

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ANDRE CORNEILLE SWIFT,  
Plaintiff-Appellee,

UNPUBLISHED  
January 27, 2004

V  
FARMERS INSURANCE EXCHANGE,  
Defendant-Appellant.

No. 242494  
Wayne Circuit Court  
LC No. 01-111716-NI

---

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying its motion for summary disposition, dismissing the case, and sending the matter to arbitration. Because defendant's notice requirement is a condition precedent to making a claim, the notice requirement is clear and unambiguous in this voluntary insurance contract, plaintiff failed to provide the requisite notice, and defendant's rights were materially affected, we reverse and remand for entry of summary disposition in favor of defendant. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sustained serious injuries when the motorcycle he was riding with the owner's permission was struck by a vehicle that then fled the scene. The motorcycle was insured by a policy issued by defendant. The policy required a person to notify defendant of the accident within thirty days if a claim for uninsured motorist benefits predicated on a hit-and-run accident was to be filed. Plaintiff submitted a notice and claim for benefits four months after the accident occurred. Defendant denied the claim on the ground that plaintiff failed to provide notice of the accident within thirty days.

Plaintiff filed suit alleging breach of contract based on defendant's failure to pay benefits under its policy. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was not obligated to pay benefits because plaintiff failed to give notice of the accident within thirty days as required by the clear and unambiguous terms of the policy. Plaintiff argued that he was not the named insured under the policy, and contended that the thirty-day notice period was unreasonably short under the circumstances. The trial court denied defendant's motion, seemingly concluding that because plaintiff was not the named insured, the thirty-day notice period was unreasonable. The trial court made no finding as to whether defendant was prejudiced by plaintiff's failure to give notice of the accident within thirty days.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Nikkel, supra*, 566-567. Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

Defendant argues that the trial court erred by denying its motion for summary disposition. We agree, reverse the trial court's decision, and remand for entry of summary disposition in favor of defendant. Uninsured motorist coverage is not required by the no-fault act. Therefore, the scope of such coverage is governed by the language of the policy itself and by contract law. *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996). Defendant's policy defines "insured person" as the named insured or anyone using the insured vehicle. Plaintiff operated the insured motorcycle with the owner's permission; therefore, plaintiff qualified as an insured person under the policy. The policy requires "a person" seeking benefits to give notice of a hit-and-run accident within thirty days if a claim for uninsured motorist benefits is to be filed. This language is clear and unambiguous, and fairly admits of but one interpretation. *Nikkel, supra*, 566. Plaintiff did not give notice of the accident until four months after the accident occurred, and thus failed to comply with the terms of the policy. The trial court was required to enforce the policy as written, and could not create an ambiguity where none existed. See *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 338; 632 NW2d 525 (2001).

We acknowledge that, as a general rule, an insured's failure to comply with a notice provision does not relieve an insurer of its obligation to provide benefits unless it was prejudiced by the lateness of the notice. *Koski v Allstate Ins Co*, 456 Mich 439, 444; 572 NW2d 636 (1998).<sup>1</sup> The trial court made no finding regarding prejudice; however, on the record before us,

---

<sup>1</sup> In *Koski, supra*, the plaintiff insured sued the defendant seeking indemnification for a default judgment in an underlying suit brought on behalf of his minor daughter, who sustained injuries on his property. The plaintiff had not notified the defendant of the suit prior to entry of the default judgment, but had filed a claim for his daughter's injuries, which the defendant denied on the ground that a household exclusion precluded coverage. The trial court entered judgment in favor of the plaintiff on a special jury verdict, concluding that the defendant's notice of the household exclusion was inadequate and that the defendant was not prejudiced by the plaintiff's failure to notify it of the underlying suit because it had received prompt notice of the accident. Another panel of this Court affirmed, but the Supreme Court reversed, holding that the defendant was prejudiced by the plaintiff's failure to notify it of the underlying suit because the defendant was deprived of the opportunity to engage in discovery, cross-examine witnesses, and present its own evidence related to liability and damages. *Id.*, 445.

we conclude that reasonable minds could not disagree that defendant was prejudiced by plaintiff's failure to give notice of the accident within thirty days. Plaintiff gave defendant notice of the accident four months after it occurred. The notice and demand for benefits, which took the form of a letter from plaintiff's counsel, identified defendant's insured as someone other than the insured subsequently named in the complaint. The notice was accompanied by statements from two purported witnesses who asserted that a white vehicle was involved in the accident. However, the notice stated that the police report was erroneous in that it made no reference to the involvement of a white vehicle. The notice stated that medical records would be furnished at a later time. Thus, when plaintiff gave untimely notice of the accident and made a demand for uninsured motorist benefits, he misidentified defendant's insured, supplied witness statements that contradicted the police report, asserted that the police report was erroneous, and failed to supply medical records. The purpose of a provision requiring the giving of notice of an accident is to give the insurance company "knowledge of the accident so that it can make a timely investigation in order to protect its interests." *Id.*, quoting *Weller v Cummins*, 330 Mich 286, 293; 47 NW2d 612 (1951). Defendant's receipt of inaccurate, incomplete, and contradictory information regarding the accident deprived it of the opportunity to investigate the facts and circumstances surrounding the accident while they were still fresh in the minds of plaintiff, the responding police officers, and the purported witnesses, and to preserve any physical evidence. Plaintiff's delay deprived defendant of the opportunity to make a prompt determination of the extent of its liability. *Wehner v Foster*, 331 Mich 113, 119-120; 49 NW2d 87 (1951). Defendant was entitled to summary disposition.

Reversed and remanded for entry of an order of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Pat M. Donofrio  
/s/ Richard A. Griffin  
/s/ Kathleen Jansen