

STATE OF MICHIGAN
COURT OF APPEALS

MEIJER, INC.,

Plaintiff-Appellee,

v

RAY'S LANDSCAPING & NURSERY, INC.,
and MERIDIAN MUTUAL INSURANCE
COMPANY,

Defendants-Appellants.

UNPUBLISHED
December 14, 2001

No. 223968
Ingham Circuit Court
LC No. 98-087797-CK

Before: White, P.J. and Talbot and E.R. Post*, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting summary disposition in favor of plaintiff and awarding damages. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).¹

Meijer and Ray's Landscaping & Nursery entered into a contract for snow removal services. Ray's agreed to remove snow and slush from Meijer's premises, and to salt or sand parking lots upon request. The contract included an indemnification provision which stated that Ray's agreed to defend and indemnify Meijer from any and all claims and damages arising directly or indirectly from its acts or omissions, or from the presence of its employees or equipment on Meijer's premises. Meridian issued a liability policy to Ray's in which Meijer was named as an additional insured.

In *Simo v Meijer, Inc*, Oakland Circuit Court Docket No. 95-496699-NO, Sharon Simo alleged that she fell on Meijer's premises and sustained injuries. Simo alleged that Meijer negligently failed to remove snow and ice from the parking lot, allowed a dangerous condition to exist in the lot, and failed to warn of the dangerous condition. Meijer tendered defense of the suit to Meridian. Meridian declined to defend the suit on the ground that documentation established that Ray's performed its contractual duties to Meijer's satisfaction.

* Circuit judge, sitting on the Court of Appeals by assignment.

¹ Plaintiff filed a claim of cross-appeal; however, that appeal was dismissed pursuant to stipulation.

Meijer filed suit against Ray's and Meridian, alleging breach of contract based on the failure to defend the underlying suit. Meijer moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted the motion, and subsequently awarded damages in the amount of \$27,792.12. That sum represented the costs and attorney fees incurred by Meijer in defending the *Simo* case. The jury returned a verdict of no cause of action in that case.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The duty of an insurer to provide a defense in a tort action depends on the nature of the allegations in the underlying complaint. *United States Fidelity & Guaranty Co v Citizens Ins Co*, 201 Mich App 491, 493; 506 NW2d 527 (1993). The duty extends to allegations that even arguably come within the scope of the policy, even if the claims may be frivolous. The duty to defend is broader than the duty to indemnify, and is properly invoked if the underlying claims are even arguably within the scope of the coverage. *Polkow v Citizens Ins Co*, 438 Mich 174, 179-180; 476 NW2d 382 (1991). Any doubt pertaining to the duty to defend is resolved in favor of the insured. *Guerdon Industries, Inc v Fidelity Casualty Co*, 371 Mich 12, 18-19; 123 NW2d 143 (1963).

Ray's and Meridian argue that the trial court erred by granting summary disposition in favor of Meijer. We disagree and affirm. The indemnity provision in Ray's contract with Meijer stated that Ray's would defend and indemnify Meijer against all claims arising directly or indirectly from its acts or omissions. The liability policy issued to Ray's by Meridian stated that it would provide coverage for damages arising out of the actions of Ray's, the named insured. The allegations made by Simo against Meijer related to snow and ice in Meijer's parking lot. Simo did not name Ray's as a defendant in the underlying suit; however, the claims made against Meijer related directly to Ray's performance of its duties under the contract. The claims made by Simo were arguably within the scope of the indemnification provision and the coverage provided by Meridian. Under the circumstances, Ray's and Meridian had a duty to defend Meijer in the underlying action, even if the claims were frivolous. *Polkow, supra*. The duty to defend is broader than the duty to indemnify; therefore, an insurer may be liable for defense costs but not for indemnification costs. *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 450-451; 550 NW2d 475 (1996). The trial court properly granted summary disposition in favor of Meijer.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post