top Flite, which resulted in a May 2019 judgment and settlement fund; the federal court found that Top Flite had no intent to injure anyone. Hartford denied Top Flite's request for coverage and declined to defend or indemnify it. Plaintiffs, standing in Top Flite's shoes after an assignment, sought coverage under Hartford's policy for alleged property damage and personal and advertising injury.

PROCEDURAL HISTORY

Bridging Communities and Gamble Plumbing filed a Wayne Circuit Court action seeking declaratory relief under MCR 2.605, asserting that Hartford's policy issued to Top Flite covered liability arising from unsolicited fax advertisements sent in violation of the TCPA. The circuit court granted Hartford summary disposition, denied its statute-of-limitations motion under MCR 2.116(C)(7), and denied plaintiffs' cross-motion. The Michigan Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Bridging Communities, Inc v Top Flite Fin, Inc, 176 F Supp 3d 725 (ED Mich, 2016)
- Bridging Communities, Inc v Top Flite Fin, Inc, 843 F3d 1119 (CA 6, 2016)
- Coventry Parkhomes Condo Ass'n v Fannie Mae, 298 Mich App 252, 256-257; 827 NW2d 379 (2012)
- Zaher v Miotke, 300 Mich App 132, 139; 832 NW2d 266 (2013)
- Home-Owners Ins Co v Andriacchi, 320 Mich App 52, 61; 903 NW2d 197 (2017)
- Joseph v Auto Club Ins Ass'n, 491 Mich 200, 206; 815 NW2d 412 (2012)
- West v Gen Motors Corp, 469 Mich 177, 183; 665 NW2d 468 (2003)
- Cohen v Auto Club Ins Ass'n, 463 Mich 525, 528; 620 NW2d 840 (2001)
- Klapp v United Ins Group Agency, Inc, 468 Mich 459, 463; 663 NW2d 447 (2003)
- Hastings Mut Ins Co v Safety King, Inc, 286 Mich App 287, 291-292; 778 NW2d 275 (2009)
- Meemic Ins Co v Fortson, 506 Mich 287, 297; 954 NW2d 115 (2020)
- Auto Owners Ins Co v Seils, 310 Mich App 132, 146-147; 871 NW2d 530 (2015)
- Tobin v Civil Service Comm, 416 Mich 661, 672, 675, 677-678; 331 NW2d 184 (1982)
- Dalley v Dykema Gossett PLLC, 287 Mich App 296, 306; 788 NW2d 679 (2010)
- Bradshaw v Mich Nat'l Bank, 39 Mich App 354-356; 197 NW2d 531 (1972)
- Royal Prop Group, LLC v Prime Ins Syndicate, Inc, 267 Mich App 708, 715; 706 NW2d 426 (2005)
- Frankenmuth Mut Ins Co v Masters, 460 Mich 105, 107-108, 114-116; 595 NW2d 832 (1999)
- Allstate Ins Co v McCarn, 466 Mich 277, 278-285; 645 NW2d 20 (2002)
- Bank of America, NA v Fidelity Nat'l Title Ins Co, 316 Mich App 480, 496 n 2; 892 NW2d 467 (2016)