

STATE OF MICHIGAN
COURT OF APPEALS

LOCAL 3126 of the NATIONAL ASSOCIATION
OF LETTER CARRIERS OF THE UNITED
STATES OF AMERICA and PAUL
ROZNOWSKI,

UNPUBLISHED
January 26, 2001

Plaintiffs-Appellants,

v

JUDGE-McKEE INSURANCE AGENCY, INC.,

Defendant-Appellee.

No. 198934
Oakland County Circuit Court
LC No. 95-507194-CK

ON SECOND REMAND

Before: Murphy, P.J., and Cavanagh and Gage, JJ.

PER CURIAM.

This matter reaches us for a third time after a December 5, 2000, order from the Michigan Supreme Court reversing the April 18, 2000, judgment of the Court of Appeals and reinstating the judgment of the Oakland Circuit Court “for the reasons stated in the dissenting Court of Appeals opinion.” The Supreme Court then remanded the case to this Court for consideration of other issues raised by the plaintiffs but not addressed by the Court of Appeals in its prior opinions.

One of the remaining issues raised by the plaintiffs relate to a claim that the trial court failed to address an alleged negligence claim and therefore summary disposition was improperly granted. Plaintiffs’ complaint was couched in terms of a misrepresentation claim and a violation of the Michigan Consumer Protection Act. In response to defendant’s motion for summary disposition and at the hearing on the motion for summary disposition, plaintiffs did not raise the issue of negligence or indicate that it was an issue. Rather, as plaintiffs had done throughout, plaintiffs focused their argument on the alleged misrepresentations of defendant and the duty to defend. Since plaintiffs failed to raise this issue in their complaint and at the trial court, we will not now review it here. *Auto Club Ins Ass’n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996).

Finally, plaintiffs argue that the trial court failed to address their claim under the Michigan Consumer Protection Act, MCL 445.903; MSA 19.418(3), and therefore summary disposition was improperly granted to defendant. Although not addressed by the trial court, in view of our Supreme Court’s order of December 5, 2000, adopting the reasoning of Judge Gage’s

dissenting opinion, which concluded that no misrepresentation occurred, and if it had, there was no reliance by plaintiffs, summary disposition on the statutory claim would have been proper as well.

Accordingly, the decision of the trial court granting summary disposition to the defendant is affirmed.

/s/ William B. Murphy

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage