

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

) Civil Action No. 2018-CP-29-00794

NGM Insurance Company,

Plaintiff

RECEIVED

) ORDER GRANTING DEFENDANT'S
) MOTION TO ALTER OR AMEND,
) DENYING PLAINTIFF'S MOTION
) FOR RECONSIDERATION AND
) GRANTING SUMMARY JUDGMENT
) TO DEFENDANT

v.

OCT 07 2019

Miles Insurance Agency, Inc.

SC Court of Appeals

Defendant.

This matter is before the Court on Plaintiff's and Defendant's motions to alter or amend the order of the Court filed May 30, 2019 denying both parties' motions for summary judgment. Defendant's motion to alter or amend was filed and served on June 6, 2019. Plaintiff's motion for reconsideration was filed and served June 10, 2019. Therefore, both motions were timely made.

Upon reconsideration of this matter, specifically Exhibit A to Defendant's memorandum in support of its motion for summary judgment discussed below, the Court GRANTS Defendant's motion to alter or amend, GRANTS summary judgment in favor of Defendant, DENIES Plaintiff's motion for reconsideration, and substitutes this Order for the previous Order denying summary judgment filed May 30, 2019.

FACTS AND PROCEDURAL HISTORY

Jerry and Janet Webster were customers of Miles Insurance Agency and had been insured under an automobile policy issued by General Accident prior to 2001. General Accident Insurance thereafter ceased doing business in South Carolina, and Miles Agency contacted the Websters to recommend that they switch their coverage to NGM Insurance Company. Mrs. Janet Webster went to Miles Agency on January 5, 2001 and signed an application for insurance with NGM in which she requested liability coverage of \$50,000/\$100,000 and uninsured coverage of \$50,000/\$100,000, but rejected underinsured motorist coverage. Her husband was injured in an automobile accident on June 30, 2012, and the Websters thereafter brought an action to reform the NGM policy to include UIM coverage, arguing that Miles Agency failed to make a meaningful offer of UIM coverage.

The trial court in the reformation action found that Miles Agency failed to avail itself of the safe harbor provision of S.C. Code Ann. §38-77-350 because it failed to fill in the blanks on the form to show the Insured the amount of additional premiums which would be charged for UIM coverage. In addition, the trial court found that Miles Agency failed to meet its burden of proving that it had otherwise made a meaningful offer of UIM coverage. The trial court ordered that the policy be reformed to provide UIM coverage of \$50,000/\$100,000 for 7 covered vehicles, or

\$350,000 in available coverage. NGM thereafter settled the case with the Websters and tendered payment in the amount of \$300,000.00. NGM did not appeal the trial court's order.

NGM then brought this action against Miles Insurance Agency alleging breach of contract, contractual indemnity, and equitable indemnity. NGM seeks damages for the \$300,000 it paid to settle the Websters' suit, along with the attorney fees and costs incurred by NGM in defending the reformation lawsuit brought by the Websters, and the attorney fees and costs incurred in the present suit.

MILES AGENCY'S MOTION FOR SUMMARY JUDGMENT

Miles Agency moves for summary judgment arguing: (1) NGM has suffered no damages; and (2) NGM is not entitled to contractual or equitable indemnity where it was negligent in accepting an application that had not been properly executed.

Regarding, Miles' second ground for seeking summary judgment, the Court finds that reaching a conclusion as to NGM's negligence would involve an inherently factual determination requiring that summary judgment be denied, were that the only ground on which summary judgment had been sought.

However, Miles also argues that NGM has no damages in the present suit because if Miles' agents had made a meaningful offer of UIM, then Janet Webster would have elected to purchase UIM, and NGM would have been required to issue the policy with UIM coverage. This court agrees that NGM would be legally obligated to issue the UIM coverage had it been requested.

In support of its motion for summary judgment, Miles filed a portion of the trial transcript from the reformation action in which Mrs. Webster had testified that she would have purchased UIM coverage if a meaningful offer had been made.

Q. Okay. You claim that you did not receive a meaningful offer of UIM coverage. I take it your position is that if you had gotten a UIM coverage offer that you would have bought it?

A. Yes, sir.

Q. So even if it greatly increased the amount of premiums you had to pay, if you had known what UIM coverage was your position is you would have purchased it.

A. Yes, sir.

Trial Transcript, Civil Action No. 2015-CP-29-00810, p. 39. (Attached as Exhibit A to Defendant's memorandum in support of its motion for summary judgment)

In Fowler v. Hunter, 388 S.C. 355, 697 S.E.2d 531 (2010), the Insured had requested automobile coverage under a commercial liability policy. The agent admitted that the insured requested the coverage, but he inadvertently failed to check the correct box when submitting the insurance application. According to the agent, there would have been no additional premium to include the automobile coverage requested. The trial court ruled that the insurance company was not harmed by the agent's error because it would have still issued the policy had the agent not checked the wrong box. In other words, the insurer suffered no additional losses by virtue of the agent's negligence. The Court of Appeals reversed, and the Supreme Court affirmed, but only for the trial court to determine a narrow issue of fact as to whether the Insurance Company would have been automatically required to issue the policy.

NGM would have been unquestionably required by law to issue the policy with UIM coverage at the Insured's request. [Brian Brennan Deposition at 24-25]. The undisputed evidence in this case is that if Miles had performed its contractual duties perfectly, i.e., explaining UIM coverage in detail, NGM would still have had to issue UIM coverage to the Websters which it was later required to do by the trial court in the reformation action.

As NGM has not raised a genuine issue of a material fact that Miles' performance of its duties, or lack thereof, resulted in liability to NGM that it would not otherwise have had, Defendant Miles's motion to alter or amend is GRANTED and summary judgment is GRANTED to Defendant.

NGM'S CROSS MOTION FOR SUMMARY JUDGMENT

For the reasons set forth above NGM's motion for summary judgment and its motion for reconsideration are DENIED.

WHEREFORE, summary judgment is GRANTED in Defendant's favor.

IT IS SO ORDERED.

Judge of the Circuit Court

_____, 2019



Lancaster Common Pleas

Case Caption: Ngm Insurance Company VS Miles Insurance Agency

Case Number: 2018CP2900794

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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