SUPREME COURT OF WYOMING

Ohio Casualty Insurance Co. v. W.N. McMurry Construction Co.

2010 WY 57 (Wyo. 2010) · No. Nos. S-08-0163, S-08-0164, S-08-0165 · Decided May 4, 2010

SUMMARY

The Supreme Court of Wyoming reviewed consolidated appeals arising from insurance disputes involving a builder's risk policy and a business auto policy. The court reversed reformation of the builder's risk policy because the parties had not mutually agreed to the disputed coverage limits, dismissed the related interest appeal as moot, and affirmed summary judgment and denial of reformation concerning the business auto policy.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Golden, Justice; Voigt, C.J.; Golden, J.; Hill, J.; Kite, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	May 4, 2010
DOCKET	Nos. S-08-0163, S-08-0164, S-08-0165
DISPOSITION	other
PROCEDURAL POSTURE	Three consolidated appeals from post-remand district court proceedings involving reformation of a builder's risk insurance policy, calculation of interest, reformation of a business auto policy, and summary judgment on tort and contract claims against an insurance agency.
STANDARD OF REVIEW	Factual findings after a bench trial are reviewed for clear error and are presumptively correct; legal conclusions are reviewed de novo. Summary judgment is reviewed de novo using the same materials and criteria as the district court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ohio Casualty Insurance Company, W.N. McMurry Construction Co. v. W.N. McMurry Construction Co., Ohio Casualty Insurance Company, BW Insurance Agency, Inc.

TOPICS

insurance coverage · reformation · contract interpretation · appellate procedure · standard of review

PRACTICE AREAS

insurance law · contract law · construction law · appellate procedure

QUESTIONS PRESENTED

1. Whether the builder's risk policy could be equitably reformed when the parties did not mutually agree on the policy's coverage limits.
2. Whether the parties' misunderstanding concerning the value of the buildings constituted a mutual mistake in drafting the written policy or instead a mistake in reaching the antecedent agreement.
3. Whether BW Insurance's conduct in obtaining the builder's risk information was attributable to Ohio Casualty for purposes of reformation.
4. Whether McMurry had a reasonable opportunity to read the business auto policy, despite its expectation that additional endorsements might issue.
5. Whether BW Insurance's agent had actual or apparent authority to remove or negate the named-driver exclusion in the business auto policy.
6. Whether the appeal concerning interest on the builder's risk award was moot after reversal of the reformation order.

HOLDINGS

1. Reformation is unavailable because McMurry Construction and Ohio Casualty never reached a mutual agreement on the essential coverage limits of the insurance policy.
2. Whether BW Insurance acted as Ohio Casualty's agent did not affect the result because BW did not know that Ohio and McMurry had mutually agreed to $5.5 million in coverage, and Ohio never agreed to that essential term.
3. Summary judgment for BW Insurance was proper because McMurry Construction had ample opportunity to read the business auto policy and failed to do so.
4. BW Insurance's agent lacked actual authority to remove the named-driver exclusion or bind Ohio Casualty to cover Richard Nelson.
5. The appeal challenging the district court's interest calculation was moot after reversal of the underlying reformation order.

KEY QUOTATIONS

> *"Reformation is not available '[i]f the parties made a mistake about the premises of their agreement, about some fact in the world outside their word-processing machines.'"* (230 P.3d 321)

> *"The remedy of reformation is not available for the purpose of making a new and different contract for the parties."* (230 P.3d 328)

FACTUAL BACKGROUND

McMurry Construction obtained insurance through independent agency BW Insurance for two Wyoming construction projects and for its business vehicles. Because of communications concerning the value of two buildings, Ohio Casualty issued a builder's risk policy with limits totaling less than $1 million rather than the approximately $5.5 million contract amount. McMurry later sought reformation after one building collapsed, but Ohio had never agreed to provide the higher limits. In the separate auto-policy dispute, Ohio's policy expressly excluded employee Richard Nelson, although a BW agent later told McMurry that Nelson was covered; McMurry did not read the policy or obtain an endorsement removing the exclusion.

PROCEDURAL HISTORY

In an earlier appeal, the Wyoming Supreme Court held that McMurry Construction's failure to read its insurance documents barred its tort and contract claims but did not bar equitable reformation claims, and remanded for further proceedings. After a bench trial on the builder's risk policy, the district court ordered reformation to provide approximately $5.5 million in coverage. The Supreme Court reversed that order because the parties never mutually agreed on the coverage limits. The related interest appeal was dismissed as moot. In the business auto proceedings, the district court granted BW Insurance summary judgment and denied reformation of the policy; those rulings were affirmed.

DISPOSITION

other

CASES CITED

- W.N. McMurry Constr. Co. v. Cmty. First Ins., Inc., 2007 WY 96, 160 P.3d 71 (Wyo. 2007)
- Aviat Aircraft, Inc. v. Saurenman, 2009 WY 98, 213 P.3d 956 (Wyo. 2009)
- Addison v. Dallarosa-Handrich, 2007 WY 110, 161 P.3d 1089 (Wyo. 2007)
- Mullinnix LLC v. HKB Royalty Trust, 2006 WY 14, 126 P.3d 909 (Wyo. 2006)
- State ex rel. Arnold v. Ommen, 2009 WY 24, 201 P.3d 1127 (Wyo. 2009)
- Colorado Casualty Insurance Co. v. Sammons, 2007 WY 75, 157 P.3d 460 (Wyo. 2007)
- Cathcart v. State Farm Mutual Automobile Insurance Co., 2005 WY 154, 123 P.3d 579 (Wyo. 2005)
- Hutchins v. Payless Auto Sales, Inc., 2002 WY 8, 38 P.3d 1057 (Wyo. 2002)
- Hutchings v. Krachun, 2002 WY 98, 49 P.3d 176 (Wyo. 2002)
- White v. Allen, 2003 WY 39, 65 P.3d 395 (Wyo. 2003)
- Mathis v. Wendling, 962 P.2d 160 (Wyo. 1998)
- Raymond v. Steen, 882 P.2d 852 (Wyo. 1994)
- Cargill, Inc. v. Mountain Cement Co., 891 P.2d 57 (Wyo. 1995)
- Velasquez v. Chamberlain, 2009 WY 80, 209 P.3d 888 (Wyo. 2009)
- Carroll v. Bergen, 2002 WY 166, 57 P.3d 1209 (Wyo. 2002)

- Cordero Mining Co. v. United States Fidelity & Guaranty Insurance Co., 2003 WY 48, 67 P.3d 616 (Wyo. 2003)
- Herbert Construction Co. v. Continental Insurance Co., 931 F.2d 989 (2d Cir. 1991)
- Ulen v. Knecttle, 50 Wyo. 94, 58 P.2d 446 (1936)
- Wyatt v. State Farm Fire & Casualty Co., 78 Wyo. 228, 322 P.2d 137 (1958)