STATE OF MICHIGAN

COURT OF APPEALS

PAMELA KAY WOODRUFF, Plaintiff-Appellant,	UNPUBLISHED May 27, 2014
v	No. 314093 Oakland Circuit Court
STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., Defendant-Appellee.	LC No. 2011-123408-NI

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

In this insurance coverage dispute, plaintiff Pamela Kay Woodruff appeals by right the trial court's order dismissing her claim against defendant State Farm Mutual Automobile Insurance Co. On appeal, Woodruff contends the trial court should not have allowed State Farm to raise the affirmative defense of noncompliance because it waived the right to raise that defense. Under the facts of this case, we agree that State Farm waived its right to assert noncompliance as an affirmative defense. Accordingly, we reverse the trial court's decision to dismiss and remand for further proceedings.

I. BASIC FACTS

In December 2008, Woodruff was driving her sister's car in Waterford, Michigan. The car was registered in Tennessee and insured under a Tennessee no-fault policy issued by State Farm to Woodruff's sister. While Woodruff was stopped at a traffic light, an unknown driver struck Woodruff's car in the rear and pushed it into another car. Woodruff testified at her deposition that a young man got out of the passenger side of the car that struck her and asked if she was okay. After the young man got back into the car, the driver turned around and drove away. Two witnesses followed the unknown driver's car as it left the scene of the accident. Police officers later discovered the car abandoned and identified the owner as Dequvae Rosan Abcumby.

Woodruff sustained various injuries in the accident, including injuries to her back and neck. She later filed a claim for personal protection insurance—commonly referred to as PIP—benefits with State Farm. State Farm paid the PIP benefits to Woodruff.

In December 2011, Woodruff sued State Farm for uninsured motorist benefits. Woodruff alleged that she provided State Farm with adequate proofs that her injuries arose from an accident involving an uninsured motorist, but State Farm repeatedly refused to settle her claim. Woodruff asked for a judgment ordering State Farm to compensate her for her injuries consistent with the policy's uninsured motorist provision.

State Farm moved for partial summary disposition of Woodruff's uninsured motorist claim in July 2012. State Farm argued that Woodruff's claim for uninsured motorist benefits had to be dismissed under MCR 2.116(C)(10) because Woodruff did not comply with the conditions precedent to any recovery for uninsured motorist benefits. Specifically, State Farm noted that, before an insured can recover uninsured motorist benefits, the insured and State Farm must agree that the insured is legally entitled to recover compensation from the owner or driver of the uninsured motor vehicle and must agree on the amount of damages. If the insured and State Farm do not agree on these items, the insured must sue State Farm, the owner and driver of the uninsured motor vehicle, and any other party or parties who may be legally liable for the insured's damages. Because it was undisputed that State Farm did not agree on those issues and that Woodruff did not sue the driver or owner of the uninsured motor vehicle, State Farm maintained, Woodruff is not entitled to uninsured motorist benefits under the policy. For that reason, State Farm asked the trial court to dismiss Woodruff's claim for uninsured motorist benefits.

In August 2012, Woodruff moved for permission to file an amended complaint. Woodruff's lawyer explained that, despite repeated attempts to obtain a copy of the insurance policy covering Woodruff's sister's car, State Farm did not provide Woodruff with a copy. Indeed, he stated that he first requested a copy of the policy in March 2010. He also stated that he tried to locate the driver and owner of the uninsured car, but could not locate the driver and determined that the owner was incarcerated. Woodruff's lawyer argued that State Farm acted in bad faith by refusing to provide Woodruff with a copy of the insurance policy and by failing to assert its defense at an earlier point when the defect could have been easily cured. He therefore asked the trial court for permission to file an amended complaint that would comply with the policy's conditions for the recovery of uninsured motorist benefits.

