

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-020

JUNE TERM, 2004

	}	APPEALED FROM:
	}	
50 Pine Street Condominium Association	}	Windham Superior Court
	}	
v.	}	DOCKET No. 26-1-03 Wmcv
	}	
Bowen Livingston, Inc., formerly Bowen Insurance Agency, Inc.	}	Trial Judge: Hon. Karen R. Carroll
	}	
	}	

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

Plaintiff appeals from the trial court's order granting summary judgment for defendant on its negligent procurement of insurance claim. Plaintiff argues that the court erred in granting summary judgment because a genuine dispute of material fact exists, and the court failed to view the facts in its favor. We affirm.

The following facts are undisputed unless otherwise noted. Plaintiff owns a condominium building and a carriage barn in Bellows Falls, Vermont. In early 2001, plaintiff's representative, Robert Tetreault, contacted defendant's representative, Randy Livingston, to procure insurance after discovering that its property was not insured. Tetreault informed Livingston that plaintiff needed immediate coverage. Tetreault believed that he requested insurance on "all" of plaintiff's property, but he admitted that he did not specifically ask Livingston to cover the carriage barn, nor did he inform Livingston of the barn's existence. Livingston procured a policy for plaintiff that same day, and delivered a copy of the policy to Tetreault. The declarations page of the insurance policy stated that it covered one building, a "6 unit condo." Tetreault acknowledged receiving the policy but stated that he did not read it.

Approximately six months later, a fire destroyed plaintiff's barn. Plaintiff's insurance claim was denied because the barn was not covered under the policy. Plaintiff then sued defendant, alleging that Livingston had negligently failed to procure insurance that conformed to Tetreault's instructions. Defendant moved for summary judgment, arguing that the undisputed facts established that its agent had procured an insurance policy that conformed exactly to the express instructions of plaintiff's agent, and it was under no duty to inquire further into plaintiff's needs and wishes. After a hearing, the court granted summary judgment for defendant. The court found that the factual disputes identified by plaintiff, such as whether Livingston had asked Tetreault if there was more than one structure on the property, were immaterial to the resolution of plaintiff's claim. As the court explained, it was undisputed that Tetreault did not tell Livingston about the barn when he requested insurance coverage. Thus, even if the alleged factual disputes were resolved in plaintiff's favor, they would show only that plaintiff had failed to make its needs and wishes clear to defendant's agent, and that defendant failed to ask questions to clarify plaintiff's desires. Because it was the insured's responsibility to make its needs and wishes clear, the court concluded that defendant was entitled to judgment as a matter of law. This appeal followed.

On appeal, plaintiff argues that summary judgment was inappropriate because there is a dispute of fact as to what "needs and wishes" it conveyed to defendant's agent. In support of its assertion, plaintiff points to conflicting testimony about whether Livingston asked Tetreault if there was more than one structure on the property that needed to be insured. Plaintiff also argues that, when the facts are viewed in its favor, Tetreault's request that Livingston procure insurance

for A all" of plaintiff' s property imposed upon defendant a duty to cover the barn as well as the condominium.

Our standard of review is familiar:

When reviewing a motion for summary judgment, we apply the same standard as the trial court: summary judgment is appropriate when the record clearly indicates there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In determining whether a genuine issue of material fact exists, we regard as true all allegations of the nonmoving party supported by admissible evidence, and we give the nonmoving party the benefit of all reasonable doubts and inferences.

Lane v. Town of Grafton, 166 Vt. 148, 150 (1997) (internal quotation marks and citations omitted).

The court did not err in granting summary judgment for defendant on plaintiff' s negligence claim. An insurance agent has a duty " to use reasonable care and diligence to procure insurance that will meet the needs and wishes of the prospective insured, as stated by the insured." Booska v. Hubbard Ins. Agency, 160 Vt. 305, 309-310 (1993) (internal quotation marks and citation omitted). It is the responsibility of the insured " to adequately convey, albeit in laymen' s terms, the nature of his wishes, in order to obtain the protection requested." Hill v. Grandey, 132 Vt. 460, 468 (1974). In this case, the undisputed facts show that Tetreault requested coverage for the condominium, but he did not specifically request coverage for the barn, nor did he inform Livingston of the barn' s existence. It is thus immaterial whether Livingston asked about additional structures on the property; Tetreault admits that he did not inform Livingston of any.

Tetreault' s statement that he wanted coverage for " all" of plaintiff' s property did not impose upon Livingston a duty to inquire about the existence of additional structures. Plaintiff relies on Dodge v. Aetna Cas. & Sur. Co., 127 Vt. 409 (1969), to support its assertion that Livingston acted negligently by failing to determine that the policy did not conform to plaintiff' s request. Plaintiff' s reliance on Dodge is misplaced. In Dodge, we found that an insurance agent had acted negligently by failing to amend a policy to cover its insured' s new business venture, despite the insured' s request for such coverage, based on a mistaken belief that the policy already covered such risks. Id. at 410. Importantly, the coverage terms at issue in Dodge " were matters lying within the peculiar expertise of the agent." See Hill, 132 Vt. at 468. Thus, in Dodge, it was the agent' s expertise in insurance matters that gave rise " to a duty to inquire as to facts necessary to provide the specific coverage requested." See id. In this case, the nature of the coverage sought by plaintiff, a business entity, was within its own knowledge and expertise. As we explained in Hill, any duty regarding the essential subject matter of the insurance contract " rests in the insured, and not in the insurance agent." Id. at 470. Plaintiff did not specifically inform defendant that it sought coverage for the barn, and defendant was under no duty to clarify the nature of the coverage requested. The undisputed facts demonstrate that defendant' s agent used reasonable care and diligence to procure insurance to meet the needs and wishes of the prospective insured as communicated to him by the insured. See Booska, 160 Vt. at 309-310. The trial court therefore properly granted summary judgment for defendant.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Marilyn S. Skoglund, Associate Justice

Paul L. Reiber, Associate Justice