

STATE OF MICHIGAN
COURT OF APPEALS

HOME INDEMNITY COMPANY, and
MAGEE INDUSTRIAL ENTERPRISES, INC.,

July 21, 1993

Plaintiffs-Appellants,

v

No. 140734
LC No. 88811353 CK

MICHIGAN MUTUAL INSURANCE COMPANY, and
JOSEPH FERRANTE,

Defendants-Appellees.

Before: Holbrook, Jr., P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

In this declaratory action, plaintiffs sought to determine that defendant Michigan Mutual Insurance Company (Michigan Mutual) was obligated to defend Magee Industrial Enterprises, Inc. (Magee Industrial) in a negligence action brought by Joseph Ferrante. In an order entered on April 23, 1991, the Wayne Circuit Court denied plaintiffs' motion for summary disposition and granted defendants' motion for summary disposition. Plaintiffs appeal as of right. We affirm.

Plaintiff Home Indemnity Company (Home Indemnity) issued a general liability insurance policy to Magee Industrial. Michigan Mutual provided no-fault automobile insurance to Wolverine Express Trucking (Wolverine). Under a well-established business practice between Magee Industrial and Wolverine, a Wolverine driver hauled an empty trailer from Detroit to Magee Industrial's plant in Bloomsburg, Pennsylvania. The driver left the empty trailer with Magee Industrial and picked up a waiting trailer already loaded with rolls of carpet for transport to Detroit. Magee Industrial's employees were responsible for loading the trailer.

On March 26, 1986, Ferrante and his coworker, who were Wolverine employees, dropped off an empty trailer at Magee Industrial's plant, picked up a loaded trailer and left for Detroit. A short distance from the plant, the tracker trailer tipped over, injuring Ferrante. Home Indemnity defended Magee Industrial in Ferrante's suit. Home Indemnity requested that Michigan Mutual defend Magee Industrial, claiming that Magee Industrial was an omnibus insured under Michigan Mutual's policy with Wolverine. The suit between Ferrante and Magee Industrial was settled. In granting defendants' motion for summary disposition, the trial court denied Home Indemnity's request of reimbursement from Michigan Mutual for the settlement and costs it paid on behalf of Magee Industrial.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and should be granted only when it is impossible for the claim to be supported at trial because of a deficiency that cannot be overcome. Holland v Liedel, 197 Mich App 60, 64; 494 NW2d 772 (1992). The court must consider the pleadings, affidavits, depositions and other documentary evidence available to it. Mascarenas v Union Carbide Corp, 196 Mich App 240, 243; 492 NW2d 512 (1992). Giving the benefit of any reasonable doubt to the nonmoving party, the court must determine whether a record might be developed that will leave open an issue upon which reasonable minds could differ. Bedker v Domino's Pizza, Inc, 195 Mich App 725, 728; 491 NW2d 275 (1992).

The omnibus clause of Wolverine's policy with Michigan Mutual reads in relevant part: