STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0126

J & M PILE DRIVING, LLC

VERSUS

CHABERT INSURANCE AGENCY, LLC

Judgment Rendered: OCT 25 2017

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On Appeal from the Seventeenth Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
No. 118398

Honorable F. Hugh Larose, Judge Presiding

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Theriot, J. Concurs

BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

Welch, J. dissents and assigns reasons.

McCLENDON, J.

The plaintiff appeals the judgment of the trial court that dismissed its suit for damages. The plaintiff, the owner of a vessel, asserted that the defendant insurance agency failed to secure insurance on the vessel before it sank. Finding no manifest error in the trial court's judgment, we affirm.

FACTS AND PROCEDURAL HISTORY

In August of 2010, the plaintiff, J&M Piling Driving, LLC (J&M), requested a quote for protection and indemnity (P&I) insurance and hull insurance from Chabert Insurance Agency, LLC (Chabert), on a newly-acquired vessel, the M/V Lil Cherie. The M/V Lil Cherie sank on September 21, 2010. J&M learned it had no insurance coverage on the vessel after its claim was denied. Thereafter, J&M filed suit against Chabert, asserting that it was informed and believed it had full insurance coverage on the M/V Lil Cherie. J&M alleged that Chabert never added the M/V Lil Cherie to J&M's existing policy as requested and that Chabert was therefore responsible for any and all damages suffered by J&M, including the value of the vessel, personal items on the vessel, salvage of the vessel, and loss of income.

Following a bench trial on March 31, 2016, the trial court took the matter under advisement so that the parties could take the trial deposition of a former insurance agent at Chabert. The trial court issued written reasons for judgment on October 7, 2016, finding that Chabert did not breach its duty to J&M to procure insurance. The court determined that Chabert used reasonable diligence in trying to obtain insurance on the vessel and notifying J&M of the lack of coverage. The trial court also found that J&M failed to meet its burden to recover under the theory of detrimental reliance. On October 7, 2016, the trial court signed its judgment in favor of Chabert, dismissing J&M's claims with prejudice.

J&M timely filed a devolutive appeal and assigned the following as error:

1. An insurance agent who undertakes to procure insurance for another has a duty to use reasonable diligence to place the insurance or to promptly notify the client if he has failed to obtain insurance. Because Chabert Insurance Agent Chris Brantley not only failed to obtain insurance – but provided J&M a

certificate of insurance – Chabert breached its duty to procure hull coverage for the M/V Lil Cherie; and

2. Because Chabert Insurance Agent Chris Brantley provided a certificate of insurance upon which J&M based its decision to lease the M/V Lil Cherie, the trial court erred by denying J&M recovery under detrimental reliance.

LAW AND DISCUSSION

Standard of Review

It is well settled that a court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The issue to be resolved by the reviewing court is not whether the factfinder was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart v. State through Dept. of Transp. and Dev.**, 617 So.2d 880, 882 (La. 1993). Where factual findings are based on determinations regarding the credibility of witnesses, the trier of fact's findings demand great deference. **Boudreaux v. Jeff**, 03-1932 (La.App. 1 Cir. 9/17/04), 884 So.2d 665, 671; **Secret Cove, L.L.C. v. Thomas**, 02-2498 (La.App. 1 Cir. 11/7/03), 862 So.2d 1010, 1016, writ denied, 04-0447 (La. 4/2/04), 869 So.2d 889. Thus, where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart**, 617 So.2d at 883. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Rosell**, 549 So.2d at 844.

