

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM N. FARRIS,

Plaintiff-Appellant,

v

AMERICAN CREDITORS LIFE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

May 11, 2006

No. 258980

Wayne Circuit Court

LC No. 04-410530-CK

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

In this action alleging fraud in the inducement and breach of contract, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant. We affirm.

Primary purchaser Jamal J. Battle entered into a retail installment contract with an automobile dealership for the purchase of a 1999 Pontiac Grand Am. Plaintiff also entered into the contract as a cosigner. The retail installment contract indicates that plaintiff and Battle elected to purchase credit life insurance on the loan and paid a premium of \$1,021.39 for the coverage. The contract also indicates that plaintiff elected to purchase credit disability insurance on the loan and paid a premium of \$1,421.77 for the coverage. The retail installment contract explicitly lists plaintiff as a buyer of credit disability coverage.

However, the application for credit insurance from defendant insurer states that disability insurance is not applicable to a joint debtor. That application identifies Battle as the "Insured First Debtor," and identifies plaintiff as the "Joint Debtor." While the application provides that credit life insurance is available to both the insured first debtor and the joint debtor, the insurance application indicates that credit disability insurance is available to the "Insured First Debtor only."

Plaintiff became totally disabled in April 2000. Thereafter, unbeknownst to plaintiff, Battle ceased making payments under the retail installment contract and the car was repossessed. It was sold at auction, leaving a deficiency due under the contract. Plaintiff was served with a complaint for the amount of the deficiency, and filed a claim for disability insurance benefits from defendant. Defendant denied plaintiff's claim, resulting in the instant action.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition under MCR 2.116(C)(8). However, because the trial court relied on material outside the pleadings, we review plaintiff's arguments on appeal under MCR 2.116(C)(10). *Panhandle Eastern Pipe Line Co v Musselman*, 257 Mich App 477, 480; 668 NW2d 418 (2003). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiet v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion under subrule (C)(10), a court considers the admissible evidence in a light most favorable to the nonmoving party. *Id.* at 30-31. In addition, the proper interpretation of a contract is a question of law, which we review de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

In interpreting a contract, our obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). We must examine the language of a contract and accord words their ordinary and plain meanings. *Wilkie, supra* at 47. If the language is clear and unambiguous, we must enforce the contract as written. *Quality Products, supra* at 375.

The instant case involves two separate contracts, the retail installment contract and the insurance contract.¹ Defendant was a party to the insurance contract only. Thus, plaintiff's breach of contract claim is premised on defendant's alleged breach of the contract for disability insurance rather than any breach of the retail installment contract. As noted, the plain language of the application for credit insurance states that disability insurance is available for an "Insured First Debtor only." Moreover, the application indicates that disability insurance is "Not Applicable" for the "Proposed Joint Insured Debtor." Accordingly, the plain language of the application for credit insurance indicates that plaintiff is not an insured under the disability insurance policy with defendant.

Plaintiff argues that the language of the retail installment contract clearly identifies him as an insured. Plaintiff asserts that the retail installment contract's language, which differs from the plain language of the insurance contract, creates an ambiguity for resolution by a jury. The application for credit insurance, however, contains the following provision:

WHAT THE CONTRACT IS AND HOW YOUR STATEMENTS AFFECT IT
The group policy, the application, and the certificate of insurance are the complete contract of insurance.

Under this language, the retail installment contract is not part of the insurance contract between the parties. Consequently, the contradictory language contained in the retail installment contract has no bearing on the parties' agreement, which is fully and exclusively contained in the contract

¹ The application for credit insurance is a part of the contract for insurance. As noted below, "[t]he group policy, the application, and the certificate of insurance are the complete contract of insurance."

for credit insurance. Because plaintiff had no disability insurance policy with defendant, summary disposition for defendant on plaintiff's breach of contract claim was proper.

Plaintiff also argues that the trial court erred by granting summary disposition on his claim of fraud in the inducement. "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Fraud in the inducement renders a contract voidable at the option of the defrauded party. *Id.* at 640. An action for fraud or fraud in the inducement requires that

(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 477; 666 NW2d 271 (2003) (citations omitted).]

Even assuming that the automobile salesperson who made the alleged misrepresentation was defendant's agent as plaintiff claims, plaintiff failed to establish fraud in the inducement because plaintiff's reliance on the alleged misrepresentation of disability insurance coverage was unreasonable. A plaintiff's reliance on a defendant's misrepresentation must be reasonable. *Foreman v Foreman*, 266 Mich App 132, 141-142; 701 NW2d 167 (2005). Plaintiff could not have reasonably relied on the alleged misrepresentation when entering into the insurance contract when the clear language of the application for credit insurance identified plaintiff as the "Proposed Joint Insured Debtor," and stated that disability insurance was "Not Applicable" to the "Proposed Joint Insured Debtor."

A contracting party has a duty to examine the contract and know what the party has signed, and the other contracting party cannot be made to suffer for neglect of that duty. *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 130; ___ NW2d ___ (2005). At the very least, the language of the application for credit insurance stating that disability insurance coverage was not applicable to plaintiff should have caused plaintiff to question the purported misrepresentation. Reliance on the alleged misrepresentation in the retail sales contract was not reasonable in light of the clear and unambiguous language of the contract for credit insurance. Because plaintiff's reliance was not reasonable, summary disposition for defendant was proper.

In light of our disposition of this case, we need not address the remaining issues raised by the parties on appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Janet T. Neff
/s/ Brian K. Zahra