

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BAHRI LIMITED, INC., d/b/a BUCHANAN  
MARKET,

UNPUBLISHED  
June 23, 2000

Plaintiff-Appellant,

v

No. 207053  
Oakland Circuit Court  
LC No. 96-514299 NM

ESTATE UNDERWRITERS & ASSOCIATES,  
INC., and LORI MOTHERSBAUGH,

Defendants,

and

MIKE NAJOR,

Defendant-Appellee.

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Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant Mike Najor's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

Defendant Najor worked for an insurance agency and assisted plaintiff in procuring insurance coverage for its market. The market and an adjacent two-apartment building also owned by plaintiff were damaged in a subsequent fire. Plaintiff discovered after the fire that the insurance policy did not extend coverage to the adjacent apartment building. Plaintiff sued Najor, as well as the insurance agency and another agent,<sup>1</sup> alleging claims for breach of contract and

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<sup>1</sup> Najor and defendant Lori Mothersbaugh both allegedly worked for Estate Underwriters & Associates, Inc., an insurance company involuntarily dissolved in 1992. In 1996, a default judgment was entered against Mothersbaugh and Estate Underwriters, who are not parties to the instant appeal.

malpractice or negligence. The trial court granted Najor's motion for summary disposition under MCR 2.116(C)(10).

With respect to the malpractice/negligence claim, the court relied on *Bruner v League General Ins Co*, 164 Mich App 28; 416 NW2d 318 (1987), in concluding that Najor owed no duty to advise plaintiff of the adequacy of its policy's coverage, and that no special relationship existed because there was no long term relationship between the parties. This aspect of *Bruner* was recently modified, however, by our Supreme Court in *Harts v Farmers Ins Exchange*, 461 Mich 1; 597 NW2d 47 (1999). In *Harts*, the Supreme Court stated, in relevant part, as follows:

While we agree with *Bruner* that there must be "some type of interaction on a question of coverage," *id.* at 34, we do not subscribe to the possible reading of *Bruner* that holds reliance on the length of the relationship between the agent and the insured is the dispositive factor in transforming the relationship into one in which the traditional common-law "no duty" principle is abrogated. We thus modify the "special relationship" test discussed in *Bruner* and the other cases cited above so that the general rule of no duty changes when (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. [*id.* at 10-11 (footnotes omitted).]

It is not clear from the available record, viewed in light of the *Harts* special relationship test, that defendant is entitled to summary disposition regarding plaintiff's malpractice/negligence count. Given the trial court's significant reliance on the portion of *Bruner* modified by the Supreme Court, we vacate the trial court's grant of summary disposition of plaintiff's malpractice/negligence claim and remand for reconsideration in light of *Harts*, *supra*.

Regarding plaintiff's breach of contract claim, the trial court found that any alleged contract between plaintiff and Najor for procurement of a specific type of insurance coverage must fail for a lack of consideration. The evidence of record concerning consideration is sparse. Defendant provided, in his brief responding to plaintiff's reply to defendant's summary disposition motion, a one-sentence argument without citation to supporting authority, while plaintiff entirely failed to address before the trial court the issue of consideration. In light of the deficient record before us and the fact that the case must in any event be remanded for the trial court's reconsideration of the special relationship issue, we vacate the trial court's grant of summary disposition to defendant regarding plaintiff's breach of contract claim. We recommend that on remand the court permit the parties to offer any further evidence they possess regarding consideration.

We decline to address the alternative grounds for summary disposition advanced by Najor that the trial court did not reach. The court on remand remains free to consider these alternative grounds.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Hilda R. Gage

/s/ William C. Whitbeck