

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 1661

RODERICK SIMS

VERSUS

MAISON INSURANCE COMPANY



Judgment Rendered: SEP 15 2017

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On Appeal from  
The 19<sup>th</sup> Judicial District Court,  
Parish of East Baton Rouge, State of Louisiana  
Trial Court No. C644504  
The Honorable Todd Hernandez, Judge Presiding

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BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

## **CRAIN, J.**

The plaintiff appeals a summary judgment dismissing his claim against an insurer based upon a finding of a material misrepresentation in the policy application. We reverse and remand.

### **FACTS AND PROCEDURAL HISTORY**

After his home was damaged by a fire, Roderick Sims made a claim under a homeowners' policy issued by Maison Insurance Company. Maison denied the claim, asserting the policy was voided by a material misrepresentation in the policy application. According to Maison, Sims misrepresented that no business is conducted on the premises when, in fact, he uses the home to conduct a business that acquires, restores, and sells automobiles.

Sims filed suit, and Maison responded with a motion for summary judgment seeking a dismissal of the claims based on the misrepresentation, citing a policy provision voiding coverage if the insured makes a material misrepresentation in the application with the intent to deceive. In support of the motion, Maison offered the policy application, which is attached to a facsimile cover sheet; a certified copy of the insurance policy; excerpts of a sworn statement from Sims; and an affidavit by a representative of the insurer, who attested Maison would not have issued the policy if it had known of the business operations on the premises.<sup>1</sup>

The policy application is a seven-page document. According to the attached cover sheet, the application was generated by an agent with MidSouth Insurance Agency, who faxed the document to Sims and requested he "sign and initial where requested and fax [the application] back to me as soon as possible." The fourth

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<sup>1</sup> Other exhibits include various information printed off the internet, including the Secretary of State's website, identifying business entities ostensibly associated with Sims, some of which identify the business's domicile as the home address. Although these exhibits are not proper evidence for purposes of a motion for summary judgment, the documents were submitted without objection. *See* La. Code Civ. Pro. arts. 966A(4) and D(2). These additional exhibits are not relevant to the issues we find determinative on appeal.

page of the application contains a list of 27 questions, all of which are answered with either a “Yes” or “No.” The first question asks, “Is there any business conducted on the premises?” The indicated answer is “No.” The application does not identify who provided the answer to that question or any of the remaining questions. The answers are type-printed rather than hand-written, and no initials or signatures appear anywhere on the page. The final two pages of the application contain signatures by Sims, one of which appears below a declaration that the applicant read the application and the information therein is “true, complete and correct to the best of my knowledge and belief.”

In the excerpts from Sims’ sworn statement taken after the fire loss, he acknowledged operating a business called “Roderick Classic Car Sales, LLC” out of his home for two years leading up to the fire. According to Sims, “I buy – go to the auctions and . . . buy cars and resell them. I fix classic cars up. So basically buy, resell, and restore/restoration.” Notably, the selected excerpts from the sworn statement contain no questions or statements about the completion of the insurance application, and, more particularly, who provided the answers to any of the questions on the fourth page. Sims was only asked how he got the insurance, to which he replied, “I Googled it off my phone and found them. So I gave them a call, and they gave me a quote.”

After taking the matter under advisement, the trial court ruled in favor of Maison, stating in written reasons that Sims made a misrepresentation in the application that materially affected the risk assumed by Maison, and, if the insurer had known of the operation of the businesses at the home, it would not have issued the policy. A judgment was signed granting Maison’s motion and dismissing Sims’ claims with prejudice. Sims appeals.

## DISCUSSION

A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show there is no genuine issue as to material fact and the mover is entitled to judgment as a matter of law. La. Code Civ. Pro. art. 966A(3). If the mover will bear the burden of proof at trial on the issue before the court in the motion, the burden of showing there is no genuine issue of material fact remains with the mover. *See* La. Code Civ. Pro. art. 966D(1); *Rider v. Ambeau*, 11-0532 (La. App. 1 Cir. 2/1/12), 100 So. 3d 849, 854. If the mover has made a *prima facie* showing the motion should be granted, the burden shifts to the non-moving party to present evidence demonstrating that a material factual issue remains. *Jones v. Estate of Santiago*, 03-1424 (La. 4/14/04), 870 So. 2d 1002, 1006. However, if a *prima facie* case has not been made, the opponent has nothing to prove in response to the motion. *See Hat's Equipment, Inc. v. WHM, L.L.C.*, 11-1982 (La. App. 1 Cir. 5/4/12), 92 So. 3d 1072, 1076.

Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing a motion for summary judgment, and all doubt must be resolved in the opponent's favor. *Willis v. Medders*, 00-2507 (La. 12/8/00), 775 So. 2d 1049, 1050. In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *In re Succession of Beard*, 13-1717 (La. App. 1 Cir. 6/6/14), 147 So. 3d 753, 759-60.

Maison relies on a policy provision that denies coverage to an insured who, in the procurement of the policy, "misrepresented any material fact" or "[i]ntentionally made false statements of fact which, if known to [Maison], would have caused [Maison] not to issue the policy." The conduct must be "committed with the intent to deceive."

The policy language follows Louisiana statutory provisions governing an insurer's ability to deny coverage based upon a misrepresentation in the policy application. *See* La. R.S. 22:860 and 1311F(2). Under these provisions, consistent with the terms of Maison's policy, the insurer can avoid coverage if it proves (1) the insured made a misrepresentation in the policy application, (2) the misrepresentation was material, meaning the insurer would not have issued the policy if the misrepresentation had not been made, and (3) the insured made the misrepresentation with the intent to deceive. *See* La. R.S. 22:860 and 1311F(2); *Darby v. Safeco Insurance Company of America*, 545 So. 2d 1022, 1026 (La. 1989); *Breaux v. Bene*, 95-1004 (La. App. 1 Cir. 12/15/95), 664 So. 2d 1377, 1380.<sup>2</sup>

A finding of intent to deceive is essential to defeating coverage. *See Cousin v. Page*, 372 So. 2d 1231, 1233 (La. 1979). Because of the inherent difficulties in proving intent, strict proof of fraud is not required to show the applicant's intent to deceive. Intent to deceive must be determined from surrounding circumstances indicating the insured's knowledge of the falsity of the representations made in the application, and his recognition of the materiality of his misrepresentations, or from circumstances that create a reasonable assumption that the insured recognized the materiality. *Cousin*, 372 So. 2d at 1233.

The evidence submitted by Maison establishes the policy application contains a misrepresentation that is material: it incorrectly states no business

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<sup>2</sup> Fire insurance policies are also subject to Louisiana Revised Statute 22:1314, which allows an insurer to void coverage for the breach of a representation or warranty if the breach exists at the time of the loss and increases the moral or physical hazard under the policy. *See Americas Insurance Company v. Chatman*, 13-0954, 2013WL6858314 at \*2 (La. App. 1 Cir. 12/27/13), *writ denied*, 14-0332 (La. 6/20/14), 141 So. 3d 808. Maison's motion for summary judgment is specific to the policy provision identified herein and does not invoke the grounds for cancellation under Section 22:1314. *See* La. Code Civ. Pro. art. 966F; *Wilson v. Two SD, LLC*, 15-0477 (La. App. 1 Cir. 12/23/15), 186 So. 3d 159, 162, *writ denied*, 16-0306 (La. 4/8/16), 191 So. 3d 588.

operations were conducted on the premises, and, if Maison had known of that misrepresentation, it would not have issued the policy. However, that does not complete Maison's burden of proof. The insurer must also establish an intent to deceive. *See Cousin*, 372 So. 2d at 1233. For that requirement, we must determine whether Maison made a *prima facie* case that no genuine issue of material fact exists relative to whether (1) Sims actually made the misrepresentation, and (2) if he did, that he understood its materiality. *See Cousin*, 372 So. 2d at 1233.

We begin by pointing out what evidence is not in the record. Maison offered no affidavits or deposition testimony about the completion of the application from either Sims or the agent, the two people presumably involved in the procurement of the policy. Sims gave a sworn statement, but the selected excerpts introduced by Maison do not address the completion of the application. Sims stated only that he discovered Maison through an internet search, contacted the insurer, and received a quote. The excerpts do not include any exchanges about the policy application. Maison introduced no affidavit or deposition testimony from the agent, either about the application process in general or the specific completion of the application for Sims' policy. On the key issue of intent to deceive, the record contains only the application and the cover sheet used by the agent to fax the application to Sims.

