STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM FIRE AND CASUALTY COMPANY, subrogee of Dr. Raj K. Modi,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
May 9, 1997

No. 191486
Genesee Circuit Court
LC No. 95-038803

STATE FARM FIRE AND CASUALTY COMPANY, subrogee of Villa Linde North Condominium Association,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

No. 191487
Genesee Circuit Court
LC No. 95-038208

Before: MacKenzie, P.J., and Holbrook, Jr., and T. P. Pickard*, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals as of right from the trial court's order granting defendant's motions for summary disposition pursuant to MCR 2.116(C)(7) on the ground that plaintiff's claims were barred by the no-fault statute of limitations. We affirm.

Plaintiff is the subrogee of its insureds, Dr. Raj K. Modi and Villa Linde North Condominium Association. On April 13, 1994, Dr. Modi and Villa Linde suffered property

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

damage when a vehicle collided with a building owned by Villa Linde which housed Dr. Modi's medical business. The vehicle was covered under a no-fault insurance policy issued by defendant. After making payments to Dr. Modi and Villa Linde, plaintiff notified defendant of the existence and amount of its subrogation claims, and submitted documentation to defendant substantiating the amount of the loss. The parties exchanged correspondence, but defendant did not make any payments to plaintiff. Eventually, defendant notified plaintiff on June 21, 1995, that it was denying its claim because the statute of limitations period had expired. Plaintiff then filed separate suits. Defendant moved for summary disposition, claiming that plaintiff's claims were time barred by the no-fault one-year statute of limitations, MCL 500.3145; MSA 24.13145. The trial court granted defendant's motions, and these appeals followed.

Plaintiff argues that the trial court improperly granted summary disposition because the statute of limitations was tolled when it gave notice of its claim to defendant. We disagree.

MCL 500.3145; MSA 24.13145 sets forth the statute of limitations for suits seeking recovery of both personal protection insurance benefits and property protection insurance benefits. The statute provides, in pertinent part:

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred ...
>
> (2) An action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident.

In *US Fidelity & Guarantee Co v Amerisure Ins Co*, 195 Mich App 1; 489 NW2d 115 (1992), this Court held that the Legislature did not intend to provide for tolling under § 3145(2), reasoning:

> Our examination of the plain language of § 3145(2) leads us to conclude that the Legislature, by omitting notice and tolling provisions in that section, which deals with property damage benefits, while including them in § 3145(1), which deals with personal injury benefits, did so intentionally. [*Id.* at 7.]

Moreover, we reject plaintiff's contention in this case that our decision in *US Fidelity* was limited to the facts of that case. Therefore, we find that the trial court properly ruled that plaintiff's claim was time barred because tolling was not permitted in this case.

Plaintiff also argues that defendant should be estopped from asserting the statute of limitations as a defense in this case. However, there is no evidence in the record that defendant

either "concealed the cause of action, misrepresented the length of the statute of limitations, or induced the plaintiff into not bringing the action at an earlier time." *Attorney General v Consumers Power Co (On Rehearing)*, 202 Mich App 74, 81; 508 NW2d 901 (1993). Therefore, the trial court properly ruled that defendant was not estopped from asserting its statute of limitations defense.

Affirmed. Defendant may tax costs.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard