# STATE OF MICHIGAN

# COURT OF APPEALS

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STUART HOWARD,

Plaintiff/Counter-Defendant-Appellant,

v

FARM BUREAU INSURANCE,

Defendant/Counter-Plaintiff-Appellee.

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UNPUBLISHED
December 22, 2009

No. 289407
Wayne Circuit Court
LC No. 08-107907-CK

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On November 17, 2006, plaintiff obtained a homeowner's insurance policy from defendant to insure his home. On December 2, 2006, the house burned while plaintiff was away. Defendant's investigation of the incident revealed that the fire was started by a space heater, which plaintiff was using (along with the oven) to heat the house because the furnace did not work. Defendant also discovered that plaintiff's house had sustained a fire in May 2006, when the house was insured by Nationwide. After paying the claim, Nationwide cancelled plaintiff's insurance, causing him to get a new policy with defendant. However, the application form signed by plaintiff to obtain defendant's policy indicated that the furnace was new in 2004, had been serviced in 2006, and was serviced annually. The form also indicated that Nationwide did not cancel plaintiff's policy and that there had been no homeowner's claims in the last three years. It is undisputed that the information about the furnace, cancellation of plaintiff's Nationwide policy, and plaintiff's May 2006 claim was incorrect. On the third page of the application, just above plaintiff's signature, the following is written: "I hereby declare to the best of my knowledge and belief that all of the foregoing statements are true and that these statements are offered as an inducement to the Company to issue the policy for which I am applying." The policy included a clause that denied coverage for a loss caused by fire if the insured "intentionally concealed or misrepresented any material fact or circumstance," "engaged in fraudulent conduct," or "made false statements," related to the insurance. Plaintiff was advised by a certified letter dated April 2, 2007, that his claim was denied because of the misrepresentations on his application. In addition, defendant stated that the policy was

"rescinded and considered void ab initio." Defendant advised that it would return any premiums plaintiff had paid. In May 2007, defendant sent plaintiff a check for $741.44, the amount of the premiums plaintiff had paid to that point. The check stub stated, "Reason: Return of premium due to rescinding policy effective 11/17/06." Plaintiff cashed the check.

In March 2008, plaintiff sued, alleging that defendant wrongly rescinded the policy and improperly denied plaintiff's claim. Defendant moved for summary disposition, arguing that plaintiff's claim was barred because he made material misrepresentations on the application and because he accepted defendant's rescission when he cashed the check refunding his premiums. Plaintiff responded that he did not fill out the application form, defendant's agent never asked him any questions about the furnace or his claim history, he did not review the letter he received in April and did not understand the meaning of rescission, and he did not understand the ramifications of cashing the check defendant sent to him. Plaintiff indicated that he signed a page that he thought was merely a receipt and that the other pages of the application were not attached to the page he signed.

The trial court agreed with defendant, noting that there was no dispute that the information on the application was incorrect and material. It did not matter that the application was actually filled out by someone other than plaintiff because he undisputedly signed the last page, stating that the information was true.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

We agree with the trial court's conclusion. There is no dispute that the statements on the application were material misrepresentations, and it does not matter that plaintiff did not type the information on the application himself because of the declaration he signed. Although plaintiff asserts that he never saw the application and did not know what he was signing, it has long been the law in this state that a party to a contract has a duty to examine the contract and know what the party has signed. *Komraus Plumbing & Heating, Inc v Cadillac Sands Motel, Inc*, 387 Mich 285, 291; 195 NW2d 865 (1972), citing *Liska v Lodge*, 112 Mich 635, 637-638; 71 NW 171 (1897); see also *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 129-131; 713 NW2d 801 (2005) (affirming summary disposition for the defendant under facts very similar to those here). The *Montgomery* panel stated that "failure to read an agreement is not a valid defense to enforcement of a contract" regardless of who actually completed the application, where the parties both signed the authorization. *Id.* at 130.

We emphasize that the application page signed by plaintiff provides, at the top of the page in bold and capital letters, that the document is a homeowners application, and the signature page twice refers to plaintiff as the "applicant." As indicated above, the signature page includes language that "the *foregoing statements* are true" (emphasis added), and the page is also denoted as page "C," which would all lead any reasonable person to the conclusion that more than the signature page formed the entire document. Assuming that plaintiff is accurate in claiming that only the signatory page was presented to him by the agent, this page, in and of itself, contained sufficient information with respect to the document's character such that plaintiff should have questioned the agent about missing pages before signing.

Furthermore, for the same reasons, plaintiff cannot argue that there was no rescission because of his ignorance of the terms invoked when he cashed the refund check. The expressed reason for the check being issued to plaintiff was listed as "RETURN OF PREMIUM DUE TO RESCINDING POLICY EFFECTIVE 11/17/06." His cashing the check unconditionally served as his acceptance of those terms. See, e.g., *Puffer v State Mut Rodded Fire Ins Co of Michigan*, 259 Mich 698, 702; 244 NW 206 (1932) ("The failure of the parties to make a verbal agreement of settlement, separate from the indorsement on the check, is not of consequence"); *DMI Design & Mfg, Inc v ADAC Plastics, Inc*, 165 Mich App 205, 210; 418 NW2d 386 (1987) ("In this case, plaintiff's action in negotiating the check speaks louder than plaintiff's words"); *Fuller v Integrated Metal Technology, Inc*, 154 Mich App 601, 608-610; 397 NW2d 846 (1986).

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Brian K. Zahra