STATE OF MICHIGAN

COURT OF APPEALS

DEMARIA BUILDING COMPANY, INC., HOLLOWCORE, INC. and BITUMINOUS INSURANCE COMPANIES,

Plaintiffs-Appellees,

v

STEWARD GROUP,

Defendant-Appellant,

and

ASSEMBLERS, INC.,

Defendant.

UNPUBLISHED
April 10, 2001

No. 217143
Oakland Circuit Court
LC No. 98-005621-CK

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

MEMORANDUM.

Defendant Steward Group appeals as of right from an order denying its motion to quash service of process and from an order granting plaintiffs' motion for partial summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs were unable to effectuate service of process on defendant in the manner provided under MCR 2.105(D) and obtained an order allowing them to serve defendant's liability insurer instead. Service on a defendant's liability insurer is proper if the insurer could be held liable for the plaintiff's damages in the event the defendant were held liable to the plaintiff. *Hayden v Gokenbach*, 179 Mich App 594, 598-599; 446 NW2d 332 (1989), amended 435 Mich 856 (1990). Assuming that defendant is correct and coverage was not available for plaintiffs' claims predicated upon written indemnification agreements, "an insurer has a duty to defend, despite theories of liability asserted against an insured which are not covered under the policy, if there are any theories of recovery that fall within the policy." *Western Fire Ins Co v J R Snyder, Inc*, 76 Mich App 242, 249; 256 NW2d 451 (1977). Because defendant has not shown that all

* Circuit judge, sitting on the Court of Appeals by assignment.

theories of liability alleged in the complaint are not covered under the policy, it has failed to prove that coverage was not available under the policy and thus that service on the insurer was improper. Accordingly, we affirm the trial court's order denying the motion to quash.

Defendant next contends that the trial court erred in granting plaintiffs' motion for partial summary disposition. We review the trial court's ruling on such a motion de novo on appeal. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997).

Plaintiffs sought judgment as to Count II of the complaint, which was predicated upon defendant's obligation to defend and indemnify DeMaria under the contract between those parties, and as to Count VII of the complaint, which was predicated upon defendant's obligation to defend and indemnify DeMaria under a written settlement agreement. The trial court ruled that plaintiffs were entitled to judgment as to both claims. Defendant argues that the court erred in granting judgment as to Count II because genuine issues of fact remained as to its liability under the contractual indemnification agreement. Because defendant has failed to address the trial court's ruling as to Count VII, an issue which must necessarily be reached to reverse the trial court, defendant is not entitled to relief. *Sargent v Browning-Ferris Indus*, 167 Mich App 29, 37; 421 NW2d 563 (1998); *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard