STATE OF MICHIGAN

COURT OF APPEALS

BAMAL CORPORATION,

Plaintiff/Counterdefendant-Appellant,

v

CHASSIS POWDER COATING, INC. and PAUL HARRIS,

Defendants/Counterplaintiffs,[1]

and

S.J. FERRARI INSURANCE AGENCY, INC., and SAMUEL FERRARI,

Defendants-Appellees,

and

FEDERAL INDUSTRIAL SERVICES, INC.,

Defendant.

UNPUBLISHED
December 22, 2005

No. 256412
Wayne Circuit Court
LC No. 03-307250-CZ

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff Bamal Corporation (Bamal) appeals as of right the trial court's order granting summary disposition in favor of defendants S.J. Ferrari Insurance Agency, Inc., and Samuel

[1] The trial court granted Bamal partial summary disposition regarding the liability of Chassis Powder Coating, Inc. (CPC), Paul Harris, and Federal Industrial Services, Inc (FIS). The court conclusively established CPC's and Harris' liability for conversion. Bamal's claims against CPC, Harris, and FIS were later dismissed without prejudice.

Ferrari.[2] Bamal was denied insurance benefits after Paul Harris, who operated a warehouse in which some of Bamal's inventory was stored, stole that inventory. Bamal's insurance policy excluded benefits for theft by third parties to whom Bamal entrusted its property (the entrustment exclusion). Bamal subsequently brought this action alleging that Ferrari negligently caused the policy to include inadequate coverage. We affirm summary disposition in Ferrari's favor.

I. Basic Facts And Procedural History

Bamal is a wholesale industrial distributor of fasteners including nuts, bolts, screws, clips, and clamps, used to manufacture cars, appliances, and furniture, among other things. Bamal regularly stored extra inventory, which it normally expected to be able to sell in the future. The fasteners involved in the instant suit (the parts) were originally stored in a Farmington Hills, Michigan, warehouse. When another company, Emhart, bought Bamal's automotive division, the other inventory in the Farmington Hills warehouse became Emhart's property, but the parts at issue in this suit were not part of Emhart's purchase. Bamal expected to sell these parts, so it separated the parts and looked for a new warehouse in which to store them.

Bamal made arrangements to store the parts in a warehouse located in Livonia, Michigan, and controlled by CPC and Paul Harris. Brown later contacted Harris in order to retrieve some of the parts from the Livonia warehouse. Harris admitted that he had stolen the parts and gave them to FIS, in order to satisfy a debt that CPC and Harris owed to FIS. Harris later pleaded guilty to a misdemeanor charge of theft and paid Bamal $30,000 in partial restitution.

Before the sale to Emhart, Bamal was using nine warehouses. Bamal owned some warehouses and leased others. Bamal also stored inventory in warehouses that were independently operated. Thus, Bamal used its own employees to staff some warehouses but also paid operators to staff other warehouses. All of Bamal's warehouses were insured by an Amerisure insurance policy, which Bamal had contracted for through Ferrari. The policy included combined "blanket coverage" for all the warehouses Bamal used. It was Bamal's practice to contact Ferrari about adding or subtracting warehouses from its policy when necessary. After transferring the parts to the Livonia warehouse, Bamal sought to insure them during storage. Bamal called Ferrari to request that the Livonia warehouse be "added to the blanket warehouse coverage." Ferrari added the location to Bamal's blanket policy.

After the theft, Bamal filed a claim for benefits with Amerisure. However, Amerisure denied the claim. Amerisure stated that Bamal's policy did not cover loss caused by "criminal, fraudulent, dishonest, or illegal acts by others to whom [Bamal] entrust[ed its] property," as outlined in the entrustment exclusion.

Bamal filed its complaint alleging insurance malpractice by Ferrari. Bamal claimed, *inter alia*, that Ferrari negligently, carelessly, and recklessly failed to give accurate information about Bamal's insurance coverage and failed to secure the theft coverage that Bamal requested. Ferrari moved for summary disposition, arguing that Bamal failed to show any misrepresentation or

[2] Hereinafter collectively referred to as "Ferrari."

other acts by Ferrari that created a special relationship between him and Bamal; thus, he had no duty to further advise Bamal about its theft coverage. The trial court granted Ferrari summary disposition, reasoning that the entrustment exclusion precluded any liability on Amerisure for the loss that Bamal suffered as a result of the theft by a party entrusted with the inventory.

