

Order

Michigan Supreme Court
Lansing, Michigan

June 11, 2025

Megan K. Cavanagh,
Chief Justice

166213

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

VILLAGE OF KALKASKA,
Plaintiff-Appellee,

v

SC: 166213
COA: 359267
Kalkaska CC: 20-013389-CK

MICHIGAN MUNICIPAL LEAGUE
LIABILITY AND PROPERTY POOL,
Defendant-Appellant.

This breach-of-contract action was initiated by plaintiff, Village of Kalkaska, against defendant, Michigan Municipal League Liability and Property Pool, seeking insurance coverage for judgments plaintiff paid arising out of its decision to end retiree healthcare benefits for some former employees. Defendant pled numerous affirmative defenses in response, including that plaintiff's claims were barred because it "failed to comply with the terms of the applicable coverage document." Defendant subsequently moved for partial summary disposition under MCR 2.116(C)(10), arguing that there was no genuine issue of material fact regarding defendant's contractual obligation to insure against plaintiff's coverage claims. While plaintiff opposed the motion, it did not move for summary disposition in its favor. The trial court denied summary disposition, and defendant filed an interlocutory appeal seeking partial summary disposition in its favor. The Court of Appeals, however, rejected defendant's arguments, concluding that the insurance policy provides coverage for the claims at issue, and remanded to the trial court with instructions to enter judgment in plaintiff's favor, notwithstanding that plaintiff had not moved for relief. *Village of Kalkaska v Mich Muni League Liability & Prop Pool*, unpublished per curiam opinion of the Court of Appeals, issued August 31, 2023 (Docket No. 359267), p 11. Defendant sought leave to appeal in this Court.

On March 12, 2025, the Court heard oral argument on defendant's application for leave to appeal the August 31, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals to the extent that it directs entry of judgment in plaintiff's favor, and we REMAND this case to the Kalkaska Circuit Court for further proceedings consistent with this order.

Summary disposition is appropriate pursuant to MCR 2.116(C)(10) when, “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” See also MCR 2.116(I)(1). Defendant’s motion for partial summary disposition argued, among other things, that there was no coverage because plaintiff failed to notify defendant of the wrongful acts or claims as allegedly required by the policy.¹ However, the trial court did not address whether this provision applied to plaintiff’s claim in its oral ruling denying defendant’s motion. The parties did not raise it in their briefing in the Court of Appeals. And it was not addressed in the Court of Appeals’ order granting leave to appeal, see *Village of Kalkaska v Mich Muni League Liability & Prop Pool*, unpublished order of the Court of Appeals, entered May 9, 2022 (Docket No. 359267), or its subsequent opinion granting summary disposition and ordering judgment in plaintiff’s favor, see *Village of Kalkaska*, unpub op. In its briefing in this Court, defendant also argued that plaintiff had a duty to cooperate with it in investigating and defending such suits and obtaining consent to settle. This issue was not raised in the trial court or considered by the trial court or the Court of Appeals.

Therefore, on the present record, there remain unaddressed issues of fact and law that preclude complete summary disposition for plaintiff at this time. The Court of Appeals erred to the extent that its opinion remanded to the circuit court with instructions to enter judgment for plaintiff in full, precluding consideration of issues not yet decided. For this reason, the judgment of the Court of Appeals must be vacated to the extent that it directs entry of judgment in plaintiff’s favor. We remand for further proceedings consistent with this order. On remand, the Kalkaska Circuit Court shall consider any unaddressed issues of fact and law that have not been abandoned or litigated.

¹ Defendant stated:

Because the Village has failed to satisfy its duty to timely and properly notify the Pool of potential and actual claims from the non-suit claimants and has settled at least one such claim without the Pool’s consent, there is no coverage for those claims. (Exhibit 27, Liability Conditions) And, to the extent that such claims are, as alleged, “similar” to the lawsuit claims, coverage is foreclosed for the non-suit claims for all the reasons stated here and applicable to the lawsuit claims. [Emphasis omitted.]

The argument refers to Section IV of the Municipal Liability Coverage document, entitled “Liability Conditions.” Subsection 2 purports to place on the insured a duty to promptly disclose wrongful acts that may result in a claim as well as any claim or suit brought against the insured.

In all other respects, the application for leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

ZAHRA, J. (*concurring in part and dissenting in part*).

I agree with the majority that the Court of Appeals improperly reversed and remanded for entry of judgment for the appellee. I disagree with the majority's decision not to squarely address the more significant question presented in this case, which is, as we stated in our order scheduling oral argument on the application for leave to appeal in this case, "whether the insurance policy provides coverage for the claims at issue that arose from the appellee's 2014 Resolution Discontinuing Trust and Agency Fund and Retirees' Health Insurance[.]" I would grant the application and definitively resolve this significant question.

HOOD, J., did not participate because the Court considered this case before he assumed office.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 11, 2025

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk