

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TRANSAMERICA INSURANCE CORPORATION  
OF AMERICA,

UNPUBLISHED  
May 21, 1996

Plaintiff-Appellant,

v

No. 169275  
LC No. 92-210893-CK

COMERICA BANK, INC.,

Defendant/Third-Party  
Plaintiff-Appellee,

and

PARKSIDE GARAGE BUILDERS AND  
CEMENT CO.,

Third-Party Defendant.

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Before: Jansen, P.J., and McDonald and D.C. Kolenda,\* JJ.

PER CURIAM.

Transamerica Insurance Corporation of America (Transamerica) appeals as of right from a September 27, 1993, order of the Wayne Circuit Court granting summary disposition in favor of Comerica Bank, Inc. (Comerica). We affirm.

Transamerica is an insurance company engaged in the business of selling insurance, including homeowner's insurance. In 1991, Parkside Garage Builders and Cement (Parkside) was an authorized vendor of Transamerica to repair damage to homes that were covered by Transamerica's homeowner's insurance policies. Employees of Transamerica who were responsible for claim appraisals conspired with employees of Parkside to obtain funds from Transamerica for performing repair work to homeowners insured by Transamerica for work that was never performed or for estimates that were greatly exaggerated. During 1991, Comerica maintained accounts for Parkside. Pursuant to appraisals

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

made by the Transamerica employees, Transamerica issued checks listing Parkside and the insured homeowner for payment of work performed on the houses as joint payees.

Transamerica alleged in its complaint that Parkside deposited fifty of the joint checks into its account at Comerica by forging the endorsement of the insured homeowner or presenting forged documents purporting to be powers of attorney of the insured homeowners. On April 16, 1992, Transamerica filed a complaint against Comerica, alleging that Comerica breached its duty toward it by depositing proceeds from Transamerica's checks into Parkside's account over forged endorsements. Transamerica alleged that Comerica's breach of duty proximately caused Parkside to be paid \$461,836 that it was not entitled to receive. Transamerica also alleged that Comerica's negligent or willful conduct resulted in conversion of its funds.

Comerica filed a motion for summary disposition under MCR 2.116(C)(8) and (10). The trial court adopted and applied the intended payee defense. The trial court determined that Parkside was the intended recipient and beneficiary of the checks, rather than the homeowners. The trial court determined that because Parkside was paid proceeds from the Transamerica checks and because Parkside was an intended beneficiary, Transamerica as the drawer could not demand that Comerica reimburse its account.

This Court has recently held that the intended payee defense is available to a bank in defending an action for breach of its presentment warranties. *Comerica Bank v Michigan National Bank*, 211 Mich App 534, 538; 536 NW2d 298 (1995). We find that the trial court properly applied the intended payee defense to this case. Although it is undisputed that the checks were forged, Parkside was the intended payee because Parkside was an authorized vendor or Transamerica to repair damage done to homes under homeowner's insurance policies issued by Transamerica. Parkside then deposited the forged checks into its account with Comerica. Here, the bank (Comerica) may escape liability for honoring a check on a faulty or improper endorsement if the bank can prove that the intended payee received the proceeds of the check. *Id.* It is undisputed that Parkside (the intended payee) received the proceeds of the checks.

Accordingly, Comerica is not liable for breaching its presentment warranty because it has established the intended payee defense. The trial court did not err in granting summary disposition in favor of defendant Comerica because the intended payee defense applies and bars any cause of action brought by Transamerica.

Affirmed.

/s/ Kathleen Jansen  
/s/ Gary R. McDonald  
/s/ Dennis C. Kolenda