J&M asserts that the manifest error standard of review does not apply when the trial court relies totally upon depositions of one party in rendering its decision, citing the cases of **Ryan v. State**, 477 So.2d 110 (La.App 1 Cir.), writ denied, 478 So.2d 136 (La. 1985), and **American Cas. Co. v. Hartford Ins. Co.**, 479 So.2d 577 (La.App. 1 Cir. 1985), in support of its argument. However, the supreme court in **Virgil v. American Guarantee & Liability Ins. Co.**, 507 So.2d 825 (La. 1987) (per curiam) held that the manifest error standard of appellate review applies even "when the evidence before the

trier of fact consists solely of written reports, records and depositions." **Virgil**, 507 So.2d at 826. In **Shephard on Behalf of Shepard v. Scheeler**, 96-1690 (La. 10/21/97), 701 So.2d 1308, the supreme court reaffirmed its holding in **Virgil**, reiterating that Louisiana's three-tiered court system allocates the fact finding function to the trial court, and that because of this institutional function great deference is accorded to the trial court's factual findings, even when the record consists solely of documentary evidence. **Shepard**, 701 So.2d at 1316. See also **Lindsay v. Greater New Orleans Expressway Com'n**, 07-0222 (La.App. 1 Cir. 11/2/07) (unpublished); **Oil Ins. Ltd. v. Dow Chemical Co.**, 07-0418 (La.App. 1 Cir. 11/2/07), 977 So.2d 18, 23, writ denied, 07-2319 (La. 2/22/08), 976 So.2d 1284. Furthermore, we note that J&M's representative, Laurachel Soileau, testified at trial, and the trial court had the opportunity to observe her demeanor and evaluate her credibility.

Insurance Agent's Duty

An insurance agent has a duty to his client to procure insurance coverage. As explained in **Karam v. St. Paul Fire & Marine Ins. Co.**, 281 So.2d 728, 730-31 (La. 1973):

> An insurance agent who undertakes to procure insurance for another owes an obligation to his client to use reasonable diligence in attempting to place the insurance requested and to notify the client promptly if he has failed to obtain the requested insurance. The client may recover from the agent the loss he sustains as a result of the agent's failure to procure the desired coverage if the actions of the agent warranted an assumption by the client that he was properly insured in the amount of the desired coverage.

To recover for losses resulting from an insurance agent's failure to procure insurance coverage, the plaintiff must establish: (1) an undertaking or agreement by the insurance agent to procure insurance; (2) failure of the agent to use reasonable diligence to obtain insurance and to notify the client promptly of the absence of coverage; and (3) actions by the agent which warranted the client's assumption that he was insured in the amount of the desired coverage. **Prest v. Louisiana Citizens Property Ins. Corp.**, 12-0513 (La. 12/4/12), 125 So.3d 1079, 1085-86.

In this matter, it is undisputed that J&M owned three vessels between January 16, 2009, and September 21, 2010, and sought hull and P&I insurance for these vessels

from Chabert. A policy of insurance for hull and P&I insurance was issued on January 16, 2009, on the first vessel, a steel barge designated as B5, through Essex Insurance Company (Essex), the underwriter. The second vessel, the M/V Laurachel, was purchased in March 2010 and was added to the existing insurance policy after receiving a quote and paying a premium effective March 24, 2010.[1] The third vessel, the M/V Lil Cherie, was purchased by J&M on August 31, 2010, at which time J&M requested Chabert to add the M/V Lil Cherie to the existing policy.

The record establishes that J&M filled out an application for the M/V Lil Cherie and that Mr. Brantley submitted J&M's application to Chabert's insurance broker, Southern General Agency (SGA), on August 31, 2010. SGA confirmed the receipt of the application and that it was sent to Essex on September 3, 2010. What is disputed is what happened thereafter.

At trial, Laurachel Soileau, one of the owners of J&M, testified that Mr. Brantley informed her that the M/V Lil Cherie was fully covered when the application was submitted for hull and P&I insurance. According to Ms. Soileau, Mr. Brantley told her that the M/V Lil Cherie would be an add-on to the existing policy, similar to automobile policies. However, Mr. Brantley testified by deposition that he never indicated to Ms. Soileau that J&M had coverage on the M/V Lil Cherie. He testified that when a client requests insurance coverage on a marine vessel, the client has to fill out an application, which would be submitted to a commercial underwriter, and wait for a premium quote. Mr. Brantley stated that, unlike automobile policies, he could not quote marine insurance in-house. He testified that he did not have binding authority for marine insurance policies and each vessel had to be submitted to the underwriter as new coverage. According to Mr. Brantley, he was at the mercy of the underwriter. He also testified that it was not until after the quote was received and a premium payment made that coverage became binding.

