Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-475

MARCH TERM, 2002

John Paluska and Cynthia Brown	}	APPEALED FROM:
v.	}	Washington Superior Court
Robert Calcagni, d/b/a Calcagni Electric and The Cincinnati Insurance Company	}	DOCKET NO. 690-11-00 Wncv
	}	Trial Judge: Alan W. Cheever

In the above-entitled cause, the Clerk will enter:

Plaintiffs John Paluska and Cynthia Brown appeal from a summary judgment of the Washington Superior Court in favor of defendants Robert Calcagni and The Cincinnati Insurance Company. Among other contentions, plaintiffs claim the court erred in concluding as a matter of law that defendants were not estopped from asserting the statute of limitations. We agree with plaintiffs, and therefore reverse.

On August 21, 1997, plaintiffs were involved in a motor vehicle accident with defendant Calcagni, and suffered personal injuries. Shortly thereafter, they entered into a series of discussions with Nancy Vaillancourt, the claims adjuster for defendant The Cincinnati Insurance Company (CIC), Calcagni's insurance company. Plaintiffs allege that Vaillancourt represented that CIC would assume responsibility for both the property and bodily injury claims, and agreed to pay $31,000 for the property damage to plaintiffs' totaled vehicle. As to the personal injuries, plaintiffs allege that they told Vaillancourt they wished to wait until all their medical treatment had been resolved to present their claim, and that Vaillancourt told them they had three years to do so. Plaintiffs remained in contact with Vaillancourt until she went out on maternity leave from October 1999 until January 2000. After she returned, on May 4, 2000, and again on June 27, 2000, Vaillancourt sent two identically worded letters to plaintiffs, stating, in pertinent part, as follows:

To date, we have not received any medical notes for our review and/or receipts for services you have paid out of pocket. Should you still wish to pursue your claim, this information will need to be forwarded to my office for review.

This letter is also written to make you aware of the three (3) year statute of limitations in Vermont. This statute allows a person to make a claim against any party or individual up to three years after the accident. The three year statute for this claim, runs out this August 21, 2000.

Thank you for your attention to this letter and should you have any additional questions, please call my office. Otherwise, we will await the information to be forwarded for our review and we will be in contact about meeting you again.

Plaintiffs allege that, in response to these letters, they informed Vaillancourt that they would be sending in a letter documenting their medical expenses "before the three-year period to make a claim," and that Vaillancourt assented to their plan. Plaintiffs submitted, and Vaillancourt received, an eight-page letter setting forth the medical information on August 21, 2000. Two days later, Vaillancourt sent a letter to plaintiffs stating that, "[u]nfortunately, the Statute has run as of August 21, 2000 for suit to be filed, therefore no negotiations for the above date of loss can be engaged in, since the Statute has expired."

Thereafter, plaintiffs filed a complaint against defendants Calcagni and CIC, alleging negligence for injuries sustained in the collision, and also asserting negligent misrepresentation and equitable and promissory against CIC. Defendants moved for summary judgment, arguing that the claims were barred by the three-year statute of limitation. Plaintiffs opposed the motion, arguing that defendants should be equitably estopped from asserting the statute based on Vaillancourt's alleged promise to pay the claims, and misrepresentations that led plaintiffs - who were not represented by counsel - to believe that the three-year statute required only that they submit a formal claim by way of letter to CIC within three years of the accident. The trial court concluded that plaintiffs had not shown that Vaillancourt's actions were a proximate cause of plaintiffs' failure to file a timely action, that plaintiffs were required to determine for themselves what was necessary to avoid the statute, and that CIC had no duty to forewarn plaintiffs how to avoid the statute. Accordingly, the court ruled that plaintiffs' equitable estoppel argument failed as a matter of law, and granted summary judgment for defendants. This appeal followed.

In reviewing a summary judgment, we apply the same standard as the trial court, determining whether, taking all allegations of the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Richart v. Jackson, 171 Vt. 94, 97 (2000). In Beecher v. Stratton Corp., 170 Vt. 137, 140 (1999), we reviewed the four essential elements of equitable estoppel:

first, the party to be estopped must know the facts; second, the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting the estoppel has as right to believe it is so intended; third, the latter must be ignorant of the true facts; and finally, the party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment.

Beecher is doubly instructive because, as here, it involved a claim by the plaintiff that statements by the defendant's insurance adjuster precluded assertion of the limitations statute. There, we affirmed a summary judgment in favor of the defendants, ruling that an alleged request by the adjuster to refrain from filing suit until settlement negotiations were completed was insufficient to estop invocation of the statute. We concluded that the plaintiff's attorney acted unreasonably in allowing the limitations period to expire without confirming that the defendant was willing to waive or extend the period. Id. at 140. In so ruling, we distinguished our earlier decision in McLaughlin v. Blake, 120 Vt. 174 (1957), which involved an estoppel claim arising out of an automobile accident in Quebec. We held there that the trial court had erred in rejecting the plaintiff's estoppel argument as a matter of law, noting that the defendant's claims adjuster had allegedly conceded liability and promised to compensate the plaintiff once he reached a medical end-result, and - most importantly - that the plaintiff's attorney was unaware the Quebec statute of extinguishment applied, leaving "the defendant . . . in a superior position to the plaintiff in that case." Beecher, 170 Vt. at 142.

We are persuaded that the facts here are more similar to those in McLaughlin and stronger than those in Beecher. As in McLaughlin, plaintiffs allege that Vaillancourt promised to pay the personal injury claim, and agreed to plaintiffs' request to accumulate their bills and submit them all at once. Furthermore, although plaintiffs had consulted an attorney immediately after the accident, they were unrepresented during their dealings with the adjuster, and therefore - as in McLaughlin - defendant was in a superior position to plaintiffs with regard to an understanding of the meaning and significance of the three-year statute. Finally, and most significantly, it is alleged that defendant here affirmatively misled plaintiffs concerning the requirements of the statute. Relying on the two letters from Vaillancourt in May and June 2000, plaintiffs allege that they were misled to believe that they could satisfy the statute of limitations by submitting their claim letter to CIC within three years of the accident. Without purporting to prejudge the issue, we conclude that the letters are sufficiently ambiguous - referring initially to plaintiffs' requested documentation as her "claim" and then stating that the "statute allows a person to make a claim" within three years of the accident - that the estoppel question presents, at the very least, a disputed material issue of fact.

In its decision granting summary judgment the trial court did not specifically address the letters from Vaillancourt, instead concluding generally that plaintiffs had the sole responsibility to avoid the statute of limitations bar and that the insurer owed plaintiffs no duty in this regard. We believe that these pronouncements are overly broad, and that McLaughlin and Beecher both recognize an insurance adjuster's duty - notwithstanding the adversarial relationship - to refrain at a minimum from misleading a relatively unsophisticated plaintiff into a belief that the statute was not a bar. Because plaintiffs' allegations raise disputed material issues as to whether defendants should be equitably estopped from

asserting the statute of limitations in these circumstances, we conclude that the judgment must be reversed, and the matter remanded for further proceedings. In view of our holding on equitable estoppel, we need not, and do not, address the promissory estoppel and negligent misrepresentation claims, which remain to be determined below.

Reversed and remanded.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice