STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Plaintiff-Appellant,

v

INVERNESS DAIRY, INC.,

Defendant-Appellee.

UNPUBLISHED
February 26, 1999

No. 202685
Cheboygan Circuit Court
LC No. 96-005632 CK

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order entering judgment in favor of plaintiff in the amount of $9,199.75. We reverse and remand.

The facts of this case are essentially undisputed. Defendant obtained Workers' Compensation coverage from plaintiff for the policy year 1994-1995. At the start of the policy year, defendant paid 25% of the year's premium pursuant to the agreement. The remaining 75% was to be paid in nine equal monthly installments. Defendant received its first bill from plaintiff and paid the first monthly installment. However, due to a failure in its new computer system, plaintiff did not send monthly bills to defendant for the remaining eight installments, and defendant did not make further premium payments.

Plaintiff filed a complaint alleging that defendant breached its contract by not making the payments on the remaining eight installments. Defendant argued that because plaintiff had canceled its policy with defendant on August 12, 1996, when it discovered defendant had not made the installment payments, defendant was not required to pay the remaining $18,399.50 due on the contract.

Following a bench trial, the trial court found that plaintiff had provided defendant with full, uninterrupted workers' compensation coverage for the 1994-1995 policy year, but that plaintiff did not provide defendant with the requisite notices pursuant to MCL 500.2235; MSA 24.12235. Under the belief that both parties had breached the insurance contract on different grounds, the trial court invoked equitable principles and employed an equitable accounting. The trial court ultimately awarded plaintiff

half of the outstanding premium due for the 1994-1995 policy year, rather than the entire amount due under the contract.

On appeal, plaintiff challenges the trial court's decision to invoke equity and reduce the amount owed on the contract by one-half. Plaintiff first argues that the court did not have the authority to convert this action to one of equity where the pleadings state a legal cause of action for breach of contract, and where legal remedies are adequate. In addition, plaintiff objects to the amount it was awarded by the court as an equitable remedy. Plaintiff says that it was entitled to receive the full amount of unpaid premiums because defendant received one full year of coverage. Also, plaintiff maintains that although it mistakenly neglected to issue monthly billing statements to defendant, defendant was not damaged as a result of this omission; therefore, there should not be a so-called equitable reduction in the premiums. We agree.

Although the parties did not request an equitable accounting below, we will review the issue nonetheless because the question is one of law for which the necessary facts have been presented. *Westfield Companies v Grand Valley Health Plan*, 224 Mich App 385, 387; 568 NW2d 854 (1997). Moreover, plaintiff was not required to take any action below in order to preserve its challenge. MCR 2.517(A)(7). The parties in this case do not dispute the essential facts; therefore, the issue presented is purely one of law which this Court reviews de novo. *Brookshire-Big Tree Ass'n v Oneida Twp*, 225 Mich App 196, 200; 570 NW2d 294 (1997).

As a general rule, a court may not invoke equity where there is an adequate remedy at law. *Eberhard v Harper-Grace Hospitals*, 179 Mich App 24, 35; 445 NW2d 469 (1989); *Basinger v Provident Life & Accident Ins Co*, 67 Mich App 1, 5-6; 239 NW2d 735 (1976). Moreover, in order to determine whether a plaintiff has stated a cause of action for an equitable accounting, the court should rely only on the facts presented in the complaint. *Boyd v Nelson Credit Centers, Inc*, 132 Mich App 774, 779; 348 NW2d 25 (1984). To sustain a claim for equitable accounting, "mutual demands, a series of transactions on one side, and payments on the other" must exist. *Id.* The only item in dispute must be the amount of money due under the contract. *Id.* Indeed, an accounting will not be had where the cause of action is for a specific sum of money due under the contract or where discovery is sufficient to determine the amounts at issue. *Id.* An equitable accounting may only be provided where the accounts are not mutual and the circumstances surrounding the sum due is very complicated or difficult. *Basinger*, *supra* at 9.

Here, neither party argued to the trial court that the legal remedies were inadequate; nor did either party contend that the principles of contract law were inapplicable. To the contrary, defendant asserted a defense based entirely on contract law, with no reference to equity. Specifically, it argued that the parties did not have a contract for insurance coverage for the remainder of the 1994-1995 year, after the down-payment had been made.

Moreover, defendant did not dispute the amount due for the remainder of the year's premium; rather, it asserted a legal defense that it did not owe plaintiff money because there was no contract. In fact, the parties agreed that the total earned premium for the 1994-1995 year was $25,629, and that the total amount still due was $18,399.50. Thus, the amount due under the contract was for a sum

certain, and the circumstances surrounding the transaction were not complex or difficult so as to warrant an equitable accounting. The only issue in dispute was whether defendant, in fact, owed the money at all. Plaintiff requested relief only under contract law, and the issue should have been decided by application of pure legal principles. Therefore, we find no basis for the trial court's decision to convert the matter to one of equity.

