STATE OF MICHIGAN

COURT OF APPEALS

JOHN CROCKER,

Plaintiff-Appellant,

v

MERIDIAN MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

April 8, 1992

No. 127004

UNPUBLISHED

Before: Griffin, P.J., and Holbrook, Jr., and Reilly, JJ.

PER CURIAM.

This appeal involves an action by plaintiff, John Crocker, to recover underinsured motorist benefits under a policy of insurance with defendant, Meridian Mutual Insurance Company. The circuit court entered summary disposition in favor of defendant pursuant to MCR 2.116(C)(10), and plaintiff now appeals as of right. We affirm.

Plaintiff was injured when the vehicle in which he was riding collided with another vehicle driven by Joseph Keenan. Plaintiff subsequently filed suit against Keenan to recover noneconomic damages. Plaintiff also notified defendant Meridian of his intent to seek underinsurance benefits.

As the lawsuit against Keenan proceeded, plaintiff advised defendant that Keenan's lawyer would request that Keenan's insurer pay "something close to policy limits" to settle the case. Ultimately, plaintiff settled his suit against Keenan for Keenan's policy limits of $50,000. Plaintiff did so, however, without first obtaining the written consent of Meridian. As a result, plaintiff forfeited his right to recover underinsured motorist benefits under his policy with Meridian:

> This coverage [i.e., underinsured motorist coverage] does not apply:
>
> 1. to bodily injury to an Insured with respect to which such Insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the Company, make any settlement with any person or organization who may be legally liable therefor[.]

On appeal, plaintiff concedes that he did not comply with the above provision by first obtaining Meridian's written consent before settling his case against Keenan. He argues, however, that Meridian should be held to have waived the written consent provision or be estopped from enforcing it. This argument is without merit.

Plaintiff submits that an estoppel arises because Meridian failed to point out the written consent provision or otherwise act to protect its interests even though it was well aware of the settlement negotiations. A similar claim was rejected by this Court in Naparstek v Citizens Mutual Ins Co, 19 Mich App 53, 64; 172 NW2d 58 (1969), wherein we quoted with approval the following language:

> In 32 CJ, Insurance, § 620, pp 1345, 1346, on the question of silence as a waiver or estoppel it states in part as follows:
>
> "Silence or inaction. In the case of a breach of condition or of a promissory warranty or representation after the issuance of the policy, mere silence upon the part of the

company will not, at least where insured is not misled, constitute a waiver, * * * A waiver or estoppel may be predicated upon the silence or inaction of the company where it is apt to mislead and does mislead insured. * * *

"Notice of intention. Silence or nonaction of the company upon notice, not amounting to a request for permission, of an intention to do something in violation of a condition of a policy, does not show a waiver, but this rule does not apply where insured notifies the company that he is doing an act which will constitute a breach and receives aid from the company in its accomplishment."

In the present case, as in Naparstek, plaintiff's former attorney did not seek to be informed regarding the contents of Meridian's policy. Moreover, plaintiff offers no evidence nor does he contend that any promises were made concerning enforcement of the written consent provision. Plaintiff's former attorney conceded as much in his deposition. It is also undisputed that defendant's agents never gave plaintiff consent in any form to settle the case. Although plaintiff claims that his former attorney was told by defendant's agent that he had to collect Keenan's policy limits before the underinsured coverage would apply, the agent's silence regarding the written consent provision does not create an estoppel in this instance. A claim of estoppel involves reliance. See Allstate Ins Co v Snarski, 174 Mich App 148, 157; 435 NW2d 408 (1988). Here, plaintiff's former attorney admitted that he would have settled the case against Keenan for policy limits even if he had known of the written consent provision. The absence of reliance is clear, and defendant was properly awarded summary disposition.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Maureen Pulte Reilly