Woodruff's lawyer also responded to State Farm's motion for summary disposition in that same month. He presented evidence that he repeatedly requested a copy of the policy at issue from March 2010 through to the present litigation. He stated that the first time State Farm provided him with a copy of the relevant policy was as an attachment to its motion for summary disposition. He also presented evidence that State Farm's representatives made significant misrepresentations concerning the applicable policy—including misidentifying it and misstating that a claim could be brought under the policy for six years. Further, Woodruff's lawyer inquired about the basis for State Farm's denial of the uninsured motorist claim through interrogatories and State Farm answered that it felt that Woodruff had not sustained a threshold injury and obliquely referred to its other affirmative defenses. State Farm failed, however, to answer fully the interrogatory asking it to state the facts in support of its affirmative defenses. Woodruff's lawyer argued that Woodruff's noncompliance was excused because it would have been impossible to sue both the driver and the owner of the uninsured car. He also claimed that the trial court should conclude that State Farm cannot assert noncompliance with the policy as a

defense on equitable grounds—namely, because State Farm waived its right to assert noncompliance through its dilatory actions and misrepresentations.

In response to Woodruff's motion to file an amended complaint, State Farm claimed that it had in fact raised the defense of noncompliance with the policy in its answer. State Farm further argued that Woodruff cannot now cure the defect by amending her complaint because the period of limitations for an action against the driver and owner had passed. See MCL 600.5805(10). It also noted that the policy required the insured to sue within two years of the accident at issue. For these reasons, State Farm asked the trial court to deny Woodruff's motion to amend.

The trial court held a hearing on the motions in September 2012. At the hearing, Woodruff's lawyer again asserted that State Farm waived the right to assert noncompliance by refusing to provide a copy of the insurance policy and by failing to inform Woodruff of the limitations stated in the policy even after Woodruff requested information on the specific bases for denying Woodruff's claim for uninsured motorist benefits. Woodruff's lawyer also argued that the trial court should deny State Farm's motion for summary disposition on the ground that it was impossible for Woodruff to comply with the conditions and because State Farm made misrepresentations that prevented Woodruff from timely complying with the conditions.

The trial court determined that the undisputed facts demonstrated that Woodruff failed to comply with the policy's conditions for the recovery of uninsured motorist benefits. It also opined that Woodruff could not rely on the various "defenses" to State Farm's right to enforce the policy as written. Accordingly, the trial court granted State Farm's motion for summary disposition.

The trial court entered orders denying Woodruff's motion for permission to amend and granting State Farm's motion for summary disposition in September 2012.

Woodruff moved for reconsideration of the trial court's order granting summary disposition in October 2012 and the trial court denied the motion in November 2012. In December 2012, the trial court entered an order dismissing Woodruff's complaint.

Woodruff now appeals to this Court.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo a trial court's selection, application, and interpretation of court rules. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012). Finally, this Court reviews de novo whether the trial court properly applied the common law such as the doctrine of equitable estoppel. *Grandberry-Lovette v Garascia*, 303 Mich App 566, 572-573; 844 NW2d 178 (2014).

B. AFFIRMATIVE DEFENSES

1. NOTICE AND WAIVER

Before the trial court, Woodruff argued that it would be inequitable under the facts of this case to permit State Farm to raise the defense of noncompliance because State Farm refused to provide her with a copy of the insurance policy at issue and misled her about the nature of its decision to deny her claim. In response, State Farm maintained that Woodruff was properly on notice of its defense because it listed noncompliance as a potential defense in its answer and the doctrine of equitable estoppel did not otherwise apply. Because State Farm argued that it did provide Woodruff with adequate notice of its defense of noncompliance and lack of notice is relevant to our discussion of equitable estoppel, we shall examine whether State Farm properly asserted this defense.

