STATE OF MICHIGAN

COURT OF APPEALS

ARLITA GREEN,

Plaintiff/Counterdefendant-Appellee,

and

JOHN COLLINS,

Plaintiff-Appellee,

v

MEEMIC INSURANCE COMPANY,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
August 20, 2020

No. 348651
Macomb Circuit Court
LC No. 2017-002962-NF

Before: GLEICHER, P.J., and STEPHENS and CAMERON, JJ.

PER CURIAM.

Almost one year after plaintiffs Arlita Green and John Collins filed this first-party no-fault action, defendant Meemic Insurance Company sought to rescind the policy. Meemic sent a letter to Green's mother, the named insured, declaring the policy rescinded and enclosing a refund check for the full amount of the premiums paid. Green endorsed the check and deposited the proceeds on her mother's behalf. By doing so, Green and her mother consented to the rescission, thereby releasing Meemic from its contractual obligations. This meant that no insurance coverage existed at the time of plaintiffs' accident. Given the policy's recission, the circuit court should have dismissed plaintiffs' claims against Meemic. We reverse.

I

Arlita Green has a valid power of attorney allowing her to enter into contracts, sign documents, and cash checks on her mother's behalf. On January 25, 2017, Green visited the Cagwin Insurance Agency seeking insurance coverage for a vehicle owned by her mother.

Green filled out an insurance application. The application required Green to identify "all household members – regardless of age." Green did not provide Collins's name, despite that Collins lived with her. In an affidavit filed after her deposition, Green averred that the insurance

agent who helped her fill out the application told her that she did not need include Collins as a household resident because he would not be driving the car; Collins's driver's license was suspended at the time. Green insists that she omitted Collins's name on the application solely on the agent's advice. Meemic issued a no-fault policy of insurance to Green's mother. The only household residents identified in the application were Green and her mother.

Green and Collins were involved in an automobile accident approximately four months later. Green was driving. On August 11, 2017, Green and Collins filed this lawsuit seeking payment of allegedly overdue first-party no-fault benefits.

Meemic's defense centered on Green's failure to name Collins as a person who lived in the household. This constituted a material misrepresentation, Meemic contended, voiding the policy. On July 23, 2018, while the lawsuit remained pending, Meemic sent a letter to Green's mother declaring its intent to rescind the policy, explaining that "[a] review of your policy information reflects that material facts were intentionally concealed and/or otherwise misrepresented by you at the time of the insuring process." The letter listed as a "false or misleading" fact Green's failure to disclose that Collins was a household resident. Meemic enclosed a check for $5,129.89, representing the total premiums paid plus interest. Green admits that she deposited the check. She did not consult her attorney before doing so.

Meemic sought summary disposition in the circuit court on multiple grounds. We granted Meemic leave to appeal the circuit court's order denying its summary disposition motion.

II

We agree with Green and the circuit court that material fact questions precluded summary disposition on material misrepresentation grounds. But the circuit court incorrectly rejected Meemic's rescission defense by reasoning that Meemic failed to present "sufficient evidence that Green actually received the recission letter at the time she deposited the refund check."

Meemic presented to the court a copy of the letter it sent to Green's mother. Generally, the law presumes that a letter placed in the mail with a proper address and postage will be delivered to the intended recipient by the post office. *Barstow v Fed Life Ins Co*, 259 Mich 125, 129; 242 NW 862 (1932). This presumption may be rebutted with evidence that the letter was not received. *Id*. Once Meemic proffered evidence of having mailed the letter and the check, Green bore the burden of coming forward with evidence refuting Meemic's claim. See *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 370; 775 NW2d 618 (2009) (explaining that when a moving party properly supports its summary disposition motion, the burden shifts to the opposing party to establish the existence of a genuine issue of disputed fact). Green never presented any evidence that the letter and enclosed check went undelivered to their intended recipient: her mother. Her affidavit does not include a denial that the letter arrived. Indeed, Green admitted to having deposited the check.

"A mutual rescission may be inferred from the conduct of the parties clearly evidencing their intention to treat the contract as at an end." *Young v Rice*, 234 Mich 697, 701; 209 NW 43 (1926) (quotation marks and citation omitted). Meemic's letter explained in detail the reasons it sought to rescind the no-fault policy, and Meemic tendered a check for the premiums Green had

paid. By signing the premium refund check, Green signaled her acquiescence to the policy's rescission. This evidence compels the conclusion that Green and Meemic mutually agreed to rescind the no-fault policy under which plaintiffs sought benefits, extinguishing their claims.

In *Wall v Zynda*, 283 Mich 260, 264; 278 NW 66 (1938), the Michigan Supreme Court adopted the description of rescission provided by 1 Black, Rescission and Cancellation (2d ed), § 1:

> "To rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligation to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever been made. Rescission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. But this by itself would constitute no more than a breach of the contract or a refusal of performance, while the idea of rescission involves the additional and distinguishing element of a restoration of the *status quo*."

The other party's acceptance of the return of the consideration it paid toward the contract creates a "mutual agreement" or mutual "assent" to rescind the contract and excuses all the duties and rights flowing from that contract. 13 Corbin, Contracts (rev ed), § 67.8, pp 47-49; 29 Williston, Contracts (4th ed), § 69:50, pp 119-121, § 73:15, pp 48-49. The endorsement and cashing of a check represents one party's acceptance of the other party's terms. See *Puffer v State Mut Rodded Fire Ins Co of Mich*, 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 Tech, Inc*, 154 Mich App 601, 614; 397 NW2d 846 (1986) (in which the plaintiff's claims were precluded because he endorsed and cashed a check tendered by the defendant in settlement of the parties' disagreement).

By refunding the premiums Green or her mother had paid, Meemic restored the status quo. As the contract was legally and mutually rescinded, plaintiffs no longer had any ground to pursue their lawsuit against Meemic.

We reverse.

/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens
/s/ Thomas C. Cameron