STATE OF MICHIGAN

COURT OF APPEALS

BELFOR USA GROUP, INC.,

Plaintiff/Counter-Defendant,

v

ALEXIS MANOR APARTMENTS,

Defendant/Counter-Plaintiff,

and

NEW ALEXIS MANOR and JOEL DORFMAN,

Defendants,

and

GROUP 42, INC.,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellant,

and

MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Third-Party Defendant,

and

LUBIN SCHWARTZ GOLDMAN, INC., d/b/a LSG INSURANCE PARTNERS,

Third-Party Defendant-Appellee.

UNPUBLISHED
March 10, 2009

No. 281444
Wayne Circuit Court
LC No. 06-609177-CK

Before: Jansen, P.J., and Borrello and Stephens, JJ.

PER CURIAM.

Group 42, Inc. ("Group 42") owned an apartment building, which sustained water damage in December 2004. Plaintiff Belfor USA Group, Inc., was hired to repair the damage and filed this action against Group 42 to recover payment for the repair work. Group 42 then filed a third-party complaint against its alleged insurer, Michigan Millers Mutual Insurance Company ("MMMIC"), and insurance agent, Lubin, Schwartz & Goldman, Inc., d/b/a LSG Insurance Partners ("LSG"), seeking recovery of its losses caused by the water damage. Group 42 now appeals by right the trial court's grant of summary disposition in favor of LSG with respect to Group 42's negligence and innocent misrepresentations claims. We affirm.

A trial court's grant or denial of summary disposition is reviewed de novo. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We will affirm if the trial court reached the correct result, even if it did so for the wrong reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

We first reject Group 42's argument that the trial court erred by granting LSG's motion for summary disposition with respect to Group 42's negligence claim.

To establish a prima facie case of negligence, the plaintiff must generally prove a duty owed by the defendant, a breach of that duty, causation, and damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A legal duty may arise by contract, statute, constitution, or common law. *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 311; 583 NW2d 548 (1998). In general, professional relationships for services are established by contract. See *Hill v Kokosky*, 186 Mich App 300, 303; 463 NW2d 265 (1990).

Group 42's claim was necessarily predicated on the existence of a professional relationship between Group 42 and LSG. We find that no such relationship existed. Viewed in a light most favorable to Group 42, the evidence demonstrated that LSG served as the insurance agent for New Alexis Manor, LLC, only. Although the property was conveyed from New Alexis Manor, LLC, to Group 42 in September 2004, Group 42 has failed to demonstrate that this change of ownership permits it to stand in the shoes of New Alexis Manor, LLC, for the purposes of suing LSG.

The law generally respects the separate existence of business entities. *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 650; 364 NW2d 670 (1984). We disagree with Group 42's argument that the "successor corporation" exception in *Craig v Oakwood Hosp*, 471 Mich 67, 96; 684 NW2d 296 (2004), applies in this case. The purpose of that test is to determine whether a successor corporation should assume the liabilities of a predecessor corporation. It does not address whether an affirmative duty can be imposed on a party to provide services to a stranger to a contractual relationship, or whether successor and predecessor entities should be treated as a single entity for purposes of their relationships with others.

Even if we were to consider the "successor corporation" test of *Craig*, we would find it inapplicable because the evidence does not suggest that the property conveyance from New Alexis Manor, LLC, to Group 42 was a transfer in name only. According to Joel Dorfman's deposition testimony, the purpose of creating Group 42 was to change the nature of the business from one in which apartments were rented to one in which condominium units were sold.

Dorfman did not want any tenants in the buildings when Group 42 acquired the property. Moreover, there was at least some difference in ownership between the two entities, inasmuch as New Alexis Manor, LLC, was owned by a trust at the time of the conveyance but Group 42 was owned by individual shareholders. A new entity with different owners and a different business purpose does not constitute a mere continuation of the old entity. *Shue & Voeks v Amenity Design & Mfg*, 203 Mich App 124, 128; 511 NW2d 700 (1993). Under the facts of this case, we cannot conclude that Group 42 was a mere continuance of New Alexis Manor, LLC. The existence of Group 42 was separate from the existence of New Alexis Manor, LLC. See *Wells*, *supra* at 650. The mere fact that LSG had a relationship with New Alexis Manor, LLC, does not compel a conclusion that LSG had a special relationship with or owed a duty to Group 42.