For more than 150 years, Michigan courts have required defendants to provide plaintiffs with notice of certain special defenses. See *Rosenbury v Angell*, 6 Mich 508 (1859). The purpose behind the requirement was to "apprise the plaintiff of the nature of the defense relied upon, so that he might be prepared to meet, and to avoid surprise on the trial." *Id.* at 513; see also *Walbridge v Tuller*, 125 Mich 218, 220-221; 84 NW 133 (1900) (explaining that certain contractual defenses must be specially pleaded or waived and holding that the trial court did not abuse its discretion when it refused to allow the defendant to amend his answer to include want of consideration as a defense). As our Supreme Court and this Court have stated, the notice requirements applicable to a plaintiff's claims and a defendant's defenses are essential to the fairness and integrity of the adversarial process. *Hormel's Estate v Harris*, 348 Mich 201, 205; 82 NW2d 450 (1957) (stating that the requirement that a plaintiff plead the facts necessary to reasonably inform the defendant of the claims against him is necessary to prevent litigation from becoming a game of chance); *Hall v Iosco County Bd of Road Comm'rs*, 2 Mich App 511, 514-515; 140 NW2d 761 (1966) (stating that the decision in *Hormel's Estate* applies equally to a defendant's duty to properly plead his or her defenses).

In order to comply with the notice requirement, it was not sufficient for a defendant to merely list the defense in his or her answer—rather, the defendant had to *plead the facts* constituting the defense:

> It has long been the rule in Michigan that affirmative defenses must be pled specially. *Wachsmuth v Merchants' National Bank*, 96 Mich 426; 56 NW 9 (1893). This rule has been carried over in the present court rules, GCR 1963, 111.3. The rationale has been aptly stated in 61 Am Jur 2d, Pleading, § 152, p 580:
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> "Since the plaintiff must apprise the defendant in the beginning as to what he relies upon for a recovery, it is only right that the defendant should be required also to inform the plaintiff of any special or affirmative defenses he expects to make by pleading the facts constituting such defenses."

* * *

> We rule it was incumbent upon the defendant in the instant case to properly raise such a defense by pleading both the appropriate statute and the facts which indicated that the statute was applicable as a special defense which prevented recovery against this defendant. Failure to plead such facts could be a waiver pursuant to GCR 1963, 111.3. [*Robinson v Emmet County Rd Comm'n*, 72 Mich App 623, 639-641; 251 NW2d 90 (1976); see also *Wait v Kellogg*, 63 Mich 138, 144; 30 NW 80 (1886) (holding that the trial court erred when it let the defendant present evidence of fraud as a defense because the defendant failed to give notice of "all facts constituting the fraud relied upon.").]

Under the current court rules, all defenses—not just affirmative defenses—must be pleaded: "A party against whom a cause of action has been asserted by complaint, cross-claim, counterclaim, or third-party claim must assert in a responsive pleading the defenses the party has against the claim." MCR 2.111(F)(2). However, in addition to the requirements for pleading ordinary defenses, the court rules provide that a defendant must plead the "facts constituting" an affirmative defense under a "separate and distinct heading". MCR 2.111(F)(3). This specific pleading requirement applies to the defenses listed under MCR 2.111(F)(3)(a), and any defense "that by reason of other affirmative matter seeks to avoid the legal effect of or defeat the claim of an opposing party, in whole or in part" or any "ground of defense that, if not raised in the pleading, would be likely to take the adverse party by surprise." MCR 2.111(F)(3)(b); MCR 2.111(F)(3)(c); see also *Campbell v St John Hosp*, 434 Mich 608, 616-617; 455 NW2d 695 (1990) (stating that the broad language used in MCR 2.111(F) puts practitioners on notice that they must plead any defense that goes beyond rebutting the plaintiff's prima facie case). Therefore, with regard to affirmative defenses, it is insufficient for a defendant to merely list the defense; the defendant must identify the affirmative defense under a separate heading and must plead specific facts that—if left unrebutted—would establish the defense. A laundry list of affirmative defenses gives the plaintiff no more notice, in the context of an affirmative defense, than a statement that "I deny I'm liable", gives in the context of an ordinary defense. *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 318; 503 NW2d 758 (1993).