In light of our conclusion that the trial court erroneously invoked equitable principles when adequate legal remedies were available, we must next consider whether plaintiff is entitled to the full amount due on the contract, or a lesser amount as the trial court ruled. Plaintiff first insists that it provided full coverage to defendant for one year, and it should be paid for one full year of premiums. Defendant denies that it received coverage for one full year, noting that plaintiff canceled the policy on August 12, 1996.

While defendant accurately points out that plaintiff attempted to cancel the policy before the end of the year, our review of the record and the relevant law demonstrates that plaintiff's attempt at cancellation was not effective because it failed to provide notice of cancellation to the Workers' Disability Compensation Board. MCL 418.621(2)(g); MSA 17.237(621)(2)(g). Absent such notice, the cancellation was ineffective, and the coverage remained intact and uninterrupted for the policy year. See *Depyper v Safeco Ins Co of America*, ___ Mich App ___; ___ NW2d ___ (Docket No. 202965, rel'd 11/3/98), slip op at 2-3. "The general rule is that an effective cancellation of an insurance policy requires strict compliance with the cancellation clause." *Id.*, slip op at 3. Absent strict compliance with the requirements of the statute, cancellation of a policy is ineffective. *Id.* Therefore, because plaintiff did not strictly comply with the notice provision in the statute, its attempt to cancel the policy was ineffective, and coverage continued for the premium year. Accordingly, defendant's argument that it did not receive full coverage is without merit, and plaintiff's right to receive all of the premium payments should not be affected by the ineffective attempt to cancel the policy.

Next, plaintiff argues that its failure to provide defendant with annual notice of its audit rights, pursuant to MCL 500.2235; MSA 24.12235, is not a valid defense to payment in full of insurance premiums because defendant was not damaged as a result of this omission. Defendant, on the other hand, claims that the statute required annual notice of their right to rate information and to a payroll audit, and the failure to provide such information was a breach of contract. Therefore, although defendant does not seek any damages as a result of this conduct, it maintains that the trial court's reduction of plaintiff's award was proper in light of plaintiff's breach.

MCL 500.2235; MSA 24.12235 requires that annual notice be provided to all insureds informing them of their right to rate information and to a payroll audit.[1] The purpose of the statute is to inform the insured of its rights under MCL 500.2008; MSA 24.12008, which guarantees that a workers' compensation insured may have an audit of final premium computation. The statute also provides the procedures for conducting the audit. The provision is part of the Unfair Trade Practices Act, which regulates trade practices of the insurance industry, and defines those unfair practices related specifically to workers' compensation insurance. See *Blackwell v Citizens Ins Co*, 457 Mich 662, 672; 579 NW2d 889 (1998). This Court has previously declared that violations of the UTPA do not give rise to a private cause of action. *Bell v League Life Ins Co*, 149 Mich App 481, 482; 387

NW2d 154 (1986). This Court stated that the Act "provides a comprehensive scheme of enforcement of the rights and duties it creates, that that scheme of enforcement is exclusive, and that plaintiffs have no private cause of action arising from the provisions of the act." *Id.*

Given the foregoing principles, we are not persuaded by defendant's argument that plaintiff's failure to provide notice of the audit rights was a breach of contract for which defendant had a cause of action. Moreover, although defendant claims that even if it could not sue under the UTPA, it would have an independent breach of contract claim, we are mindful of the fact that defendant has not claimed, nor does it allege, that it suffered any damages by virtue of plaintiff's failure to provide the requisite notice. Finally, as defendant itself stated in its brief on appeal, "[i]t is not every partial failure to comply with the terms of the contract by one party which will entitle the other party to abandon the contract at once." *Walters v Quality Biscuit Division*, 336 Mich 214, 220; 57 NW2d 503 (1953) (quoting *Rosenthal v Triangle Development*, 261 Mich 462, 463; 246 NW 182 (1933)).

Therefore, for the foregoing reasons, we find that the trial court's reduction of plaintiff's damages to only half of the premiums owed under the contract, was improper and unwarranted. The contract was not canceled, and insurance coverage was provided for the entire premium year. In addition, defendant did not suffer damages as a result of plaintiff's failure to provide the requisite notice.

Reversed and remanded for entry of judgment in favor of plaintiff in the amount of $18,399.50. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins

[1] MCL 500.2235; MSA 24.12235 provides:

> At least annually, in conjunction with a renewal notice, a bill, or other notice of payment due issued in connection with a policy of worker's compensation insurance, an insurer shall send to each insured a written notice containing all of the following statements:
>
> (a) A description of the insured's right to all pertinent rating information within a reasonable time after making a written request and paying reasonable charges.
>
> (b) A description of the procedures whereby an insured or an insured's representatives may request a review of the way in which the insured's rate and premiums have been determined, including a statement of the insured's right to appeal the result of the review to the commissioner.
>
> (c) Relevant information regarding the right of an insured to obtain a payroll audit under section 2008.

(d) Relevant information regarding the right of an insured to request a conference with a management representative to review, reserve or redemption decisions by the insurer under section 2419.