

STATE OF MICHIGAN
COURT OF APPEALS

LATHRUP INVESTMENT COMPANY,

Plaintiff-Appellant,

v

WEST AMERICAN INSURANCE COMPANY,

Defendant-Appellee,

and

IBRAHIM KHALIL KAZAN, GERALD A.
HOFFMAN, and GERALD A. HOFFMAN
INSURANCE AGENCY, d/b/a BARACK &
HOFFMAN AGENCY,

Defendants.

UNPUBLISHED

December 15, 2000

No. 212269

Oakland Circuit Court

LC No. 95-509985-CK

Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant West American Insurance Company regarding its estoppel claim pursuant to MCR 2.116(C)(8). Plaintiff brought this lawsuit alleging breach of contract, estoppel, and negligence on behalf of defendant after defendant failed to pay plaintiff for building losses after his building was destroyed by a fire. We affirm.

Plaintiff argues that the trial court erred in granting summary disposition for defendant. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). However, a trial court's decision regarding whether to invoke equitable estoppel will only be reversed if the trial court's findings of fact were clearly erroneous or if this Court would have reached a different result in the lower court's position. *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 309; 583 NW2d 548 (1998).

Plaintiff argues that there were genuine issues of material fact that prevented the trial court from finding that the elements of estoppel were not present. However, regardless of

whether factual issues were present, summary disposition was appropriate under MCR 2.116(C)(8) because plaintiff failed to state a claim on which relief can be granted.

As a preliminary matter, plaintiff never clearly indicated whether its estoppel claim was based on equitable or promissory estoppel theories. However, its brief on appeal discusses the test for equitable estoppel. Accordingly, we will analyze the issue as one of equitable estoppel and not of promissory estoppel.

Our Supreme Court recently stated that a plaintiff, in an insurance case, must establish the following elements for equitable estoppel to apply:

(1) that the defendant's acts or representations induced plaintiff to believe that the policy was in effect at the time of the accident, (2) that the plaintiff justifiably relied on this belief, and (3) that plaintiff was prejudiced as a result of his belief that the policy was still in effect. [*Morales v Auto-Owners Ins Co*, 458 Mich 288, 296-297; 582 NW2d 776 (1998), citing *Fleckenstein v Citizens' Mut Automobile Ins Co*, 326 Mich 591, 599; 40 NW2d 733 (1950).]

Plaintiff set forth these elements in its complaint as a cause of action. Accordingly, this claim was properly dismissed by the trial court because a plaintiff cannot use the doctrine of equitable estoppel as a cause of action. *Hoye v Westfield Ins Co*, 194 Mich App 696, 707; 487 NW2d 838 (1992).

In *Van v Zahorik*, 227 Mich App 90, 102; 575 NW2d 566 (1997), *aff'd* 460 Mich 320; 597 NW2d 15 (1999), this Court stated regarding equitable estoppel:

Equitable estoppel is not a cause of action and therefore provides no remedy. *Hoye v Westfield Ins Co*, 194 Mich App 696, 707; 487 NW2d 838 (1992). . . . The doctrine is generally available as protection from a defense raised by a defendant or as an aid to the plaintiff, but it has never been recognized as a cause of action in itself. *Hoye, supra* at 705-707; 487 NW2d 838. In the case at bar, plaintiff does not assert equitable estoppel as a defense against defendant, or even as an aid to his claim. Plaintiff essentially asserts equitable estoppel as a cause of action and seeks relief on that ground. As a result, we think plaintiff misuses the doctrine. Plaintiff has failed to state a claim upon which relief can be granted. Therefore, the trial court did not err in granting defendant's motion for summary disposition. [*Van, supra* at 102.]

Similarly, in *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438; 505 NW2d 275 (1993) this Court stated that "plaintiff's claim of equitable estoppel also fails . . . [because] it is not a cause of action in itself and provides no remedy such as damages The trial court did not err in dismissing this count." *Id.* at 443-444, citing in part *Hoye, supra* at 707.

Applying *Van* and *Marrero* to this case, plaintiff erroneously relied on equitable estoppel as a cause of action and summary disposition pursuant to MCR 2.116(C)(8) was appropriately granted to defendant on this issue as long as plaintiff did not have a proper defensive use for the

doctrine. *Westfield Companies v Grand Valley Health Plan*, 224 Mich App 385; 568 NW2d 854 (1997).

Plaintiff did not have a proper defensive method for the doctrine. Plaintiff contends on appeal that he asserted estoppel in response to defendant's summary disposition motion. However, plaintiff argued promissory estoppel, not equitable estoppel, in that response. Because plaintiff never used equitable estoppel in a defensive manner, summary disposition was thus properly granted to defendant pursuant to MCR 2.116(C)(8).

We decline to address the issue whether promissory estoppel applied or whether the trial court erred in granting summary disposition of its agency claim because plaintiff has abandoned these issues on appeal. Plaintiff failed to list these issues in its questions presented and has failed to provide any specific argument regarding them in its brief. Accordingly, we conclude that these issues have been waived by plaintiff. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000); see also *In re Coe Trusts*, 233 Mich App 525, 536-537; 593 NW2d 190 (1999).

Affirmed.

/s/ Michael J. Kelly

/s/ David H. Sawyer

Gribbs, P.J., did not participate.