

copies of the deeds, conveyances at the time of trial may not have been necessary if the discovery had been complied with in this case."

[21] By our review of the evidence we find that the chancellor abused her discretion in assessing the \$1,500.00 in fees. The affidavits submitted by the appellee do not specifically indicate which costs and attorney's fees were actually caused by the appellants' failure to provide certain tax returns pursuant to the order of July 19, 1979. Rather, the appellee's counsel stated that the reimbursement was being sought for time spent on the "action in toto," and for matters that had "nothing to do with discovery." Furthermore, the chancellor's remarks at the December hearing do not clarify whether or not the \$1,500.00 assessment was made solely to reimburse the appellee for discovery expenses incurred after issuance of the July 19, 1979 order to comply with discovery. We must, therefore, remand the case for further proceedings in which complete evidence may be presented by the appellee showing its expenses that may be subject to reimbursement under Md. Rule 422 b 5.

JUDGMENT AFFIRMED AS TO THE FRAUDULENT CONVEYANCE; JUDGMENTS VACATED AS TO THE CONTEMPT OF LAURINS AND NORMAN, AND CASE REMANDED FOR FURTHER PROCEEDINGS; JUDGMENT VACATED AS TO THE ASSESSMENT OF ATTORNEY'S FEES, AND CASE REMANDED FOR FURTHER PROCEEDINGS.

COSTS TO BE DIVIDED ONE-HALF TO THE APPELLANTS AND ONE-HALF TO THE APPELLEE.



46 Md.App. 570

**ST. PAUL FIRE AND MARINE
INSURANCE COMPANY**

v.

Charles J. MOLLOY et ux.

No. 3.

Court of Special Appeals of Maryland.

Oct. 9, 1980.

Suit was instituted to recover under a fire policy. The Circuit Court, Prince George's County, Audrey E. Melbourne, J., entered judgment on verdict for insureds, and insurer appealed. The Court of Special Appeals, Gilbert, C. J., held that: (1) defense of arson was waived by insurer under fire policy regardless of reliance by insureds where, though insurer possessed sufficient information to constitute knowledge of possible defense of arson at time it denied liability, insurer failed to notify insureds of defense and (2) whether insured neglected to preserve insured's premises during and after fire so as to preclude recovery under fire policy was question for jury.

Affirmed.

1. Insurance ⇐390, 395

Upon notification of an insured's claim, insurer may either accept or deny liability, and if insurer denies liability, all defenses of which it has knowledge at time of denial must be asserted or else they are waived.

2. Insurance ⇐390

Knowledge on part of insurer sufficient to constitute waiver of defenses available to it when not asserted on denial of liability must be of essential facts necessary to enable a person of ordinary prudence and judgment to act understandingly and must be knowledge as distinguished from mere inference.

3. Estoppel ⇐52.15

Estoppel precludes a party from asserting a given right or defense, but demands ignorance of party who invokes estoppel and an innocent and deleterious change of

position in reliance on such representations or conduct.

4. Estoppel ⇐52.10(2)

Waiver does not require detrimental reliance on party of party asserting waiver.

5. Insurance ⇐390

Defense of arson was waived by insurer under fire policy regardless of reliance by insureds where, though insurer possessed sufficient information to constitute knowledge of possible defense of arson at time it denied liability, insurer failed to notify insureds of defense.

6. Insurance ⇐390

There was no necessity to prove that insureds relied to their detriment on insurer's failure to inform him of arson defense under fire policy inasmuch as detrimental reliance was not an element of waiver of that defense by insurer.

7. Insurance ⇐508.2

Whether insured neglected to preserve insured's premises during and after fire so as to preclude recovery under fire policy was question for jury.

8. Insurance ⇐429.1(2)

Refusal to permit testimony of an argument between insured and a neighbor, as well as opinion testimony proffered to describe speed of insured's automobile when he left scene of fire, was not error in suit under fire policy inasmuch as such testimony was not relevant to issue in suit and would have served to obfuscate issue rather than shed light upon it.

Gary A. Godard, Rockville, with whom were Roy L. Mason and Donahue, Ehrmantraut & Montedonico, Rockville, on the brief, for appellant.

Terrell N. Roberts, III, Hyattsville, with whom was Emmett H. Nanna, Jr., Hyattsville, on the brief, for appellees.

