STATE OF MICHIGAN

COURT OF APPEALS

RICHARD DAVIS III,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 9, 2004

No. 249169
Wayne Circuit Court
LC No. 02-224381-CK

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition on the ground that the statute of limitations had expired and defendant was not estopped from relying on the statute of limitations. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

There is no dispute that the insurance policy required that plaintiff file suit within one year from the date of loss or that the one-year period was tolled "from the time the insured notifies the insurer of the loss until the insurer formally denies liability." MCL 500.2833(q); *Randolph v State Farm Fire & Cas Co*, 229 Mich App 102, 106-107; 580 NW2d 903 (1998). Assuming plaintiff notified defendant of the loss immediately, the limitations period did not begin to run until December 13, 2000, when defendant formally denied the claim, and expired on December 13, 2001. Plaintiff did not file his complaint until July 2002.

"[T]he doctrine of equitable estoppel is a judicially created exception to the general rule that statutes of limitation run without interruption. It is essentially a doctrine of waiver that extends the applicable period for filing a lawsuit by precluding the defendant from raising the statute of limitations as a bar." *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997). "Equitable estoppel arises where one party has knowingly concealed or falsely represented a material fact, while inducing another's reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position." *Adams v*

Detroit, 232 Mich App 701, 708; 591 NW2d 67 (1998). It requires proof of "conduct clearly designed to induce 'the plaintiff to refrain from bringing action within the period fixed by statute.'" *Lothian v Detroit*, 414 Mich 160, 177; 324 NW2d 9 (1982), quoting *Renackowsky v Bd of Water Comm'rs of Detroit*, 122 Mich 613, 616; 81 NW 581 (1900). To invoke the doctrine, the plaintiff must establish three elements: "(1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party." *Cincinnati*, *supra*. In the context of insurance claims, the plaintiff must show that the defendant concealed a cause of action, misrepresented the time in which an action must be brought, or induced the plaintiff to refrain from bringing an action. *Compton v Michigan Millers Mut Ins Co*, 150 Mich App 454, 458; 389 NW2d 111 (1986). Negotiations intended to forestall litigation constitute an inducement sufficient for invoking the doctrine of equitable estoppel. *Id*.; *Cincinnati*, *supra*.

There is no evidence that defendant concealed the existence of a cause of action or misrepresented the time in which plaintiff had to file suit. Thus, the question is whether defendant made a material misrepresentation of fact that induced plaintiff to refrain from filing suit within one year after the claim was denied.

The evidence shows that plaintiff was dissatisfied with the denial of his claim and undertook an independent investigation in the hope of uncovering evidence that would cause defendant to reconsider denial of the claim on the ground that the claim was fraudulent because the fire was the result of arson. Plaintiff also hoped that his new-found willingness to cooperate would cause defendant to reconsider denial of the claim on the grounds that he refused to submit to an examination under oath and provide documentation supporting his claim. Plaintiff's counsel engaged in various discussions with defendant's attorney, Daniel Fleming. In his statements and letters, Fleming indicated that he would ask defendant about reconsidering plaintiff's claim and that defendant needed additional information in order to determine whether it would reconsider plaintiff's claim. At best, Fleming indicated that defendant might reconsider its previous denial of plaintiff's claim, not that it would in fact reopen the case. This case is thus distinguishable from *Cincinnati* in that there is no evidence that Fleming assured plaintiff that defendant would reconsider and pay his claim, that the parties agreed to cooperate in the processing of the claim in a manner specified by defendant, or that Fleming indicated that the claim would be paid if plaintiff's expert could identify an electrical cause of origin of the fire. See *Secura Ins Co v Auto-Owners Ins Co*, 232 Mich App 656, 661; 591 NW2d 420 (1998). Accordingly, we find that the trial court did not err in granting defendant's motion.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski