

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

JEANETTE WINNICK,

Plaintiff-Appellant,

v

NORTH AMERICAN INS CO,

Defendant-Appellee.

UNPUBLISHED  
November 5, 1996

No. 178689  
LC No. 93-002788

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Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,\* JJ.

PER CURIAM.

Plaintiff appeals as of right a Shiawassee Circuit Court order granting defendant's motion for summary disposition. We reverse and remand.

The facts giving rise to the instant case involve a credit insurance company's refusal to pay on a policy covering the life of plaintiff's husband. Plaintiff Jeanette Winnick and her husband Peter Winnick, now deceased, purchased a new Ford automobile on June 20, 1992. While the financing was being arranged through Ford Motor Credit Company, plaintiff and her husband were offered the opportunity to purchase life and credit insurance to insure payment on the vehicle in the event of Peter's death. The Winnicks then purchased a policy from defendant dated June 20, 1992, which insured Peter's life for \$15,257.12.

Less than one month later, Peter died as a result of a heart condition for which he had received medical treatment within the preceding six months. Plaintiff attempted to collect on the credit insurance policy, and defendant denied coverage on the basis of the following exclusion contained within the policy:

The insurance provided hereunder to you and the Joint Debtor (if any) shall not cover death caused by . . . condition(s) for which you received medical advice, diagnosis or treatment within 6 months preceding the Effective Date of coverage, and

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

which caused death within 6 months following the Effective Date of coverage. In either event, we will return the life premium.

Plaintiff then filed the instant breach of contract suit, claiming that the exclusion was not applicable because neither she nor her husband were provided with a copy of the policy which contained the exclusion, and therefore, they were unaware of the exclusion. Plaintiff also claimed that the car dealership salesperson, who was acting as defendant's agent for purposes of selling the credit insurance policy at issue, knew of her husband's heart condition and told them that the condition was not important, citing as an example the fact that defendant had recently provided coverage to another couple when the husband died just one week after purchasing a vehicle.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the exclusion recited above barred coverage. Plaintiff filed a counter-motion for summary disposition and, following a hearing, the trial court granted defendant's motion for summary disposition.

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because plaintiff's failure to receive defendant's credit life insurance policy and plaintiff's reliance on representations made to her and her husband by the salesman who assisted them in applying for the coverage estops defendant from denying liability on the basis of the policy exclusion covering death from a preexisting medical condition. We agree. Because there appears to be a genuine issue of material fact concerning whether plaintiff and her husband were provided with a copy of the policy, summary disposition in defendant's favor was improperly granted. If a trier of fact determines that defendant did in fact fail to comply with MCL 550.608; MSA 24.568(8) by not providing plaintiff and her husband with a copy of the policy containing the provision upon which defendant relied in denying plaintiff's claim, then plaintiff could be entitled to recover under the policy. See *Gardner v League Life Ins Co*, 48 Mich App 574; 210 NW2d 897 (1973).

We find defendant's arguments to the contrary, which are premised on plaintiff's lack of reliance on coverage at the time the decision to buy the car was made and her deposition testimony that they probably would have purchased the policy even if they had known about the exclusion, to be unpersuasive. Whether plaintiff and her husband actually relied upon this insurance when incurring the debt at issue would be a question for the trier of fact to resolve. Defendant's argument that plaintiff and her husband did not rely upon the existence of coverage at the time the purchasing decision was made is contradicted by the fact that the purchase of the policy and the financing of the automobile were part of one continuous transaction. The premiums due under the credit insurance policy were added to the price of the automobile and financed through Ford Motor Credit Company. Likewise, plaintiff's testimony that they probably would have purchased the insurance at issue even if they had known about the exclusion is irrelevant because plaintiff's husband was the named insured under the policy and there is no way of knowing whether he would have still purchased the policy.

Furthermore, we believe genuine issues of material fact surround the representations made to plaintiff and her husband by the salesperson and their reliance upon those representations. Accordingly, summary disposition in defendant's favor was improperly granted.

Because the record suggests that plaintiff did in fact receive the refund in premium to which she was entitled, the timing of the refund is irrelevant. Plaintiff has made no showing of harm from the alleged untimeliness of the refund. Accordingly, we view this issue as moot.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.