II. Motion For Summary Disposition

A. Standard Of Review

Bamal claims the trial court improperly granted summary disposition when it concluded that there was no genuine issue of material fact that Bamal's policy did not cover the property loss. Bamal contends that this fact was not at issue; rather, it sued on the theory that Ferrari's negligence caused the policy to be inadequate. Bamal argues that there are genuine issues of material fact regarding whether Ferrari had a duty to advise Bamal about the inadequacy of his insurance coverage for third-party theft.

We review a trial court's decision on a motion for summary disposition de novo.[3] A summary disposition motion pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[4] The nonmovant may not rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial.[5] A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue on which reasonable minds could differ.[6] When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party.[7]

B. Negligence: Special Relationship

"To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages."[8] Generally, whether a duty exists is a question of law,[9] and an insurance agent

---

[3] *Graves v American Acceptance Mortgage Corp* (*On Rehearing*), 469 Mich 608, 613; 677 NW2d 829 (2004).

[4] *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001).

[5] *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004).

[6] *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

[7] MCR 2.116(G)(5); *Miller*, *supra* at 246.

[8] *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

[9] *Harts v Farmers Ins Exch*, 461 Mich 1, 6; 597 NW2d 47 (1999); *Braun v York Properties, Inc*, 230 Mich App 138, 141; 583 NW2d 503 (1998).

generally has no duty to advise an insured regarding the adequacy of the insured's coverage.[10] "[T]his is consistent with the insured's obligation to read the policy and raise questions concerning coverage within a reasonable time after the policy has been issued."[11] However, under certain circumstances a special relationship arises that requires the agent to further advise the insured. Such circumstances exist 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."[12] "[W]here certain factual circumstances give rise to a duty, and there are disputed facts, a jury must determine whether those factual circumstances exist."[13] "'The jury decides the question of duty only in the sense that it determines whether the proofs establish the elements of a relationship which the court has already concluded give rise to a duty as a matter of law.'"[14]

1. Ferrari's Alleged Misrepresentation

Bamal's first claim on appeal is that Ferrari misrepresented the nature or extent of the theft coverage provided by Bamal's policy. We disagree. Bamal merely incorrectly assumed that its existing policy covered theft by third parties to whom the property was entrusted. Although Bamal contends that the theft would have been covered if it had occurred at a warehouse that it owned or leased, Bamal failed to support this assertion with any documentary evidence. Although Bamal contends that it purchased an additional employee dishonesty endorsement that covered theft of inventory by its employees, Bamal failed to present any evidence of such an endorsement to the trial court.

While Ferrari admitted that he was aware of the general criminal acts exclusion in the existing policy, Ferrari's deposition testimony indicated that he was unaware of the specific entrustment exclusion in the existing policy, and he stated that he was unaware if additional coverage was available to cover theft under an entrustment scenario. But, regardless, Bamal has not presented evidence that its understanding regarding the scope of its theft coverage was a result of any affirmative misrepresentations made by Ferrari at the time the Livonia warehouse was added to the existing policy.

Bamal had a "blanket" policy that covered property stored in all of its various warehouses. Bamal owned or operated some of the covered warehouses; third parties

---

[10] *Harts*, *supra* at 8, 10.

[11] *Id*. at 8 n 4; *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981).

[12] *Harts*, *supra* at 10-11.

[13] *Braun*, *supra* at 141.

[14] *Id*. at 141-142, quoting *Smith v Allendale Mut Ins Co*, 410 Mich 685, 714-715; 303 NW2d 702 (1981).

independently operated other warehouses. The policy covered fire, lightning, and theft, but Bamal never made specific requests about the details of the theft coverage. Bamal merely notified Ferrari when it wanted to add warehouses to, or delete warehouses from, the blanket coverage. The stolen parts had been stored in a warehouse operated by Bamal and were later moved to the Livonia warehouse. After moving the parts, Bamal called Ferrari to have the Livonia warehouse included "in the policy like all of the other warehouses." Bamal now claims that Ferrari misrepresented the level of theft coverage when Ferrari agreed to add the warehouse to the "same" policy.