The application does not identify whether the agent or Sims answered the questions on the fourth page of the document. No declarations, signatures, or initials appear on the page. The cover sheet for the fax transmittal indicates the agent faxed the completed application to Sims with instructions to "sign and initial where requested" and "fax back" the document "as soon as possible." Sims apparently complied with the agent's instructions by signing and initialing the application in several places. This limited evidence, without any pertinent

testimony from Sims or the agent, sheds no light on who actually provided the incorrect answer to the question at issue.

We note that Sims' signature does appear on the final page under a declaration stating the applicant reviewed the application and the information contained therein is correct. Generally, one who signs a document is presumed to have done so with knowledge of its contents, regardless of whether he actually read it. *See Coleman v. Jim Walter Homes, Inc.*, 08-1221 (La. 3/17/09), 6 So. 3d 179, 183. However, in the case of insurance contracts, if the insurer's agent undertakes to fill out and complete the policy application, the agent's acts, representations, and mistakes, if any, are considered to be those of the insurance company. *Americas Insurance Company v. Chatman*, 13-0954, 2013WL6858314 at \*3 (La. App. 1 Cir. 12/27/13), *writ denied*, 14-0332 (La. 6/20/14), 141 So. 3d 808. If the agent by reason of mistake, fraud, omission or negligence inserts erroneous or untrue answers to the questions contained in the application, such representations bind the insurer but not the insured, provided the insured is justifiably ignorant thereof, has no actual or implied knowledge thereof, and has been guilty of no bad faith or fraud. *Id.*

Thus, despite the declaration above Sims' signature, for purposes of proving an intent to deceive, the threshold questions remain the same: who put the incorrect information in the application, Sims or the agent, and, if the latter, was Sims aware of the error? Those questions are not answered by the evidence before the court.

Even if Sims could be held accountable for the misrepresentation, the evidence also fails to establish he knew the information was material to the issuance of the policy. Maison presented nothing allowing for even an inference as to why the subject question was answered incorrectly, whether intentionally or by oversight, or if Sims knew or should have known of the significance, for purposes

of his insurance coverage, of operating a business out of his home. Without any explanation from the parties involved in the application process, the answers to these questions are left to speculation.

The decisive issues in this case turn on knowledge and intent. Summary judgment is rarely appropriate for disposition of a case requiring judicial determination of subjective facts such as intent, motive, malice, good faith, or knowledge. *Jarrell v. Travis*, 04-0117 (La. App. 1 Cir. 2/11/05), 906 So. 2d 551, 553. The limited evidence submitted by Maison leaves material facts unresolved and is not sufficient to place this case among the rare exceptions warranting summary judgment on such issues. The trial court thus erred in granting summary judgment and dismissing Sims' claims. See *Royal Maccabees Life Insurance Company v. Montgomery*, 97-1434 (La. App. 1 Cir. 6/29/98), 716 So. 2d 921, 926, writ denied, 98-2664 (La. 12/11/98), 730 So. 2d 940 (summary judgment reversed based on factual issues relating to whether applicant made a false statement in the policy application that materially affected the insured risk and whether any misrepresentation was done with an intent to deceive); *Breaux v. Bene*, 95-1004 (La. App. 1 Cir. 12/15/95), 664 So. 2d 1377, 1382 (determination of whether applicant had intent to deceive in policy application required a credibility determination that was not appropriate for summary judgment); *Kahl v. Chevalier*, 15-1028 (La. App. 3 Cir. 3/23/16), 188 So. 3d 449, 456 (genuine issues of material fact precluded summary judgment in favor of insurer claiming material misrepresentation in policy application); *Estate of Dausat v. Eagle American Insurance Company*, 06-333 (La. App. 3 Cir. 10/11/06), 941 So. 2d 166, 170 (evidence that agent, instead of applicant, completed policy application presented issue of material fact on intent to deceive that precluded summary judgment).



## **CONCLUSION**

The summary judgment is reversed, and the case is remanded for further proceedings. All costs of appeal are assessed to Maison Insurance Company.

**REVERSED AND REMANDED.**