In a claim for breach of contract, the defense of noncompliance is an affirmative defense that must be pleaded and proved. *Molnar v Mut Auto Ins Co*, 242 Mich 41, 42-43; 217 NW 770 (1928) ("If noncompliance or breach was to be averred it was upon defendant to do it and it could not defend on the ground of the claimed breach in the absence of a notice added under its plea plainly indicating the nature of the defense relied upon."); see also MCR 2.112(D)(2) (stating that a defense of breach of condition of a policy of insurance must be stated specifically and with particularity). Accordingly, in order to give proper notice of the defense, State Farm had to plead the specific facts constituting the defense. MCR 2.111(F)(3); MCR 2.112(D)(2).

State Farm generally answered Woodruff's allegations by neither admitting nor denying them. After providing this generic answer to Woodruff's specific allegations, State Farm pleaded 13 affirmative defenses under the heading: "**AFFIRMATIVE DEFENSES**." Included within this laundry list was the following: "12. That plaintiff's complaint is barred because of plaintiff's failure to comply in with (sic) plaintiff's contractual obligations for bringing this cause of action against defendant." State Farm did allege that "plaintiff's claims are barred by the

statute of limitations", but it did not allege that the policy was governed by a contractually shortened period of limitations.

As is evident, State Farm did not plead the noncompliance defense under its own separate and distinct heading and did not plead facts, which—if left unrebutted—would establish the validity of the defense. Indeed, State Farm did not even identify, let alone attach to its answer, the specific contractual provisions with which Woodruff purportedly failed to comply. Although Woodruff did not cite the court rules before the trial court, given these deficiencies, the trial court would have been fully justified in denying State Farm's motion for summary disposition on the ground that it waived its right to present the defenses of noncompliance and a contractually shortened period of limitations under MCR 2.111(F)(2). In any event, it is clear on the face of State Farm's pleadings that it failed to give Woodruff fair notice that it intended to raise either defense.

2. EQUITABLE ESTOPPEL

Although Woodruff's trial lawyer did not raise MCR 2.111(F)(2) as a challenge to State Farm's application of the defense of noncompliance and a contractually shortened period of limitations, he did argue that State Farm should be barred from raising these defenses without notice and after engaging in conduct that would make it inequitable to permit State Farm to do so. He also specifically argued that the trial court should apply the doctrine of equitable estoppel to preclude State Farm from raising these defenses.

Michigan courts have long recognized that a party may be equitably estopped from asserting certain facts where it would be inequitable to permit the party to do so. See *Hassberger v Gen Builder's Supply Co*, 213 Mich 489; 182 NW 27 (1921). Courts will apply equitable estoppel when a party, by his or her acts, representations, or admissions, or by his or her silence when obligated to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and the other person rightfully relies and acts on such belief, so that he or she will be prejudiced if the former is permitted to deny the facts. *Lichon v American Universal Ins Co*, 435 Mich 408, 415; 459 NW2d 288 (1990). The doctrine of equitable estoppel is a tool to protect a plaintiff from a defense asserted by the defendant. *Charter Twp of Harrison v Calisi*, 121 Mich App 777, 787; 329 NW2d 488 (1982). And it has been applied to prevent an insurer from enforcing a provision contained in an insurance contract where the insurer waived its right to assert the provision through its course of conduct. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 295; 582 NW2d 776 (1998).

Here, Woodruff presented undisputed evidence that her lawyer repeatedly asked State Farm to provide a copy of the insurance policy at issue, both before and during the litigation at issue. It was also undisputed that Woodruff was not the holder of the policy, which was issued by State Farm in Tennessee to Woodruff's sister. Given that Woodruff's lawyer contacted State Farm to obtain a copy of the policy, State Farm knew or should have known that Woodruff did not have access to the policy. Despite these facts, State Farm either deliberately refused or negligently failed to provide Woodruff with a copy of the policy. State Farm first provided Woodruff with a copy of the policy that governed their dispute with its motion to dismiss her claim for failing to comply with the policy. We can conceive of no legitimate reason for State Farm's failure to provide a copy of the policy to Woodruff under the facts of this case.