An insurance agent generally has no duty to advise an insured regarding the adequacy of the insured's coverage.[15] A contrary rule

> (1) "would remove any burden from the insured to take care of his or her own financial needs and expectations in entering the marketplace and choosing from the competitive products available," (2) could result in liability for a failure to advise a client "of every possible insurance option, or even an arguably better package of insurance offered by a competitor," and (3) could provide an insured with an opportunity to self-insure "after the loss by merely asserting they would have bought the additional coverage had it been offered."[16]

"'The general duty of the insurer's agent to the insured is to refrain from affirmative fraud, not to watch out for all rights of the insured and inform the latter of them.'"[17] "[A]n agent's job is to merely present the product of his principal and take such orders as can be secured from those who want to purchase the coverage offered."[18]

Bamal's existing policy covered other independent warehouses and included the entrustment exclusion. Bamal had a general duty to read its policy and ask questions about coverage within a reasonable amount of time.[19] Thus, although Bamal's may have misunderstood the extent of its theft coverage, there was no evidence presented that Ferrari created this misunderstanding. Ferrari never told Bamal that the policy covered theft by a third party to whom the inventory was entrusted. Ferrari fulfilled his duty to Bamal by complying with Bamal's request to add the Livonia warehouse to the "same" policy. Ferrari had no duty to watch out for Bamal's rights when adding the warehouse to the existing policy. There is no genuine issue of material fact that Ferrari made no affirmative misrepresentations that established a special relationship or created a duty to advise as a matter of law.

---

[15] *Harts*, *supra* at 8, 10.

[16] *Id*. at 8-9, quoting *Nelson v Davidson*, 456 NW2d 343, 346 (Wis, 1990).

[17] *Id*. at 8 n 3, quoting 4 Couch, Insurance, 3d, § 55:5, p 55-10.

[18] *Id*. at 8; see also MCL 500.2116(1)(a) and (d).

[19] *Parmet Homes*, *supra* at 145.

2. Bamal's Request For "Same Coverage"

Neither is there a genuine issue of material fact regarding whether Bamal's request for the "same coverage" was an ambiguous request requiring clarification.[20] The *Harts* Court suggested that an example of an ambiguous request that "might in some circumstances require clarification" is a request for "full coverage."[21] Bamal argues that its request was comparably ambiguous given that the "same" coverage could mean at least two different things under the facts of the case: Bamal could have meant it wanted precisely the same policy terms, or, it could have meant it wanted the same level of coverage for theft by third parties among all the warehouses regardless of how they were operated. Bamal implies that the latter meaning would require an endorsement covering theft by third party nonemployees to whom property was entrusted given that theft by third party nonemployees was covered at the warehouses operated by Bamal.

We again note that Bamal previously had been receiving the same blanket coverage for all of its warehouses, including those that were independently operated. In this context, Bamal's request for the "same" coverage was not a general ambiguous request akin to an isolated, unspecific request for "full coverage." Rather, Bamal's request had a specific, historic meaning between the parties that explicitly referred to a policy already in place. As discussed above, even if both Bamal and Ferrari misunderstood the types of theft that were covered, Bamal's request for the "same" coverage appears to have been understood by both parties: Bamal wanted the Livonia warehouse added to the existing blanket policy. The request was not ambiguous. That the policy did not include the coverage that Bamal assumed it contained does not negate that an agent is essentially an order taker for the insuring company and that the insured has a duty to make himself aware of the contents of his policy.[22] Accordingly, any underlying misunderstanding of the policy terms—which would have been easily rectified by Bamal's reference to the written terms of its policy—is not a basis for a special relationship creating a duty on the part of Ferrari as a matter of law.

3. "Agent" Versus "Counselor"

Bamal also briefly raises the issue whether Ferrari may have owed Bamal a higher standard of care because he was an insurance counselor rather than an insurance agent. The *Harts* Court noted that agents and counselors serve different roles; however, the Court did not further develop the issue whether a counselor owed a different standard of care or how that standard would differ from the standard applied to agents.[23] Regardless, Bamal offers no authority for what standard of care should be applied to Ferrari if he is to be considered a counselor rather than an agent. A party may not merely announce a position or give only cursory

---

[20] See *Harts*, *supra* at 10.

[21] *Id*. at 10 n 11.

[22] *Id*. at 9, 10 n 11.

[23] *Id*. at 8-9.

treatment of an issue with little or no citation to supporting authority.[24] Bamal also did not include this issue in its statement of questions presented.[25] Therefore, we decline to address this issue on appeal.

C. Damages

Ferrari did not have a duty to Bamal as a matter of law, and summary disposition in Ferrari's favor was proper. We therefore need not address Bamal's claim that there is a genuine issue of material fact regarding the existence of damages.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Peter D. O'Connell

---

[24] *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).

[25] MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).