STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION, Plaintiff-Appellant, v IVORY GRANDBERRY, JR., and CHRISTOPHER MASON, Defendants-Appellees.	UNPUBLISHED May 18, 2006 No. 265597 Wayne Circuit Court LC No. 05-507499-CK

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Plaintiff Auto Club Insurance Association appeals as of right from the trial court's orders granting summary disposition to defendant Ivory Grandberry, Jr., and to defendant Christopher Mason, pursuant to MCR 2.116(C)(10). We reverse and remand.

I. Basic Facts And Procedure

Grandberry purchased a no-fault automobile insurance policy from plaintiff. Following an accident, Mason filed an automobile negligence suit against Grandberry. Grandberry filed a breach of contract suit against plaintiff after it denied Grandberry's vehicle damage claim. The two cases were consolidated. During a settlement conference conducted on the record, the trial court ruled that plaintiff's policy limit in the case was $100,000, and not the statutory minimum of $20,000.

Plaintiff then filed a declaratory action against Grandberry and Mason, and alleged that Grandberry's no-fault auto insurance policy was void because Grandberry intentionally concealed or misrepresented material facts regarding his registered address and the address where the vehicle was garaged. Plaintiff requested that the trial court determine what, if any, obligation it had to continue paying benefits on Grandberry's behalf. The trial court denied plaintiff's motion for summary disposition, and granted summary disposition to both defendants, on the basis that plaintiff could not rescind the policy as to Mason, the innocent third party. The trial court also ruled that its prior ruling regarding the $100,000 coverage amount was retained for purposes of plaintiff's declaratory judgment action. This appeal followed.

II. Analysis

A. Standard Of Review

We review de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the plaintiff's complaint. *Maiden, supra* at 119. The moving party has the initial burden to support its claim that it is entitled to summary disposition. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). If the moving party carries its initial burden, the party opposing the motion must then demonstrate with admissible evidence that a genuine issue of material fact exists; otherwise summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). A trial court may grant summary disposition if, after considering the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Maiden, supra* at 120.

B. Permissible Rescission Of A Policy's Coverage

Plaintiff argues that summary disposition to both defendants was improper because it rightfully rescinded the insurance policy as to Grandberry's vehicle damage claim and rightfully reformed the insurance policy as to the innocent third party, Mason,[1] after Grandberry listed his brother's Clinton Township address on his insurance application when he actually lived with his parents in Detroit.

"It is the well-settled law of this state that where an insured makes a material misrepresentation in the application for insurance, including no-fault insurance, the insurer is entitled to rescind the policy and declare it void ab initio." *Lake States Ins Co v Wilson*, 231 Mich App 327, 331-332; 586 NW2d 113 (1998). If the insurer relies on the misrepresentation, regardless of whether it was innocent or intentional, recission is justified. *Id*. Reliance may exist when the misrepresentation relates to the insurer's guidelines for determining eligibility for coverage. *Id*.

There is an exception to this general rule. Once an innocent third party is injured in an accident, the insurer is estopped from asserting fraud to rescind the insurance contract. *Id*.;

---

[1] As to Mason, plaintiff conceded below, and still concedes, that it is liable for the statutory minimum $20,000/$40,000 bodily injury liability benefits. However, plaintiff argues that the benefits of $100,000 per person/$300,000 per occurrence provided in Grandberry's insurance contract constituted optional coverage, and that the insurance contract should be reformed to provide only the $20,000/$40,000 statutory minimum coverage required by MCL 257.520(b)(2).

Farmers Ins Exch v Anderson, 206 Mich App 214, 220; 520 NW2d 686 (1994).[2] However, an insurer is not precluded from reforming the policy to eliminate any "optional" insurance coverage, MCL 257.520(g), as that optional coverage relates to an innocent third party, unless the insurer could easily ascertain the fraud or misrepresentation. *Id*. at 332; *Farmers Ins Exch, supra*, at 219. The financial responsibility act defines "optional" coverage as "any lawful coverage in excess of or in addition to the [mandatory minimum] coverage specified for a motor vehicle liability policy." MCL 257.520(g); *Lake States Ins Co, supra* at 332. In sum, an insurer is entitled to reformation of an insurance policy if (1) there was a material misrepresentation, (2) the coverage the insurer wishes to rescind is "optional," and (3) the fraud or misrepresentation could not have been easily ascertained by the insurer at the time that the insurance contract became effective. *Lake States Ins Co, supra* at 332.

