SUPREME COURT OF SOUTH CAROLINA

Fowler v. Hunter, 388 S.C. 355

697 S.E.2d 531 (2010) · No. No. 26834 · Decided July 19, 2010

SUMMARY

The Supreme Court of South Carolina reviewed the reversal of summary judgment granted to an insurance agency in claims for professional negligence and equitable indemnification. The court held that the assigned professional-negligence claim could proceed because the settlement and covenant not to execute were not shown to be collusive, and that conflicting evidence regarding whether the requested coverage would have been issued created a genuine issue of material fact on Selective's damages. The court affirmed the court of appeals' reversal of summary judgment on both claims.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Pleicones; Justice Beatty; Acting Justice James E. Moore; Acting Justice John H. Waller, Jr.
JURISDICTION	South Carolina
DECIDED	July 19, 2010
DOCKET	No. 26834
DISPOSITION	affirmed
PROCEDURAL POSTURE	Insurance Associates petitioned for a writ of certiorari to review the court of appeals' reversal of the trial court's grant of summary judgment on professional-negligence and equitable-indemnification claims.
STANDARD OF REVIEW	The appellate court applies the same Rule 56(c), SCRCP, standard as the trial court: summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, with evidence and reasonable inferences viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; precedential.
PARTIES	Insurance Associates, Inc. v. Eric U. Fowler, Melissa W. (Dawn) Fowler, Sallie Hunter, Gynecologic Oncology Associates, Selective Insurance Company of South Carolina

TOPICS

professional negligence · indemnity · summary judgment · negligence · appellate procedure

PRACTICE AREAS

insurance · torts · civil procedure · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether the court of appeals erred in reversing summary judgment on the Fowlers' assigned professional-negligence claim when the settlement included a covenant not to execute.
2. Whether the court of appeals erred in reversing summary judgment on Selective's equitable-indemnification claim based on the absence of proof that Selective suffered damages.

HOLDINGS

1. A professional-negligence claim assigned in connection with a settlement may proceed where the settlement is not collusive and the assignment does not eliminate the possibility of proving damages; the covenant not to execute did not, as a matter of law, require summary judgment for Insurance Associates.
2. Summary judgment was improper on Selective's equitable-indemnification claim because conflicting evidence regarding the insurer's guidelines created a genuine issue of material fact as to whether Selective would have issued the requested automobile coverage and suffered damages from Insurance Associates' alleged negligence.

KEY QUOTATIONS

> *"When reviewing a grant of summary judgment, an appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP."* (361)

> *"Because the court of appeals correctly recognized that South Carolina courts favor settlement and determined that there was no collusion involved in the settlement, it reversed the trial court's order granting summary judgment as to the assigned professional negligence claim."* (363)

> *"The court of appeals found the competing sets of guidelines raised a genuine issue of material fact as to damages precluding summary judgment and reversed the trial court's grant."* (364)

FACTUAL BACKGROUND

The Fowlers were severely injured when a vehicle owned by Gynecologic Oncology Associates and driven by Sallie Hunter collided with their motorcycle. GOA intended its commercial liability policy, procured through Insurance Associates, to include automobile coverage, but an Insurance Associates representative allegedly failed to select the appropriate option in the insurer's software program. The parties settled the underlying claims, and Hunter and GOA assigned their professional-negligence claim to the Fowlers; Selective pursued equitable indemnification against Insurance Associates. Conflicting insurer guidelines created a factual dispute over whether Selective would have issued the requested automobile coverage and therefore whether Selective was damaged by the alleged negligence.

PROCEDURAL HISTORY

The Fowlers filed a declaratory judgment action concerning insurance coverage after a motorcycle collision and asserted claims arising from Insurance Associates' alleged failure to procure requested automobile coverage. After the parties settled the underlying accident claims, the trial court granted Insurance Associates summary judgment on the professional-negligence and equitable-indemnification claims. The court of appeals reversed, and the South Carolina Supreme Court granted certiorari and affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002)
- Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000)
- Bartholomew v. McCartha, 255 S.C. 489, 179 S.E.2d 912 (1971)
- Campione v. Wilson, 422 Mass. 185, 661 N.E.2d 658 (1996)
- Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Co., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999)

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