State Farm's actions also plainly prejudiced Woodruff. Woodruff's lawyer first asked State Farm for a copy by a letter dated March 2010.[1] Had State Farm promptly provided Woodruff's lawyer with a copy of the policy, he could have read the conditions precedent to recovery and readily complied with them. Woodruff was injured in December 2008. Thus, she had several months within which to sue the unknown driver and the owner of the uninsured car in order to meet the contractual requirements within the two-year period of limitations provided in the contract. By failing to provide Woodruff with the insurance policy, State Farm effectively prevented Woodruff from complying with its terms. Our Supreme Court has already determined that similar facts warranted application of equitable estoppel to preclude an insurer from asserting the defense of noncompliance. See *Struble v Nat'l Liberty Ins Co of America*, 252 Mich 566, 570-571; 233 NW 417 (1930) (noting that the insured would "doubtless" have complied with the conditions stated in the insurance policy had the insurer provided a copy of the policy to the insured and holding, as a result of the insurer's "inexcusable" refusal to provide a copy, the insurer could not "now be heard to rely on such noncompliance as a defense"). Moreover, State Farm engaged in a course of conduct, which, when coupled with the fact that State Farm knew or should have known that Woodruff had no access to the policy at issue, reasonably led Woodruff to conclude that she had no obligation to sue the unknown driver and the owner of the uninsured motor vehicle, let alone that she had to do so within two years of her accident.

State Farm failed to properly assert either noncompliance or a shortened period of limitations as affirmative defenses in its answer. Accordingly, because Woodruff did not have a copy of the policy, she had no notice that she had to sue the unknown driver and owner of the uninsured car within two years. Further, in response to Woodruff's interrogatories, State Farm indicated that its primary reason for denying Woodruff's claims was that she did not meet the serious impairment threshold under Michigan's no-fault law. Although it referred to its improperly pleaded affirmative defenses, State Farm failed to state the facts in support of those defenses even after Woodruff requested them in her interrogatories. Its agents also specifically told Woodruff's lawyer that Woodruff would have six years within which to assert her claim. Under these circumstances, Woodruff might reasonably conclude that the only issues for trial were whether her injuries amounted to a serious impairment of body function and the amount of any damages that she suffered. Stated another way, State Farm's course of conduct reasonably led Woodruff to believe that she had complied with the terms of the insurance policy by suing State Farm for uninsured motorist benefits within three years of the date of her accident and State Farm, therefore, should not now be heard to assert otherwise.[2] *Id.*

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[1] In the letter, Woodruff also asked State Farm to send her a letter outlining her duties under State Farm's uninsured and underinsured motorist policy, but State Farm did not send her that information either.

[2] Because the issue was not raised and decided before the trial court, we decline to address whether State Farm can now assert Tennessee's period of limitations as a defense to Woodruff's claim. See *Barnard Mfg*, 285 Mich App at 380-381. We nevertheless note that State Farm did

III. CONCLUSION

The trial court erred when it concluded that Woodruff could not rely on equitable estoppel to defeat State Farm's assertion of these defenses. State Farm's inexcusable failure to provide Woodruff with a copy of the policy effectively prevented Woodruff from complying with the policy's conditions for the recovery of uninsured motorist benefits. In addition, State Farm failed to provide Woodruff with adequate notice of its defenses and engaged in a course of conduct that caused Woodruff to reasonably believe that the only issues in the litigation were whether she suffered a serious impairment and the amount of damages, if any. Under these facts, the trial court should have applied equitable estoppel and concluded that State Farm waived its right to assert noncompliance and the shortened period of limitations. For that reason, we reverse the trial court's decision to dismiss Woodruff's complaint and remand for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings. We do not retain jurisdiction. As the prevailing party, Woodruff may tax her costs. MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Michael J. Kelly

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not properly plead the facts in support of a period of limitations defense in its answer. MCR 2.111(F)(3)(a); *Kincaid v Cardwell*, 300 Mich App 513, 536 n 5; 834 NW2d 122 (2013) (noting that the failure to identify the appropriate statute and to plead the facts in support of a statute of limitations defenses constitutes a waiver of that defense).