Argued before GILBERT, C. J., and MORTON and MOORE, JJ.

GILBERT, Chief Judge.

The primary issue in this case is the extent to which an insurer waives available defenses upon the denial of liability of a claim asserted by an insured.

On January 22, 1978, the home of the appellees, Charles and Diane Molloy, was severely damaged by fire. When the fire occurred, the home was insured by the appellant, St. Paul Fire and Marine Insurance Co. The fire was discovered in the late afternoon by Mr. Molloy who, as the only one at home, drove some four miles to a local MacDonald's to telephone a report of the fire, passing on the way the homes of several neighbors as well as a few commercial establishments. Upon return to his home shortly thereafter, he found that the fire department had the blaze under control. When the fire investigators attempted to question him, Mr. Molloy hurriedly drove off, leaving the investigators to initiate a full siren chase after him. Despite the theatrical effort, Mr. Molloy was able to elude his pursuers. Subsequent to the conflagration, the fire investigators filed a report stating that the fire, which started in the hall closet, was ignited intentionally through the use of "an open flame device, such as a match or cigarette lighter." Soon afterward, the Prince George's County State's Attorney Office charged Mr. Molloy with arson. The charge was later *not* pressed.

In accord with the terms of the insurance policy, the appellees filed a proof of loss statement with the appellant on April 11, 1978. Appellant denied liability on June 28, 1978, in a letter written to the appellees' attorney, stating as its reasons the appellees' failure "to use all reasonable means to save and preserve the property at and after the fire." At the time of the denial, the appellant possessed a copy of the fire investigator's report which suggested the possibility of arson. Additionally, the appellant had knowledge of Mr. Molloy's behavior at the time of and after the fire, and it was aware that arson charges had been brought against him, and that they were dropped. The appellees sued the appellant on the

insurance contract to recover the loss sustained in the fire.

At trial, the appellees made a motion *in limine* to exclude all evidence indicating that Mr. Molloy had deliberately set fire to his home. A motion was also made by the appellees to sever Mrs. Molloy's interest under the insurance policy from that of her husband. The court reserved ruling on both motions; each was, however, granted at the close of the appellant's case. The jury was instructed to ignore all evidence suggesting that Mr. Molloy committed arson and to consider only whether both appellees had neglected to preserve the insured premises during and after the fire. A verdict was returned for the appellees.

The issues presented are fourfold: 1) whether the trial judge properly ruled that the appellant had waived the defense of arson due to its failure to notify the appellees of such defense at the time liability was denied; 2) whether Mrs. Molloy's interest in the insurance policy, held in tenancy by the entirety, could be severed from that of her husband; 3) whether the trial judge properly denied appellant's motion for a directed verdict on the issue of appellees' alleged failure to preserve their property during or after the fire; and 4) whether the trial judge erred in making several evidentiary rulings unfavorable to the appellant. We affirm the judgment of the trial court and now state our reasons.

[1, 2] Upon notification of an insured's claim, the insurer may either accept or deny liability. If the insurer denies liability, *all defenses of which he has knowledge at the time of the denial* must be asserted or else they are waived. 16A Appleman, *Insurance Law and Practice* § 9260 (1968); *Couch on Insurance* 2d § 71:43 (1968); 43 Am.Jur.2d *Insurance* § 1146 (1969); 45 C.J.S. *Insurance* §§ 706-707 (1946). Knowledge sufficient to constitute waiver "must be of the essential facts necessary to enable a person of ordinary prudence and judgment to act understandingly, and it must be knowledge as distinguished from mere inference." 45 C.J.S. *Insurance* § 696 (1946).

The application of this rule may vary from State to State according to its definition of waiver. Waiver is defined as:

"... the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances. And acts relied upon as constituting a waiver of the provisions of a contract must be inconsistent with an intention to insist upon enforcing such provisions." *Rubinstein v. Jefferson National Life Insurance Co.*, 268 Md. 388, 392-93, 302 A.2d 49, 52 (1973), quoting *Food Fair v. Blumberg*, 234 Md. 521, 531, 200 A.2d 166, 172 (1964). (Citation omitted.)