Mr. Brantley followed up with SGA several times between the date of the filing of the application for the M/V Lil Cherie and the date the vessel sank. Copies of emails

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[1] After the M/V Lil Cherie sank, J&M learned that the M/V Laurachel was not insured although it paid a down payment and monthly premiums to a finance company. As a result of this discovery, the endorsement was applied retroactively to March 24, 2010, the date the quote was provided to J&M.

admitted into evidence show that he contacted SGA on September 8, September 14, and September 21, 2010. Particularly, the September 14, 2010 email stated: "Any update on the endorsements for this account? Insured is calling me everyday to see if I have something for him." A quote was never received on J&M's application for the M/V Lil Cherie.

The trial court specifically found Mr. Brantley's testimony to be more credible than J&M's witnesses and documentary evidence. It also determined that Mr. Brantley did not indicate to J&M that the M/V Lil Cherie was covered. The trial court found that Chabert timely processed J&M's application for insurance coverage and promptly sent the information to SGA for the determination of a quote. The court concluded that Chabert acted with reasonable diligence to procure insurance on the vessel and that Chabert timely advised J&M of its failure to obtain coverage. Upon our thorough review of the record, we can find no manifest error by the trial court in these factual findings. Accordingly, the trial court did not err in finding that Chabert was not responsible for J&M's losses based on a failure to use reasonable diligence to place the insurance or to promptly notify the client if he failed to obtain insurance.

Detrimental Reliance

J&M next argues that it relied on Mr. Brantley's assurances and is therefore entitled to recover its losses under the doctrine of detrimental reliance. The theory of detrimental reliance is codified in LSA-C.C. art. 1967, which provides, in pertinent part:

> A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable.

To establish detrimental reliance, a party must prove three elements by a preponderance of the evidence: (1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one's detriment because of the reliance. **Suire v. Lafayette City-Parish Consol. Government**, 04-1459 (La. 4/12/05), 907 So.2d 37, 59.

Having previously determined that Mr. Brantley did not tell J&M that their vessel was covered, the trial court found that J&M failed to meet its burden to recover under the theory of detrimental reliance. The trial court determined that J&M was aware that without a quote and a payment of the premium, the M/V Lil Cherie would not be insured. Additionally, although two certificates of liability insurance were improperly issued by Chabert, the trial court found that J&M could not have reasonably relied upon the certificates of liability insurance for hull coverage.[2] We find no manifest error in these findings and cannot say that the trial court was clearly wrong.

CONCLUSION

For the above and foregoing reasons, we affirm the October 7, 2016 judgment of the trial court in favor of the defendant, Chabert Insurance Agency, LLC. All costs of this appeal are assessed to the plaintiff, J&M Pile Driving, LLC.

AFFIRMED.

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[2] We note that a certificate of insurance is not the same as a binder. A binder is used to bind insurance temporarily pending the issuance of the policy. **All Crane Rental of Georgia, Inc. v. Vincent**, 10-0116 (La.App. 1 Cir. 9/10/10), 47 So.3d 1024, 1029, writ denied, 10-2227 (La. 11/19/10), 49 So.3d 387. The certificates issued in this matter each contained a disclosure that they were issued for informational purposes only and did not amend, extend, or alter the policy's coverage.

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WELCH, J., dissents.

I respectfully disagree with the majority opinion because the judgment of the trial court should be reversed. The record establishes that the insurance agent failed to inform the plaintiff that he was unable to get an insurance quote on the vessel and that they had no insurance, even though he had knowledge that the plaintiff were entering into a lease of the vessel. Next, the insurance agent gave certificates of insurance to two separate entities indicating that the boat was covered by insurance. This would lead an unsophisticated person to believe that the vessel was covered by insurance. Therefore, the insurance agency and agent should be liable for the damages sustained by plaintiff's when the vessel sank.

Thus, I respectfully dissent.