WASHINGTON SUPREME COURT

Lawyers Title Insurance Corp. v. Baik, 147 Wash. 2d 536

56 P.3d 1148 (2002) · Decided October 17, 2002

SUMMARY

The Washington Supreme Court considers whether a title insurer could pursue negligent misrepresentation claims against a law firm and attorneys who represented an estate and stated that no estate taxes were due. The court holds that a negligently obtained or communicated opinion may constitute false information, and that the defendants' professional role and circumstances could support a duty of care. It reverses summary dismissal because the reasonableness of the title insurer's reliance was a question for the trier of fact.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Owens, J.; Alexander, C.J.; Smith, J.; Ireland, J.; Bridge, J.; Chambers, J.
JURISDICTION	Washington
DECIDED	October 17, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lawyers Title appealed from summary judgment dismissing its negligent misrepresentation claims against the law firm and its attorneys. The Court of Appeals affirmed, and the Washington Supreme Court granted review.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with the appellate court engaging in the same inquiry as the trial court and viewing the facts and reasonable inferences in the light most favorable to the nonmoving party. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lawyers Title Insurance Corporation v. Anderson, Burrows & Galbraith, Grant B. Anderson, Sang I. Chae

TOPICS

negligence duty of care comparative fault standard of care appellate procedure

PRACTICE AREAS

torts insurance professional negligence appellate procedure

QUESTIONS PRESENTED

1. Whether the law firm's letter could constitute false information for purposes of a negligent misrepresentation claim even though it accurately stated the firm's opinion based on its tax preparation.
2. Whether the law firm and its attorneys owed Lawyers Title a duty of care under Restatement (Second) of Torts § 552.
3. Whether Lawyers Title's reliance on the law firm's letter was unjustifiable as a matter of law.
4. Whether Restatement (Second) of Torts § 552A's contributory-negligence bar applies to negligent misrepresentation claims in Washington.

HOLDINGS

1. A negligently obtained or communicated opinion may constitute false information under Restatement (Second) of Torts § 552; the defendants were not entitled to summary judgment on that element.
2. The law firm and its attorneys were not entitled to judgment as a matter of law on the duty element because the letter was supplied in the course of their profession, reflected a pecuniary interest, and was directed to a known business use.
3. Whether Lawyers Title reasonably relied on the law firm's letter was a question for the jury, not an issue resolvable on summary judgment.
4. Restatement (Second) of Torts § 552A does not bar negligent misrepresentation claims in Washington; a plaintiff need not be entirely free from fault to establish justifiable reliance, although comparative fault may reduce damages.

KEY QUOTATIONS

> *"Thus, under the Restatement, a negligently obtained or communicated opinion will constitute "false information" for purposes of a negligent misrepresentation claim."* (547-548)

> *"Thus, we hereby reject the applicability of section 552A to negligent misrepresentation claims and reaffirm our determinations in ESCA that reliance is justifiable if it is reasonable under the circumstances and that negligent misrepresentation defendants are not entitled to a jury instruction based on section 552A."* (551)

> *"We believe that reasonable minds could differ on that question."* (552)

FACTUAL BACKGROUND

A law firm representing the estate of Jae Kon Baik prepared and filed an estate tax return and sent Lawyers Title a letter stating that, based on the firm's tax preparation, no state or federal estate taxes were due. Lawyers Title relied on the letter in removing an estate-tax exception from a title insurance policy. The IRS later assessed the estate $392,733 in taxes, and Lawyers Title paid $618,195.53 in taxes, penalties, and interest before suing the law firm and its attorneys for negligent misrepresentation.

PROCEDURAL HISTORY

Lawyers Title sued the law firm, Anderson, and Chae after paying estate taxes assessed against property covered by its title policy. The trial court granted the defendants' summary judgment motion and dismissed the claims. The Court of Appeals affirmed, holding that Lawyers Title could not have reasonably relied on the law firm's letter; the Supreme Court reversed and remanded for trial.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remand for trial. The jury must determine whether the respondents supplied false information, owed a duty of care, and whether Lawyers Title's reliance was reasonable. If the jury finds justifiable reliance, it may reduce damages proportionally for Lawyers Title's negligence.

CASES CITED

- Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)
- ESCA Corp. v. KPMG Peat Marwick, 135 Wn.2d 820, 826-31, 959 P.2d 651 (1998)
- Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 162, 744 P.2d 1032, 750 P.2d 254 (1987)
- Hines v. Data Line Sys., 114 Wn.2d 127, 150, 787 P.2d 8 (1990)
- Puget Sound National Bank v. McMahon, 53 Wn.2d 51, 330 P.2d 559 (1958)
- Williams v. Joslin, 65 Wn.2d 696, 399 P.2d 308 (1965)
- Skagit State Bank v. Rasmussen, 109 Wn.2d 377, 386-87, 745 P.2d 37 (1987)
- Lawyers Title Ins. Corp. v. Soon Baik, 106 Wn. App. 1049