

STATE OF MICHIGAN
COURT OF APPEALS

AHMAD HAMMOUD,

Plaintiff-Appellant,

v

METROPOLITAN PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION

April 1, 1997

9:05 a.m.

No. 178285

Wayne Circuit Court

LC No. 93-321255-NF

Before: Marilyn Kelly, P.J., and MacKenzie and J. R. Ernst*, JJ.

MackENZIE, J.

Plaintiff, who was under age 25, was injured in an automobile accident while he was driving a 1986 Ford Thunderbird. Claiming to be an insured under a no-fault policy issued by defendant, plaintiff sought and was denied no-fault benefits for his injuries. This action followed. Defendant filed a counter-complaint seeking to rescind its policy *ab initio* because of material misrepresentations made in the application for insurance. The trial court granted summary disposition for defendant insurer, and plaintiff now appeals as of right. We affirm.

Although the Thunderbird was titled in plaintiff's name only, the application for no-fault insurance for the Thunderbird was made by plaintiff's older brother, Mohamad Hammoud. Under the "Driver Information" portion of the application, Mohamad Hammoud was the only listed driver of the vehicle. Mohamad Hammoud's wife, Iman Hammoud, was the only person listed under the heading "All Residents Not Previously Indicated." There was no mention of plaintiff in the application, although he resided with his brother and sister-in-law and drove the Thunderbird on a regular basis. At his deposition, plaintiff acknowledged that he never attempted to get insurance for the car. He explained that his brother "helped me pay for the car, so we both drove the car, and he figured it would be cheaper to have it [insured] in his name."

In granting defendant's motion for summary disposition and allowing rescission, the trial court rejected plaintiff's position that because he himself did not make the misrepresentations in

* Circuit judge, sitting on the Court of Appeals by assignment.

the application, he was an innocent third party whose injuries precluded rescission of the no-fault policy. On appeal, plaintiff contends that the court erred in this determination. We disagree.

Where a policy of insurance is procured through the insured's intentional misrepresentation of a material fact in the application for insurance, and the person seeking to collect the no-fault benefits is the same person who procured the policy of insurance through fraud, an insurer may rescind an insurance policy and declare it void *ab initio*. *Cunningham v Citizens Ins Co of America*, 133 Mich App 471; 350 NW2d 283 (1984). However, this right to rescind ceases to exist once there is a claim involving an innocent third party. *Katinsky v Auto Club Ins Ass'n*, 201 Mich App 167, 170; 505 NW2d 895 (1993); *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985). See also *Burton v Wolverine Mutual Ins Co*, 213 Mich App 514, 517 n 2; 540 NW2d 480 (1995).

In contrast to the situations in *Katinsky, supra*, and *Darnell, supra*, where the persons injured were considered innocent third parties to a material misrepresentation made to an insurance company, plaintiff in this case was not an innocent third party with respect to the misrepresentations made to defendant in the application for no-fault insurance. Plaintiff was the owner of the insured vehicle, with the responsibility to maintain a policy of no-fault insurance. To save money, he allowed his older brother to obtain the necessary insurance by misrepresenting plaintiff's status as a driver of the vehicle. Under these circumstances, plaintiff was actively involved in defrauding defendant and was not an innocent third party. Accordingly, the trial court did not err in finding that defendant was entitled to *ab initio* rescission of its policy covering the Thunderbird.

Plaintiff argues that defendant insurer should be estopped from seeking rescission because it could have discovered that Mohamad Hammoud was not the titled or registered owner of the Thunderbird before it issued the policy. According to plaintiff, by failing to verify what his brother represented on the application for insurance, defendant waived its right to rescind the policy. Contrary to plaintiff's argument, however, an insurer does not owe a duty to the insured to investigate or verify that individual's representations or to discover intentional material misrepresentations. *United Security Ins Co v Comm'r of Ins*, 133 Mich App 38, 45; 348 NW2d 34 (1984). Defendant was therefore not estopped from seeking rescission of its policy.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ J. Richard Ernst