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Stroman Realty, Inc. v. State Farm Lloyds



Not Reported in S.W.3d, 2003 WL 22672223

Tex.App.-Beaumont,2003.

November 13, 2003 (Approx. 3 pages)

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Briefs and Other Related Documents

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MEMORANDUM OPINION

Court of Appeals of Texas,
Beaumont.

STROMAN REALTY, INC. and Ad-Net, Inc., Appellants,

v.

STATE FARM LLOYDS and Mack Barnhill, Appellees.

No. 09-02-508 CV.

Submitted Nov. 3, 2003.

Delivered Nov. 13, 2003.

Background: Real estate broker and uninsured company, under common ownership with insured real estate broker, sued insurer and insurance agent alleging violation of Texas Insurance Code, violation of Deceptive Trade Practices Act (DTPA), breach of duty of good faith and fair dealing, and negligence. The 359th District Court, Montgomery County, James H. Keeshan, Jr., J., granted summary judgment in favor of insurer and agent. Broker and uninsured company appealed.

Holdings: The Court of Appeals, held that:

- (1) insurer and agent could not be liable for breach of contract;
- (2) agent did not make any false, misleading, or deceptive statements, actionable under DTPA or Insurance Code, in failing to provide coverage under liability policy for company under common ownership with insured real estate broker; and
- (3) agent had no legal duty to extend coverage or create a new policy for uninsured company.

Affirmed.

West Headnotes



[1] KeyCite Notes

↳ 217 Insurance

↳ 217XI Agents and Agency

↳ 217XI(D) Agents for Applicants or Insureds

↳ 217k1668 Duties and Liabilities to Insureds or Others

↳ 217k1671 k. Failure to Procure Coverage. Most Cited Cases



↳ 217 Insurance KeyCite Notes

↳ 217XVII Coverage--Liability Insurance

↳ 217XVII(A) In General

↳ 217k2272 k. Persons Covered. Most Cited Cases

Liability insurer and agent could not be liable for breach of contract with respect to company that was under common ownership with insured real estate broker, but that was not itself covered by policy.

[2] KeyCite Notes

- ↳ 29T Antitrust and Trade Regulation
 - ↳ 29TIII Statutory Unfair Trade Practices and Consumer Protection
 - ↳ 29TIII(C) Particular Subjects and Regulations
 - ↳ 29Tk221 k. Insurance. Most Cited Cases
(Formerly 92Hk6 Consumer Protection)

↳ 217 Insurance KeyCite Notes

- ↳ 217XI Agents and Agency
 - ↳ 217XI(D) Agents for Applicants or Insureds
 - ↳ 217k1668 Duties and Liabilities to Insureds or Others
 - ↳ 217k1669 k. In General. Most Cited Cases

Insurance agent did not make any false, misleading, or deceptive statements, actionable under Deceptive Trade Practices Act (DTPA) or Insurance Code, in failing to provide coverage under liability policy for company under common ownership with insured real estate broker, although name of uninsured company was included in some faxes requesting that inventory be included in coverage, where insured real estate broker was always named on cover sheet for those faxes, and there was never specific request to include uninsured company under policy. V.T.C.A., Bus. & C. § 17.41 to 17.63; V.A.T.S. Insurance Code, § 21.21.

[3] KeyCite Notes

- ↳ 217 Insurance
 - ↳ 217XI Agents and Agency
 - ↳ 217XI(D) Agents for Applicants or Insureds
 - ↳ 217k1668 Duties and Liabilities to Insureds or Others
 - ↳ 217k1671 k. Failure to Procure Coverage. Most Cited Cases

Insurance agent had no legal duty to extend coverage or create a new policy for uninsured company, under common ownership with insured real estate broker, merely because agent knew that uninsured company existed, knew that it was part of owner's business interests, and knew that owner had insured the broker through same insurer.

On Appeal from the 359th District Court, Montgomery County, Texas, Trial Court Cause No. 00-04-02527 CV.

Christopher Beck, Baker & Beck, P.C., Conroe, for appellants.

Brian M. Chandler, **Ronald P. Schramm**, Ramey, Chandler, McKinley & Zito, P.C., Houston, for appellees.

Before McKEITHEN, C.J., BURGESS and GAULTNEY, J.J.

MEMORANDUM OPINION

PER CURIAM.

*1 Appellants, Ad-Net, Inc. and Stroman Realty, Inc. sued appellees, State Farm Lloyds and Mack Barnhill for breach of contract, violation of TEX. INS.CODE ANN. § 21.21 (Vernon 1981 & Supp.2003), violation of TEX. BUS. & COM.CODE ANN. §§ 17.41-17.63 (Vernon 2002) ("DTPA"), breach of a duty of good faith and fair dealing, and negligence. State Farm and Barnhill first moved for partial

summary judgment on the breach of contract claim. The trial court granted this motion. State Farm and Barnhill then moved for summary judgment on the remainder of appellants' issues, and the trial court entered a final summary judgment. Appellants complain of the trial court's granting of both motions.



