

STATE OF MICHIGAN
COURT OF APPEALS

JOHNNY MAYES,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
October 23, 1998

No. 202536
Wayne Circuit Court
LC No. 96-638930 NO

Before: Hoekstra, P.J., and Cavanagh and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the lower court granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7) (statute of limitations). We affirm.

Plaintiff argues that summary disposition was improperly granted because his notice to defendant of his no-fault insurance claim for property damage tolled the statute of limitations. We disagree. Plaintiff’s complaint was filed after the expiration of the one-year statute of limitations for recovery of property protection insurance benefits, MCL 500.3145(2); MSA 24.13145(2). In *United States Fidelity & Guaranty Co v Amerisure Ins Co*, 195 Mich App 1, 6; 489 NW2d 115 (1992), this Court held that its examination of the plain language of §3145(2) led it to conclude that “the Legislature, by omitting notice and tolling provisions in that section, which deals with property damage benefits, while including them in § 3145(1), which deals with personal injury benefits, did so intentionally.” We are required to follow that decision by MCR 7.215(H)(1), and further, we find the reasoning of that decision to be persuasive. Therefore, the trial court did not err in granting defendant’s motion for summary disposition because plaintiff’s complaint was not timely filed and the statute of limitations was not tolled.

Next, plaintiff argues that summary disposition was improperly granted because defendant was estopped from asserting a statute of limitations defense. We disagree. Although this issue was not directly addressed by the trial court, summary disposition was nonetheless properly granted because plaintiff failed to present sufficient evidence of promissory estoppel to create a genuine issue of material fact for trial. Once defendant established a prima facie case that plaintiff’s claim was time-barred, the

burden of proof shifted to plaintiff to show facts taking the case out of the operation of the statute of limitations. *Warren Consolidated Schools v W R Grace & Co*, 205 Mich App 580, 583; 518 NW2d 508 (1994). To establish a claim of estoppel, plaintiff was required to show that defendant made a false representation, had an expectation that the representation would induce reliance, and had knowledge of the actual facts making the representation false. See *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997).

The only evidence plaintiff presented on this issue was a letter from defendant dated after the statute of limitations had already expired and an unsupported allegation in his brief that defendant had promised to pay the claim. Even if this issue had been fully addressed in the trial court, this evidence would have been insufficient to survive defendant's motion for summary disposition because plaintiff cannot rest upon mere allegations or denials in its pleadings. See *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Further, we decline to consider the substance of the affidavit filed on appeal because it was never presented to the trial court. See MCR 7.210(A); *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). Therefore, the trial court did not err in granting defendant's motion for summary disposition because plaintiff failed to present documentary evidence to support his claim of estoppel.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Peter D. O'Connell