

STATE OF MICHIGAN
COURT OF APPEALS

MADISON CADGER, a Minor, RANDY
CADGER and CANDENSE CADGER,

UNPUBLISHED
February 26, 2002

Plaintiffs-Appellants,

v

SAMUEL SMITH and FARMERS INSURANCE
EXCHANGE,

No. 226531
Wayne Circuit Court
LC No. 99-900856-NI

Defendants-Appellees,

and

KEN MARKEY, DANNY BANNOW and
VALERIE BANNOW,

Defendants.

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting appellees' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand. 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). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith, supra* at 454-455, quoting *Quinto, supra* at 362-363.

In general, an insurance agent whose principal is an insurance company does not have a duty to advise the insured regarding the adequacy of insurance coverage. *Harts v Farmers Ins*

Exchange, 461 Mich 1, 7-8; 597 NW2d 47 (1999). “Instead, the insured is obligated to read the policy and raise any questions concerning coverage within a reasonable time after issuance.” *Bruner v League General Ins Co*, 164 Mich App 28, 31; 416 NW2d 318 (1987). The agent’s job “is to merely present the product of his principal and take such orders as can be secured from those who want to purchase the coverage offered.” *Harts, supra* at 8 (footnote omitted).

Like most other rules, “the general no-duty-to-advise rule” is subject to an exception. *Harts, supra* at 9-10. “[A] duty to advise may arise when a ‘special relationship’ exists between the insurance company or its agent and the policyholder. Where such a duty has been breached, liability may be based thereon.” *Bruner, supra* at 31-32. Such a duty will be found where (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) where the insured makes an ambiguous request that requires a clarification, (3) the insured makes an inquiry that may require advice and the agent gives advice that is inaccurate, or (4) the agent assumes a duty by express agreement with or promise to the insured. *Harts, supra* at 10-11.

In *Harts*, the Court provided as an example of an ambiguous request one in which the insured asks for “full coverage” for his vehicle. *Id.* at 10 n 11. Here, plaintiff Candense Cadger testified that she requested of Smith full coverage or across the board coverage for her Jeep, the vehicle involved in the accident. While her testimony was somewhat contradictory on this point, it did, when taken in a light most favorable to plaintiffs, show an ambiguous request that required clarification. Thus, it was for the trier of fact to determine whether plaintiffs in fact made such a request of Smith. Accordingly, we find that the trial court erred in granting the motion for summary disposition.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Martin D. Doctoroff

/s/ Donald S. Owens