

JUN062014

3

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 PATRICK L. RICHBURG,)
)
 Plaintiff,)
)
 -vs-)
)
 SOUTH CAROLINA FARM BUREAU)
 MUTUAL INSURANCE COMPANY,)
)
 Defendant.)

2014 JUN -3) P 12: 4

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

IN THE COURT OF COMMON PLEAS

RECEIVED

DEC 5 2014

S.C. Supreme Court

ORDER DENYING MOTION
TO ALTER OR AMEND

Case Number: 2010-CP-32-03359

The plaintiff has moved for the court to reconsider and alter or amend its order granting summary judgment to the defendant. The plaintiff asserts various grounds, including the position that the court did not rule on the causes of action for promissory estoppel and negligent misrepresentation. To the extent that the order did not specifically rule on those causes of action, the court alters or amends the order to reflect that the defendant is entitled to summary judgment on all causes of action. In all other respects, the motion is denied.

WAC #1

Plaintiff's counsel did an excellent job of briefing the issues for court prior to the original hearing, and attached numerous exhibits for the court's review.¹ The court is aware of the scintilla rule and the admonition of caution concerning a court summarily dismissing cases. In this instance, the court believes that the material facts are clear, that it has construed them in the light most favorable to the plaintiff, and that the basis of the ruling is a respectful disagreement with the plaintiff's interpretation of the applicable law.

¹ The parties were notified that the court would decide the motion on written submissions. Both parties apparently relied upon what had been filed, and no additional submissions were obtained.
 Page | 1

RECEIVED

DEC 09 2014

SC Court of Appeals

Mr. Richburg was an independent contractor who worked as a sales agent for South Carolina Farm Bureau Mutual Insurance Company (SCFB). At the relevant time, he had been with SCFB for over 16 years. Mr. Richburg maintained his own automobile liability policy through SCFB and acted as his own agent, which SCFB permitted. It is undisputed that, over the course of years, Mr. Richburg had allowed the policy to lapse on occasion and then reinstated the policy without a lapse of coverage.

The policy was set to cancel on August 28, 2008, at 12:01 a.m. Mr. Richburg received written notice that the policy would terminate for non-payment at that time. Viewing the evidence in the light most favorable to the plaintiff, Mr. Richburg printed a Change Request Form and attached a check to it on the afternoon of August 28, 2008, then placed those things on his desk. As to any non-agent, it is admitted that this would bind coverage on the policy. Again, in the light most favorable to the plaintiff, SCFB had not advised Mr. Richburg that this was not an effective way to bind coverage where its agents were the insured. All of those issues, and others, were addressed in the prior order.

WPC
#2

Over a month later, on September 20, 2008, Mr. Richburg was involved in a motor vehicle collision. The paperwork had never been forwarded from Mr. Richburg and the check had not been negotiated. In the court's view, SCFB had not ratified coverage, and the actions of Mr. Richburg in writing the check, completing the form, and placing those things on his desk were not sufficient to bind SCFB's coverage in this instance.

The plaintiff disagrees with the court's interpretation. If the court is incorrect in its interpretation, it apologizes for the mistaken application of the law. The court finds that there is

a critical difference between persons in Mr. Richburg's position and third parties who have no relationship with the insurance company other than being insured.

As to the specific causes of action that the plaintiff claims were not covered in the previous ruling, the court previously considered the arguments related to promissory estoppel and negligent misrepresentation. Those issues were well-presented in the plaintiff's brief.

As pointed out in the brief, negligent misrepresentation requires that the defendant made a false representation to the plaintiff, that the defendant had a pecuniary interest in making the statement, that the defendant owed a duty of care to see that it communicated truthful information to the plaintiff, that the defendant breached that duty by failing to exercise due care, that the plaintiff justifiably relied on the representation, and that the plaintiff suffered a pecuniary loss as a proximate result of his reliance. The court does not believe that there is evidence that the defendant made any misrepresentations, nor evidence that it owed a duty to inform the agents that they would be treated differently than other insured persons in this situation, and the court does not believe that there is evidence of justifiable reliance in this particular factual scenario.

The brief cites the elements of promissory estoppel, as follows: the presence of a promise unambiguous in its terms; reasonable reliance on the promise by the plaintiff; that the reliance upon the promise be expected and foreseeable by the defendant; and, that the plaintiff suffered damages in reliance upon the promise. Again, the court feels that it has addressed the factual scenario and the application of law in the previous order. It is the court's view that there is no evidence of a binding, unambiguous promise made by the defendant or any justifiable reliance upon it by the plaintiff, in this situation. There are conflicting interests that the law must protect, and it is the court's view (though it may be incorrect) that South Carolina would

recognize that this situation is different than a situation where the company is dealing with a third party.

THEREFORE, IT IS ORDERED, that the motion to alter or amend is denied, except to the extent that the court specifically rules that summary judgment is granted as to all causes of action.

AND IT IS SO ORDERED.

May 29
~~January 22, 2014~~

William P. Keesley

William P. Keesley, Judge

h4

FILED
2014 JUN -3 P 12:50
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC