

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

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DOUGLAS ETKIN and JUDITH ETKIN,

Plaintiffs-Appellees,

v

FEDERAL INSURANCE COMPANY,

Defendant-Appellant.

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UNPUBLISHED

November 25, 2003

No. 240484

Oakland Circuit Court

LC No. 01-032772-CK

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment granting plaintiffs' motion for summary disposition under MCR 2.116 (C)(9) and (10). We affirm.

This case arose when plaintiffs filed insurance claims with defendant for reimbursement of losses they suffered when their babysitter stole drafts on which she forged plaintiff Judith Etkin's name. The trial court awarded plaintiffs \$158,845 after defendant failed to respond to plaintiffs' summary disposition motion or attend the motion hearing. Defendant moved for reconsideration, claiming that it did not receive actual notice of the motion or hearing date. The trial court denied the motion for reconsideration. However, the trial court did allow for oral argument on the motion for reconsideration, in which the parties addressed the substantive issues concerning the summary disposition motion.

Defendant first argues that the trial court erred in granting summary disposition in favor of plaintiffs because they untimely notified defendant of their loss. Defendant relies on a notification provision that required plaintiffs to notify defendant of a loss "as soon as possible." Insurance provisions are strictly construed in favor of the insured. *Kennedy v Dashner*, 319 Mich 491, 494; 30 NW2d 46 (1947). In *Kennedy*, our Supreme Court held that terms demanding immediate notice required an insured to inform its insurer within "a reasonable time, dependent upon the facts and circumstances of the case." *Id.* Furthermore, the Court measured reasonableness by evaluating the length of delay and prejudice to the insurer. *Id.* at 494-495. Defendant claims that plaintiffs knew about the mysterious decrease in their account balance but did not inform it until after they learned from the account manager's investigation that forgeries had caused the balance's depletion. By that time, several months had passed and the babysitter had forged several more thousands of dollars in drafts. Nevertheless, plaintiffs were not reasonably required to report a decline in their account to their insurer until they discovered that an insurable event, i.e. the forgeries, caused the decline. Furthermore, defendant merely

speculates that it could have prevented the subsequent forgeries better than the account manager. Therefore, we find, as a matter of law, that plaintiffs' prompt notification after their discovery of the forgeries satisfies the policy's notification provision.

Defendant also argues that plaintiffs misled the trial court into believing the policy did not define "occurrence," so they could unjustly suggest that the several forgeries constituted several "occurrences" for purposes of a \$10,000 limitation. Defendant misreads the policy in this regard, however, because the \$10,000 limitation applies to "any check or negotiable instrument" while the "occurrence" language only defines what constitutes a single event for purposes of the \$1,000,000 policy limit.

Finally, defendant argues that the trial court abused its discretion when it denied defendant's motion for rehearing. We first reject plaintiffs' argument that defendant's inclusion of only the summary disposition order in its claim of appeal precludes us from addressing defendant's motion for rehearing. *Dean v Tucker*, 182 Mich App 27, 31; 451 NW2d 571 (1990). Nevertheless, because the additional facts defendant presented in its motion for rehearing did not undermine the propriety of the trial court's grant of summary disposition, the trial court did not abuse its discretion when it denied defendant's motion for rehearing. MCR 2.119(F)(3); *Huspen v T&H, Inc*, 200 Mich App 162, 167; 504 NW2d 17 (1993).

Affirmed.

/s/ Karen M. Fort Hood

/s/ William B. Murphy

/s/ Janet T. Neff