[1] The essence of appellees motion for partial summary judgment was simply that there was no evidence of the existence of a contract between appellees and appellant Ad-Net. Appellants presented no evidence of the existence of an insurance policy listing Ad-Net as the insured. Appellants failed in their burden to present a genuine fact issue on the existence of a valid insurance policy with Ad-Net as named insured. See generally *Kent v. Citizens State Bank*, 99 S.W.3d 870, 871 (Tex.App.-Beaumont 2003, pet. denied)(contract claim depends on existence of contract). The trial court did not err in granting the partial motion for summary judgment on the breach of contract issue. Issues one, two, and three are overruled.

Although the final motion for summary judgment included both "no evidence" and "traditional" summary judgment language, our analysis will focus on the traditional standard. A summary judgment for a defendant will be upheld when the defendant negates an essential element of plaintiff's theory of recovery. See *Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex.1997). The final summary judgment in the instant case does not specifically state the grounds on which it was granted; under these circumstances an appellate court must affirm a summary judgment if any of the asserted summary judgment grounds are meritorious. See *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 872-73 (Tex.2000).



[2] Appellants' Insurance Code and DTPA claims focused on alleged false, misleading, or deceptive representations on the part of Barnhill as the insurance agent representing State Farm Lloyds. However, an examination of the deposition of Wayne Stroman, president of Stroman Realty, Inc. and president and owner of Ad-Net, Inc., upon whose testimony both parties rely, provides no support for appellants' allegations. By Stroman's own testimony, he was responsible ultimately for Ad-Net's not being named as an insured on any insurance policy. The entirety of Stroman's testimony consisted of admitting to being unaware of even very basic or generalized knowledge of the insurance circumstances of appellant Ad-Net. Stroman's deposition contains many responses using the ambiguous word "we" with regard to insurance coverage for his many companies and business interests. Stroman was under the mistaken impression that Ad-Net, Inc. was covered by liability insurance as an entity separate and distinct from Stroman Realty, Inc. But nowhere in Stroman's deposition testimony does he explicitly state that he or anyone else in his employ ever made a specific request to Mack Barnhill to cover Ad-Net, Inc. in a separate liability insurance policy. Nor does his deposition indicate that at any time Stroman specifically requested that Barnhill add Ad-Net, Inc. to the existing policy for Stroman Realty, Inc.

*2 The documentary evidence submitted by both parties in support of their respective positions are virtually identical. Appellants' documents indicate a single insurance policy listing the policyholder as, "Stroman Realty, Inc. dba ERA Stroman," was issued by State Farm Lloyds. The only additional named insureds reflected on the face of the policy were "ERA, L.P." and "G & M Properties." Thereafter, the documentary evidence indicates several occasions in which faxes from Stroman Realty were sent to Barnhill requesting various office inventory be added to "our Policy" or "our Insurance Policy, or "our Insurance." Although these faxes included various receipts, cancelled checks, and inventory reports containing the words "Ad-Net, Inc.," the cover-sheet for each set of faxes bore a large "Stroman Realty" logo prominently displayed. Taken out of context, these documents are no evidence in support of either the Insurance Code or DTPA causes of action. Taken in context with Stroman's deposition testimony and the single insurance policy naming Stroman Realty, Inc. as insured, the documents do not rise to the scintilla of evidence necessary to raise a fact issue on either the Insurance Code or DTPA causes of action. Summary judgment was proper as to these claims.



[3] We combine discussion of appellants' "duty of good faith and fair dealing" and common law negligence causes of action. We recognize appellants' issue six, that appellees did not explicitly include the negligence cause in their final motion for summary judgment. While we agree that the negligence cause was not segregated in the motion, the lack of "duty" issue was fully and completely covered by appellees, and established as a matter of law. See Lear Siegler, Inc., v. Perez, 819 S.W.2d 470, 471 (Tex.1991).

The controlling authority cited by appellees to the trial court and on appeal is McCall v. Marshall, 398 S.W.2d 106 (Tex.1965). We quote from the opinion:

An insured's expectation of the agent to either renew his policy or at least inform him of the impending lapse is different from an expectation for extended coverage.... We are to be understood as holding that no legal duty arises on the part of an insurance agent to extend the insurance protection of his customer merely because the agent has knowledge of the need for additional insurance of that customer, especially in the absence of evidence of prior dealings where the agent customarily has taken care of his customer's needs without consulting him.

Id. at 109. Stretching Stroman's deposition testimony to its limits, all that can be said is that Barnhill knew of the existence of Ad-Net, Inc., that Ad-Net, Inc. was part of Wayne Stroman's various business interests, and that Stroman had insured Stroman Realty, Inc. with State Farm Lloyds through Barnhill. Under the holding of McCall, however, this purported knowledge on Barnhill's part did not give rise to a legal duty to extend coverage to Ad-Net, Inc., or to cause a new policy to be created for Ad-Net, Inc. Under McCall, summary judgment was proper on the "duty of good faith and fair dealing" and negligence causes of action. We overrule issues four, five, and six.

*3 Summary judgment is affirmed.

AFFIRMED.

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