STATE OF MICHIGAN

COURT OF APPEALS

BLAKE LEE,

Plaintiff-Appellee,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant,

and

ABOOD, ABOOD & RHEAUME, P.C., and DAVID P. PASICHNYK,

Defendants-Appellees.

FOR PUBLICATION
December 29, 1994
9:10 a.m.

No. 175571
LC No. 89-63225 CK

ON REMAND

Before: Michael J. Kelly, P.J., and Marilyn Kelly and Connor, JJ.

CONNOR, J.

This case is before us for the second time. Previously, we affirmed the trial court's dismissal of defendant insurance company's claim of release. Additionally, we reversed the trial court's denial of defendant insurance company's motion for summary disposition; we found that the trial court erred in striking the affirmative defenses related to plaintiff's failure to comply with the policy's conditions. We remanded to the trial court for entry of an order of dismissal as to defendant insurance company. See Lee v Auto-Owners Ins, 201 Mich App 39, 43; 505 NW2d 866 (1993).

In an order dated May 24, 1994, the Supreme Court, in lieu of granting leave to appeal, remanded to this Court as on rehearing granted. The Supreme Court indicated that this Court shall specify what parts of the insurance contract are affected by MCL 500.2254; MSA 24.12254 and explain that relationship in detail. We again affirm the trial court's refusal to give effect to the release executed by plaintiff. In addition, we again reverse the trial court's denial of defendant insurance company's motion for summary disposition. However, upon reconsideration, we rule that plaintiff does not have a right to arbitration of his claim against defendant insurance company.

As we indicated in our prior opinion, plaintiff was injured while riding in an automobile which was involved in an accident. Contrary to the terms of plaintiff's underinsured motorist policy, plaintiff sued the driver of the vehicle and subsequently settled with that individual. Part of the settlement included a release which eliminated defendant insurance company's rights of subrogation against the driver. Defendant insurance company was unaware of the lawsuit, settlement, and release.

In our original opinion, we stated that while plaintiff's failure to abide by the conditions of his insurance policy prevents him from suing defendant insurance company, he still has a right to compel arbitration of his claim. We now depart from that conclusion. Upon reconsideration, no public policy argument having been urged by the parties, we conclude that MCL 500.2254; MSA 24.12254 does not

affect the insurance contract. Further, we conclude that plaintiff is not entitled to arbitration in light of the fact that he failed to abide by the terms of his insurance contract; specifically, he initiated a lawsuit and settlement with the third-party tort-feasor without the knowledge or approval of defendant insurance company. Moreover, at no time did plaintiff assert a right to arbitration. Where, as here, the language of the policy is clear and unambiguous, a meaning of the contract which does not otherwise violate public policy must be enforced as written. Raska v Farm Bureau Mutual Ins Co, 412 Mich 355, 361-362; 314 NW2d 440 (1982).

Reversed in part. Affirmed in part.

/s/ Michael J. Connor
/s/ Michael J. Kelly
/s/ Marilyn Kelly