[3, 4] Estoppel precludes a party from asserting a given right or defense, but it demands "ignorance of the party who invokes the estoppel . . . and an innocent and deleterious change of position in reliance on such representations or conduct." 45 C.J.S. *Insurance* § 673; *Rubinstein v. Jefferson National Life Insurance Co.*, *supra* 268 Md. at 393, 302 A.2d 49. Significantly, waiver does *not* require detrimental reliance on the part of the party asserting the waiver.

Since the distinction between the above two principles is slight, some jurisdictions refer to waiver and estoppel synonymously, thereby requiring the injured party to demonstrate detrimental reliance in order for waiver to apply. Maryland, however, has maintained the distinction between the two. See *Rubinstein v. Jefferson National Life Insurance Co.*, *supra*; *Eastover Stores, Inc. v. Minnix*, 219 Md. 658, 150 A.2d 884 (1959).

The issue of waiver of defenses in insurance claims has met with limited discussion in this State. The Court of Appeals has held that the insurer will waive the defense of failure to give timely notice of injury if he fails to specify the defense at the time liability is denied. *McElroy v. John Hancock Life Insurance Co.*, 88 Md. 137, 149-50, 41 A. 112, 115 (1898); *Fidelity and Casualty Co. v. Riley*, 168 Md. 430, 438-39, 178 A. 250, 254 (1935). The requirement of proof of death can also be waived if not asserted

in the denial of liability. *Prudential Insurance Co. v. Devoe*, 98 Md. 584, 56 A. 809 (1904). More recently, the Court, in *Zurich Co. v. Monarch Co.*, 247 Md. 3, 230 A.2d 330 (1967), addressed the issue of whether an insurer waived the defense of nonpermissive use of an automobile after liability was denied solely on the basis of the noncooperation of the injured party. The Court, in *Zurich*, found that the defense had not been waived since the insurer did not have knowledge of the defense at the time it denied liability. *Id.* at 11, 230 A.2d 330.

[5, 6] We hold that the trial court properly ruled that the defense of arson was waived by the appellant. The record indicates that at the time the appellant denied liability it possessed sufficient information to constitute knowledge of the possible defense of arson, and, therefore, the failure to notify the appellees of the defense, in the letter of June 28, 1978, was a waiver of that defense. Furthermore, there is no necessity to prove that the appellees relied to their detriment on the appellant's failure to inform them of the arson defense since detrimental reliance is not an element of waiver in this State. Consequently, we do not reach the issue as to whether the grant of the summary judgment permitting the severance of Mrs. Molloy's interest under the policy from that of her husband was proper.

[7] We also conclude that the trial court correctly denied appellant's motion for a directed verdict on the issue of appellees' alleged failure to preserve their property during and after the fire. Examining the evidence in the light most favorable to the appellees' position, the record reveals that there was enough evidence to cause reasonable minds to differ, and, therefore, the matter was properly submitted to the jury. See *Ralph Pritts & Sons, Inc. v. Butler*, 43 Md.App. 192, 403 A.2d 830 (1979); *Keene v. Arlan's Department Store of Baltimore, Inc.*, 35 Md.App. 250, 370 A.2d 124 (1977). See also *Beahm v. Shortall*, 279 Md. 321, 368 A.2d 1005 (1977).

[8] We decline to review those objections related to the issue of arson inasmuch

as we have affirmed the trial court's ruling on the waiver of the arson defense. With respect to those objections concerning the refusal to permit testimony of an argument between Mr. Molloy and a neighbor, as well as opinion testimony proffered to describe the speed of Mr. Molloy's automobile when he left the scene of the fire, we affirm the trial court's rulings. The evidence was not relevant and would have served to obfuscate the issue rather than shed light upon it.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.



46 Md.App. 579

Neal BLINKEN

v.

STATE of Maryland.

No. 13.

Court of Special Appeals of Maryland.

Oct. 9, 1980.

Defendant was convicted on a plea of guilty in the Circuit Court, Queen Anne's County, Clayton C. Carter, J., of counts charging violations of the Controlled Dangerous Substances Law, and he appealed. The Court of Special Appeals, Couch, J., held that: (1) denial of defendant's request to withdraw his guilty plea prior to sentencing was not an abuse of discretion; (2) requisite inquiry was conducted of defendant prior to time guilty plea was tentatively accepted by trial judge; and (3) apparent dependency of codefendant's freedom on defendant's guilty plea did not operate on record to render defendant's plea involuntary or operate to deny defendant his right of due process.

Affirmed.