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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-1127

SCOTT STREET TOWNHOUSES, LLC APPELLANT V. UNDERWRITERS AT LLOYD'S LONDON, ACE GLOBAL MARKETS PROPERTY, LTD., GRAHAM-ROGERS, INC. AND JAMES WOODS INSURANCE AGENCY, INC. APPELLEES	**Opinion Delivered** November 17, 2010 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, THIRD DIVISION [NO. CV-07-11858] HONORABLE JAMES M. MOODY, JR., JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Scott Street Townhouses, LLC (Scott Street), appeals from the grant of summary judgment in favor of appellees Underwriters at Lloyd's London, Ace Global Markets Property, LTD., and James Woods Insurance Agency, Inc. (the insurers). On appeal, Scott Street argues that the circuit court erred in granting summary judgement because there are genuine issues of material fact that should be decided by a jury. We affirm.

In our review of this case, we treat all of the testimony presented by the owners of Scott Street as true. *See Watkins v. Southern Farm Bureau Cas. Ins. Co.*, 2009 Ark. App. 693, ___ S.W.3d ___. Scott Street is a limited liability company created for the purpose of holding and operating a Little Rock residential complex consisting of four buildings that each contain six apartments. Scott Street is owned by three individuals: Mark Reynolds, Rusty Jenkins, and Ralph Cotham. In his deposition, Reynolds stated that he and Jenkins had originally

purchased the complex in 2002. They made significant improvements to the buildings and decided to add Cotham as a third partner in March 2004 and create Scott Street as a new business entity. Reynolds and Jenkins sold the complex to Scott Street for $650,000, which was less than the $700,000 appraisal. First National Bank of Hot Springs financed $629,000 of the purchase price. As a condition of the loan, the Bank required that the property be insured.

Prior to the sale, insurance coverage on the complex had lapsed, and the apartments were uninsured from September 2003 until March 2004. Acting on behalf of Scott Street, Reynolds contacted the James M. Woods Insurance Agency and dealt exclusively with Mr. Woods. He told Woods that he wanted the same coverage as had previously been on the complex, which treated the four separate buildings as a single entity. Reynolds admitted that he intentionally sought to insure the complex for less than the appraised value to reduce the cost of the premiums. Woods recommended that the buildings be insured individually for $147,000 each rather than insuring the complex for $588,000 as a single entity. Reynolds accepted the recommendation. The application was prepared by Woods, but signed by Reynolds. Reynolds admitted that he had an opportunity to review the application. He subsequently received three insurance policies, which insured the buildings individually. Reynolds admitted that he did not read the policies, but merely "thumbed through them." The policies were renewed twice before a fire seriously damaged one of the buildings.

The cost to repair the building was $217,000. The insurer paid policy limits on the

building—$147,000—plus approximately $3,966.48 for debris removal and other covered expenses. Scott Street sued the insurers for the balance. The insurers successfully moved for summary judgment, and Scott Street has filed this appeal.

Scott Street argues that the trial court erred in granting summary judgment because there are genuine issues of material fact left to be resolved. It asserts that it should be excused from being bound by the contract that Reynolds did not carefully read because there was "fraudulent representation" concerning the contents of the application and the policies. It cites *De Soto Life Ins. Co. v. Johnson*, 208 Ark. 795, 187 S.W.2d 883 (1945), for the general proposition that Woods was acting as the agent for the insurers and that in not providing Scott Street with "identical coverage" to the lapsed policy, the actions amounted to "constructive fraudulent misrepresentations" about the coverage afforded. Further, Scott Street specifically points to the language on the declarations pages which states, "This certificate of coverage, being in the amount of $147,000.00 represents its pro rata share of the total amount of coverage of $585,000.00," and asserts that the language was too ambiguous to be interpreted by a lay person. We find these arguments unpersuasive.

It is appropriate for a trial court to grant summary judgment when it is clear that there are no genuine issues of material fact to be litigated and the moving party is entitled to judgment as a matter of law. *Watkins v. Southern Farm Bureau Cas. Ins. Co.*, *supra*. On appellate review, we must determine whether summary judgment was proper based on whether the evidence presented by the moving party, viewed in the light most favorable to

the party resisting the motion, left a material fact unanswered. *Id.* Where there are no disputed material facts, our review must focus on the trial court's application of the law to those undisputed facts. *Id.* When the facts are not at issue but possible inferences therefrom are, we will consider whether those inferences can be reasonably drawn from the undisputed facts and whether reasonable minds might differ on those hypotheses. *Id.*

We note first that there are no material facts in dispute. Scott Street essentially concedes that its agent, Reynolds, signed the application after being given time to review it. Further, Reynolds reported the negotiation he had with Woods in which he approved the plan to insure the buildings individually, a situation reflected not only on the application but also on the declarations pages of the policies that Reynolds admitted receiving. It is well settled in Arkansas that one is bound under the law to know the contents of a paper he signs, and one cannot excuse himself by saying he did not know what it contained. *Carmichael v. Nationwide Life Ins. Co.*, 305 Ark. 549, 810 S.W.2d 39 (1991). Accordingly, Reynolds's assertion that he did not know what was contained in the application and policy declarations cannot create a fact question for a jury to decide. *Id.*

Likewise, Scott Street's argument that reliance on Woods, who filled out the application, resulted in "constructive fraudulent misrepresentations" about the coverage is thwarted by the rule in *Carmichael*, as Scott Street is deemed to know what was written in the application. Moreover, to establish constructive fraud, a plaintiff must show that a party with a legal or equitable duty to disclose made a false representation of material fact; had

knowledge that the representation was false or that there was insufficient evidence upon which to make the representation; and had the intent to induce action or inaction in reliance upon the representation; and that the plaintiff justifiably relied on the representation and suffered damages as a result of the reliance. *Farm Bureau Policy Holders and Members v. Farm Bureau Mut. Ins. Co. of Arkansas, Inc.*, 335 Ark. 285, 984 S.W.2d 6 (1998). In the instant case, Scott Street cannot make out a prima facie case of constructive fraud because the insurers were not under a duty to inform Scott Street that the coverage it purchased did not conform to the coverage that it believed it was getting. *Stokes v. Harrell*, 289 Ark. 179, 711 S.W.2d 755 (1986).

Finally, we reject Scott Street's contention that the declarations page was ambiguous. While there is some question as to whether this argument was properly preserved below, we dispose of this argument on the merits and hold that there is no ambiguity. We agree with Underwriters at Lloyd's London and Ace Global Markets Property, LTD., that equivalent language was held to be unambiguous in *Bratton v. St. Paul Surplus Lines Ins. Co.*, 17 Ark. App. 193, 706 S.W.2d 189 (1986). Whether there is an ambiguity in an insurance contract is a matter of law and therefore susceptible to summary judgment. *Nichols v. Farmers Ins. Co.*, 83 Ark. App. 324, 128 S.W.3d 1 (2003).

Affirmed.

BAKER and BROWN, JJ., agree.