1. Evidence of a Material Misrepresentation

The insurance policy at issue contained a requirement that the principal named insured notify plaintiff of any changes in the insured's address, principal garaging location for the car, use of the car, operators regularly driving the car, and ownership and registration. It also contained a "Concealment or Fraud" provision, which stated, "[t]his entire policy is void if an insured person has intentionally concealed or misrepresented any material fact or circumstance" related to the insurance or the application for it. It further stated, "[w]e do not provide coverage for any insured person if an insured person has intentionally concealed or misrepresented any material fact or circumstance relating to a claim for which coverage is sought under this Policy."

The address at which an insured resides is a material fact when applying for insurance. Plaintiff alleged in its complaint that there would have been a substantial rate difference in the policy had the Detroit address been on the application. The trial court did not, though, explicitly base its ruling on whether Grandberry made a material misrepresentation of his address on his insurance application. Although the policy listed Grandberry as a resident of Clinton Township, he provided his parents' address in Detroit when he filed his property damage claim related to the accident. A claim memo information sheet indicated that Grandberry verified that his home address was in Detroit and that it was not a new address, but indicated that his home address was in Clinton Township after being advised that the records listed a different address.

While these facts suggest a material misrepresentation, Grandberry, his brother, and his sister-in-law all testified that Grandberry lived in Clinton Township at the time of the accident. When viewed in the light most favorable to the non-moving party, it creates a material factual issue as to whether Grandberry defrauded plaintiff by misrepresenting his home address. The trial court based its ruling solely on the proposition that plaintiff could not rescind coverage to an innocent third party. Consequently, it did not explicitly rule as to whether the misrepresentation existed, whether it was innocent or fraudulent, and whether plaintiff's reliance on it was justified.

---

[2] Rescission is appropriate if the party claiming benefits was actively involved in defrauding the insurer and was not an innocent third party. *Hammoud v Metro Prop & Cas Ins Co*, 222 Mich App 485, 488-489; 563 NW2d 716 (1997). There is no contention that Mason was involved in any misrepresentation here, if in fact there was one.

Resolution of these factual issues will form the basis for a finding of whether plaintiff rightfully rescinded the insurance policy as to Grandberry, and whether plaintiff rightfully reformed the policy to supply coverage for Mason at the $20,000/$40,000 statutory minimum. If Grandberry was actively defrauding plaintiff by stating that he lived in Clinton Township when he really lived in Detroit, then recission is appropriate as to Grandberry's property damage claim. *Hammoud, supra* at 488-489. Likewise, if a material misrepresentation existed, then plaintiff would be entitled to reformation of the insurance contract to the statutory minimum limits of $20,000/$40,000 for any coverage claimed by Mason, the innocent third party. *Lake States Ins Co, supra* at 331-332. Because there is a genuine issue of fact regarding whether Grandberry made a material misrepresentation, summary disposition was improperly granted to Mason and Grandberry.

2. No Material Questions of Fact as to the Remaining Issues

No material factual issues exist regarding the second and third prongs of the test as it relates to plaintiff's potential obligation to Mason. The $100,000/$300,000 bodily injury liability coverage provided by Grandberry's policy exceeded the statutory minimum requirement of $20,000/$40,000, and the excess was therefore optional coverage. MCL 257.520(g); *Farmers Ins Exch, supra* at 218-219. Additionally, the record supports a conclusion that Grandberry's address at the time of his insurance application, if in Detroit, was not easily ascertainable. An insurer does not owe the insured a duty to investigate or verify the insured's representations, or to discover intentional material misrepresentations. *Hammoud, supra* at 489, citing *United Security Ins Co v Comm'r of Ins*, 133 Mich App 38, 45; 348 NW2d 34 (1984). In light of the information that Grandberry provided to plaintiff, it is reasonable to conclude that the Detroit address, if Grandberry truly resided there, was not easily ascertainable by plaintiff. Grandberry applied for insurance using the Clinton Township address, and testified that it was the address listed on his driver's license at that time.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Janet T. Neff
/s/ Brian K. Zahra