STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2187

Business Impact Group, LLC,
Appellant,

vs.

Stanton Group, LLC, et al.,
Respondents.

Filed July 13, 2010
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-CV-08-31616

Chad A. Johnson, Matthew J. Franken, Hellmuth & Johnson, Eden Prairie, Minnesota (for appellant)

Rolf E. Sonnesyn, Aaron M. Simon, Tomsche, Sonnesyn & Tomsche, Minneapolis, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

WRIGHT, Judge

Appellant challenges the grant of summary judgment on its negligence claim, arguing that the district court incorrectly applied the law regarding the duty of an

insurance agent and that a genuine issue of material fact exists as to whether respondents breached their duty. We affirm.

FACTS

Appellant Business Impact Group LLC (BIG) provides uniforms, marketing materials, and branded products to its clients. BIG stores most of its inventory in a warehouse attached to its Chanhassen office. In January 2007, BIG began to store some of its inventory at a warehouse in Green Isle.

Peter Vos is BIG's chief financial officer. When Vos began his employment with BIG in 2005, the chief executive officer instructed Vos to determine whether BIG's insurance needs could be met at a better price. Vos contacted respondent Tim Gonsior, an insurance agent employed by respondent Stanton Business Group LLC (Stanton Group). BIG subsequently purchased a liability policy through Gonsior for its officers and directors.

BIG insured its personal property under a policy issued by The Hartford (the Hartford policy). The Hartford policy covered only property kept at BIG's Chanhassen location. In late August 2007, BIG notified Hartford that Gonsior was its new agent and would be handling the upcoming policy renewal.

In early October 2007, Vos and Gonsior met at the Chanhassen office to discuss the renewal of the Hartford policy. Gonsior had prepared an insurance summary, which he reviewed "page by page" with Vos. The summary stated that the renewed policy would insure personal property located at the Chanhassen facility, and the insurance summary mentioned no other facilities.

According to Vos, he told Gonsior to obtain insurance coverage for BIG's inventory. Their discussion of BIG's inventory was limited to Vos telling Gonsior that "our warehouse was where we had our inventory." Vos gave Gonsior a tour of the Chanhassen facility during either the October 2007 meeting or a prior meeting in 2006. Vos described his tour in the following manner: "I walked [Gonsior] around our office and showed him this is our inventory, this is our warehouse." Vos did not inform Gonsior about the Green Isle facility, and Gonsior did not ask whether BIG stored inventory at other locations.

After Vos and BIG's chief executive officer reviewed the insurance summary, BIG renewed the Hartford policy through Gonsior and Stanton Group. The policy stated that it covered physical loss or damage to "Covered Property at the premises described in the Declarations." The Chanhassen facility is the only location listed in the declarations. When he received a copy of the policy, Vos "glanced" at it to verify the coverage amounts but did not read it "word for word."

In June 2008, Vos notified Gonsior via e-mail that BIG's "current inventory levels we have on hand" had increased. Vos requested that Gonsior "make sure [BIG is] covered accordingly" and suggested that the limits of the Hartford policy be increased to $3 million. Gonsior increased the limits from approximately $2.2 million to $3 million.

In July 2008, a fire occurred at the Green Isle storage facility, which destroyed inventory worth more than $1.2 million. BIG's insurance covered only $35,000 of the loss.

BIG sued Gonsior and Stanton Group (collectively respondents) for negligence and breach of contract, alleging that the Hartford policy did not provide adequate coverage. Respondents moved for summary judgment. In opposition to respondents' motion, BIG submitted the affidavit of an individual with 36 years of experience in the insurance industry. This individual opined that respondents breached the standard of care owed by insurance agents because they failed to identify all the locations of BIG's inventory.

After a hearing, the district court granted summary judgment in favor of respondents. The district court subsequently denied BIG's request for leave to move for reconsideration. This appeal followed.

D E C I S I O N

BIG argues that the district court erred by granting summary judgment on its negligence claim.[1] "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). On appeal from summary judgment, we review the district court's decision de novo to determine whether the district court erred in its application of law and whether a genuine issue of material fact exists. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). In doing so, we view the evidence in the light

[1] BIG does not challenge summary judgment on its breach-of-contract claim.

most favorable to the party against whom judgment was granted. *Fabio*, 504 N.W.2d at 761.

