SUPREME COURT OF OKLAHOMA

Don Embry v. Innovative Aftermarket Systems L.P. a/k/a ISA L.P. f/k/a Innovative Aftermarket Systems, Inc. f/d/a IAS Inc.; Twin City Fire Insurance Company; and Hartford Fire Insurance Company

Embry v. Innovative Aftermarket Systems L.P., 247 P.3d 1158 (Okla. 2010) · No. No. 107,777 · Decided November 23, 2010

SUMMARY

The Oklahoma Supreme Court reviewed a certified interlocutory summary judgment concerning claims arising from a gap-protection agreement for an automobile loan. The court held that the agreement could support tort liability for bad faith or breach of the implied covenant of good faith and fair dealing, but that negligence was not an independent theory of recovery for contract performance. The summary judgment was affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Reif, J.; Edmondson, C.J.; Kauger, J.; Watt, J.; Colbert, J.; Taylor, V.C.J.; Winchester, J.; Hargrave, J.
JURISDICTION	Oklahoma
DECIDED	November 23, 2010
DOCKET	No. 107,777
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of Oklahoma granted certiorari to review a certified interlocutory order granting defendants summary judgment on plaintiff's bad-faith and negligence theories of recovery.
STANDARD OF REVIEW	Summary judgment is reviewed under the applicable summary-judgment standard, with all conclusions drawn from the evidentiary materials viewed in the light most favorable to the party opposing the motion. Before bad faith may be submitted to the jury, the trial court must determine as a matter of law, construing facts favorably to the opposing party, whether the conduct may reasonably be perceived as tortious.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES	Don Embry v. Innovative Aftermarket Systems L.P., Twin City Fire Insurance Company, Hartford Fire Insurance Company

TOPICS

implied covenant of good faith · insurance bad faith · summary judgment · commercial litigation · appellate procedure

PRACTICE AREAS

contracts · commercial litigation · torts · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether defendants' subjective belief that the deficiency-payment agreement was not insurance precluded tort liability for bad faith.
2. Whether the evidentiary materials created a sufficient basis for submitting plaintiff's bad-faith theory to a jury.
3. Whether negligence is an independent theory of recovery for unreasonable performance of a contract under Oklahoma law.

HOLDINGS

1. An insurance contract is not required to support tort liability for bad faith; such liability may arise when the contract creates a special relationship characterized by a disparity in bargaining power and elimination of risk.
2. Summary judgment eliminating plaintiff's bad-faith theory was improper because, viewing the evidence in plaintiff's favor, defendants' conduct could reasonably be perceived as tortious and the expert evidence supported submission of the issue to a jury.
3. There is no general duty to use reasonable care in performing a contract; alleged neglect or lack of diligence in contractual performance is encompassed by the implied covenant of fair dealing and good faith and is not an independent negligence theory of recovery.

KEY QUOTATIONS

> *"However, an insurance contract is not required to support tort liability for bad faith but instead such liability depends upon the existence of a "special relationship" under a contract (like the "special relationship" of an insurer and insured)."* (247 P.3d at 1160)

> *"There is simply no general duty to use reasonable care in the performance of a contract."* (247 P.3d at 1161)

FACTUAL BACKGROUND

Innovative Aftermarket Systems drafted and marketed a debt-relief waiver or gap-protection agreement promising to pay the deficiency between an automobile's insurance settlement and the remaining loan or lease payoff after a total loss. After plaintiff's vehicle was totaled, defendants allegedly calculated the deficiency by deducting amounts not disclosed when the agreement was made and failed to pay the full deficiency. Plaintiff offered expert evidence that defendants' conduct violated industry standards and reflected bad faith.

PROCEDURAL HISTORY

The trial court initially granted summary judgment for defendants, but the Court of Civil Appeals reversed, holding that the deficiency-payment agreement was insurance and that factual issues precluded summary judgment on bad faith and negligence. On remand, the trial court again granted summary judgment, concluding that defendants could not have acted in bad faith because they did not believe the agreement was insurance and that negligence was not an independent theory of recovery. The Supreme Court affirmed the elimination of negligence, reversed the elimination of bad-faith liability, and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings, with plaintiff's bad-faith or implied-covenant theory remaining available and negligence eliminated as an independent theory of recovery.

CASES CITED

- Embry v. Aftermarket Systems, 2008 OK CIV APP 92, 198 P.3d 388
- First National Bank and Trust of Vinita v. Kissee, 1993 OK 96, 859 P.2d 502
- Rodgers v. Tecumseh Bank, 1988 OK 36, 756 P.2d 1223
- Christian v. American Home Assurance Co., 1977 OK 141, 577 P.2d 899
- Garnett v. Government Employees Insurance Co., 2008 OK 43, 186 P.3d 935
- Malson v. Palmer Broadcasting Group, 1997 OK 42, 936 P.2d 940
- C & E Services, Inc. v. Ashland, Inc., 498 F. Supp. 2d 242 (D.D.C. 2007)
- Hillers v. Local Federal Savings and Loan Association, 1951 OK 57, 232 P.2d 626