

STATE OF MICHIGAN
COURT OF APPEALS

IRA MOPKINS,

Plaintiff-Appellant,

v

NATIONAL INDEMNITY COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 13, 2011

No. 299621

Wayne Circuit Court

LC No. 09-015156-NF

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was involved in a motor vehicle accident on November 28, 2005. On June 19, 2009, he filed this action seeking, in part, benefits for uninsured motorist (UM) coverage under his employer's insurance policy. The policy required that, absent certain exceptions not applicable here, any action seeking benefits under that coverage must be filed within three years after the accident. On appeal, plaintiff challenges the trial court's rejection of his argument that equitable estoppel precluded defendant from enforcing the three-year contractual limitations period.

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."

With respect to UM coverage, "an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy." *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). However, the doctrine of equitable estoppel is still viable. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 204; 747 NW2d 811 (2008). The elements of equitable estoppel as set forth in *McDonald* are:

(1) defendant's acts or representations induced plaintiff to believe that the limitations period clause would not be enforced, (2) plaintiff justifiably relied on

this belief, and (3) [the plaintiff] was prejudiced as a result of [plaintiff's] reliance on [plaintiff's] belief that the clause would not be enforced. [*Id.* at 204-205.]

In this case, plaintiff argues that defendant should be estopped from relying on the three-year limitations period in the policy because it did not provide him with a copy of the policy when requested, and because it did not otherwise alert him of the three-year period. However, these are not acts or representations inducing plaintiff to have a belief about the limitations period. Plaintiff's argument is not that defendant misled them about the deadline, or the clause, or its enforceability. Rather, plaintiff contends that defendant failed to act and failed to disclose. Plaintiff's theory does not fit the formulation of the elements of equitable estoppel in *McDonald*, 480 Mich at 204.

Plaintiff contends that "[t]he facts of this case are akin to 'silent fraud.'" Just as this Court has recognized that silence can invoke an estoppel only where there is a legal or equitable duty to disclose, *Tenneco, Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 445-446; 761 NW2d 846 (2008), the suppression of information may establish silent fraud if there is a legal or equitable duty of disclosure. *Roberts v Saffell*, 280 Mich App 397, 403-404; 760 NW2d 715 (2008). Plaintiff argues that defendant had an equitable duty to disclose that it was relying on a shortened limitations period.

We are not willing to impose on defendant the equitable duty plaintiff seeks. A stronger argument for recognition of an equitable duty to disclose the shortened limitations period would exist if, for example, plaintiff had inquired about the limitations period or referred to his belief that the six-year period for bringing a breach of contract action was applicable, and defendant did not respond in that instance. Plaintiff's argument here is premised on an unfulfilled request for the policy that was made more than two years before the expiration of the deadline for filing the action. Defendant's inaction or silence is not a basis for imposing an equitable duty to inform plaintiff of the requirements for exercising his rights under the policy.

Moreover, even if we accepted the argument that inaction in response to a request for the policy should be treated as silence on which an estoppel may be based, equitable estoppel also requires that (1) the defendant's silence or inaction induces a belief on the part of plaintiff that the limitations period would not be enforced, and (2) that plaintiff justifiably relied on this belief. *McDonald*, 480 Mich at 204-205. An unfulfilled request for a policy does not induce a belief about its contents or the enforceability of its terms. In fact, plaintiff's proofs do not indicate that plaintiff or his attorney had any belief that the three-year period would not be enforced, much less that any such belief was induced by defendant's failure to provide the policy more than two years before the deadline.

Plaintiff relies heavily on *Dellar v Frankenmuth Mut Ins Co*, 173 Mich App 138; 433 NW2d 380 (1988), which addressed the plaintiff's failure to file a timely proof of loss when she had not received the requisite form from the company. *Id.* at 142. The discussion focuses on the insurer's statutory duty to specify the materials that will constitute a satisfactory proof of loss. *Id.* at 142-143 citing MCL 500.2006(3). Plaintiff does not contend that a similar statute is applicable in this case.

Plaintiff emphasizes that he was not a party to the contract and, therefore, the principle of “freedom to contract” justifying the rejection of “equitable tolling” in *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 31-32; 772 NW2d 801 (2009), is not applicable here. However, he does not cite any decisions in which the Court indicated that a party’s status as a contracting party or a mere beneficiary of the contract was significant to the application of equitable estoppel. Cf. *Sisk-Rathburn v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 425, 429; 760 NW2d 878 (2008) (rejecting named insured’s wife’s argument for equitable estoppel because she was “aware of the insurance contract,” retained counsel, and therefore “had equal access to the pertinent information and the means to independently assess defendant’s actions”).

Plaintiff did not establish the requirements for equitable estoppel and therefore, his action for UM benefits was barred by the contractual limitations period. Accordingly, the trial court did not err in dismissing plaintiff’s claim for UM benefits.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Donald S. Owens