"[A]n insurance agent may be held liable under a negligence theory for a failure to procure insurance if the agent undertook such an obligation." *Peterson v. Brown*, 457 N.W.2d 745, 749 (Minn. App. 1990), *review denied* (Minn. Aug. 23, 1990). In a negligence action against an insurance agent, the plaintiff must show (1) the existence of a duty; (2) a breach of the duty; (3) causation; and (4) damages. *Johnson v. Urie*, 405 N.W.2d 887, 891 (Minn. 1987). The existence of an insurance agent's legal duty presents a question of law, but the underlying facts are resolved by the factfinder. *Gabrielson v. Warnemunde*, 443 N.W.2d 540, 543 n.1 (Minn. 1989).

An insurance agent has a legal duty "to exercise the skill and care which a reasonably prudent person engaged in the insurance business [would] use under similar circumstances." *Id.* at 543 (alteration in original) (quotation omitted). This duty ordinarily is limited to the obligations to act in good faith and to follow instructions. *Id.* But if "special circumstances" exist in the agency relationship, the insurance agent "may possibly be under a duty to take some sort of affirmative action, rather than just follow the instructions of the client." *Id.* at 543-44.

BIG argues that the district court erred by determining that no special circumstances exist here. But in the district court, BIG conceded that it could not in good faith argue the existence of special circumstances. BIG, therefore, is without a legal basis to challenge the district court's conclusion that it has not argued and has not demonstrated the existence of any special circumstances that would give rise to a duty

beyond that of acting in good faith and following instructions. *See In re Estate of Grote*, 766 N.W.2d 82, 88 (Minn. App. 2009) ("When a party has taken a position at the district court level, it may not change its position on appeal." (quotation omitted)).

BIG also argues that the district court erred by disregarding the affidavit of BIG's expert. BIG contends that this affidavit establishes that Gonsior had a duty to ask where BIG's inventory was located. But again, in the absence of special circumstances, the duty of the reasonably prudent insurance agent is limited to acting in good faith and following instructions. *Gabrielson*, 443 N.W.2d at 543; *see also Scottsdale Ins. Co. v. Transp. Leasing/Contract, Inc.*, 671 N.W.2d 186, 196 (Minn. App. 2003) ("Unless there is a special circumstance or relationship, the agent's duty is to act in good faith and to simply follow the instructions of the insured."), *review denied* (Minn. Sept. 24, 2003); *Higgins ex rel. Higgins v. Winter*, 474 N.W.2d 185, 188 (Minn. App. 1991) (stating that when special circumstances do not exist, an insurance agent's duty is "no greater than accomplishing what [the clients] specifically instructed it to do"), *review denied* (Minn. Oct. 7, 1991). Because the affidavit does not address whether Gonsior acted in good faith or followed his client's instructions, the district court properly disregarded it.

Finally, BIG argues that a genuine issue of material fact exists as to whether Gonsior complied with BIG's instructions. BIG contends that Gonsior was instructed to insure BIG's entire inventory, regardless of its location. We disagree. Viewing the evidence in the light most favorable to BIG, the directions given to Gonsior were quite clear. Vos told Gonsior to obtain insurance coverage for BIG's inventory. He further told Gonsior that the inventory was kept in the Chanhassen warehouse. Given these

instructions, which defined the location of the goods to be insured, it was not reasonable to expect Gonsior to ask additional questions about the location of BIG's inventory. It is undisputed that Gonsior followed the instructions to insure the inventory stored in the Chanhassen warehouse. The evidence that Gonsior followed the June 2008 instructions to increase the coverage limits of the Hartford policy also is uncontroverted. And the record is devoid of any evidence that Gonsior knew or should have known before the fire that BIG was storing inventory at a location other than the Chanhassen warehouse. Accordingly, we conclude that a genuine issue of material fact does not exist as to whether Gonsior followed Vos's instructions.

Because there is no genuine issue of material fact as to whether Gonsior followed his client's instructions, and because the district court did not err in its application of the law, we affirm the summary judgment in favor of respondents on the negligence claim.

Affirmed.