Group 42 cites this Court's decision in *Consolidated Mortgage Corp v American Security Ins Co*, 69 Mich App 251; 244 NW2d 434 (1976), for the proposition that the change of ownership in this case did not affect its right to stand in the shoes of New Alexis Manor, LLC. In that case, this Court held that an insurance company was required to continue coverage on residential property even after the mortgagor had abandoned it and the mortgagee had reacquired the home. This Court held that the transfer from the mortgagor to the mortgagee was not the type of "change of ownership" that would serve to allow the insurer to deny continued coverage under the specific policy at issue in that case. However, Group 42 has failed to show how the transfer of ownership from New Alexis Manor, LLC, to Group 42 in this case is equivalent to a transfer of residential property from a mortgagor to a mortgagee. Moreover, Group 42 has not even attempted to establish whether the insurance policy at issue in this case contained a "change of ownership" clause similar to the one in *Consolidated Mortgage*. Given that Group 42 has failed to brief any language in the MMMIC policy that would support its position that it had a right to stand in the shoes of New Alexis Manor, LLC, we deem the issue abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Further, we conclude that Group 42 has not demonstrated anything about LSG's activities following the water damage that would support an inference that LSG recognized or otherwise acknowledged a "client relationship" with Group 42. We deem this issue abandoned because Group 42 has failed to cite the factual support for its argument in this regard. See MCR 7.212(C)(7); *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004). In any event, Group 42 has not explained the circumstances of the payment made by LSG for the repair work, and we therefore have no basis to accept its argument that the payment should be treated as an admission of a duty on the part LSG. Speculation and conjecture are insufficient to create a genuine issue of material fact. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

We decline to consider Group 42's additional argument in its reply brief that LSG's payment of $23,000 should estop it from denying that it owed a duty. This argument was not raised before or decided by the trial court. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000). Moreover, a party may not raise an argument for the first time on appeal in its reply brief. MCR 7.212(G); *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 576; 692 NW2d 68 (2004); see also *Hall v Small*, 267 Mich App 330, 335; 705 NW2d 741 (2005).

In sum, we conclude that Group 42 has failed to demonstrate a genuine issue of material fact with respect to the existence of a relationship between LSG and Group 42 giving rise to a

duty owed by LSG. The absence of such a duty is fatal to Group 42's negligence claim. Because the trial court reached the correct result, we uphold its decision granting LSG's motion for summary disposition with respect to the negligence claim. *Taylor, supra* at 458.

Turning to Group 42's claim of innocent misrepresentation, privity of contract is essential to this claim. *Forge v Smith*, 458 Mich 198, 212; 580 NW2d 876 (1998); *M & D, Inc v McConkey*, 231 Mich App 22, 28; 585 NW2d 33 (1998). The misrepresentation must be made in connection with the making of the contract. *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 118; 313 NW2d 77 (1981). The lack of factual support for Group 42's claim regarding the existence of a contractual relationship with LSG is dispositive of this claim. Quite simply, Group 42 was not a party to the contract between LSG and New Alexis Manor, LLC, and the evidence failed to establish a genuine issue of material fact with respect to whether Group 42 was in privity with the parties. Group 42 has demonstrated no grounds for disturbing the trial court's grant of summary disposition in favor of LSG with respect to this claim.

We have also reviewed de novo Group 42's argument that summary disposition should have been granted in its favor for the reason that LSG should have been estopped from denying liability for MMMIC's failure to accept the claim for water damage.[1] The authority on which Group 42 relies concerns two distinct estoppel doctrines. In *Holt v Stofflet*, 338 Mich 115, 119; 61 NW2d 28 (1953), our Supreme Court set forth standards for applying the doctrine of equitable estoppel to preclude a party, who ought to speak out, from denying a fact when the other party either intentionally or through culpable negligence is induced to believe the fact and rightfully acts on that belief. In *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390; 256 NW2d 607 (1977), this Court applied the doctrine of promissory estoppel set forth in *Vogue v Shopping Ctrs, Inc*, 58 Mich App 421, 424; 228 NW2d 403 (1975), and other similar cases. We are not persuaded that the evidence in this case supported application of either estoppel doctrine to preclude LSG from denying liability. We accordingly uphold the trial court's denial of summary disposition for Group 42 on this ground.

Affirmed.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens

[1] The loss condition in the policy excluded coverage for water damage if the building was 70 percent vacant for more than 60 days.