SUPREME COURT OF VERMONT

Brad Gilman and Lisa Emerson v. Maine Mutual Fire Insurance Co., Conley Country and Michael Conley, and Bruce Bjornlund, 2003 VT 55

830 A.2d 71 (2003) · No. No. 02-170 · Decided June 3, 2003

SUMMARY

The Vermont Supreme Court reviewed claims arising from a fire in a newly purchased home, including an insurer’s alleged bad-faith failure to pay and alleged negligence by the seller’s agent and the buyer’s attorney concerning Vermont’s smoke-detector certification statute. The court affirmed summary judgment for Maine Mutual based on the policy’s one-year suit limitation, but reversed in part the dismissals of negligence claims against the real estate agent, agency, and buyer’s attorney because the pleadings could support duties relating to delivery of the required certificate. The matter was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Amestoy, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	June 3, 2003
DOCKET	No. 02-170
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from superior-court orders granting a motion to dismiss claims against Conley Country, Michael Conley, and Bruce Bjornlund and granting summary judgment to Maine Mutual Fire Insurance Company.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court: it is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Construction of the legal effect of an agreement is a question of law. A Rule 12(b)(6) dismissal is reviewed by accepting pleaded facts and reasonable inferences as true and asking whether it appears beyond doubt that the plaintiff could prove no facts entitling relief.

PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Brad Gilman, Lisa Emerson v. Maine Mutual Fire Insurance Co., Conley Country, Michael Conley, Bruce Bjornlund

TOPICS

insurance coverage · statute of limitations · motions to dismiss · professional negligence · standard of care

PRACTICE AREAS

Insurance · Professional negligence · Real estate · Civil procedure · Torts

QUESTIONS PRESENTED

1. Whether the insured's action against Maine Mutual was barred by the policy's one-year limitation period.
2. Whether appellants' allegations could support negligence-based claims against the seller's agent and agency for failing to deliver or ensure delivery of the smoke-detector certificate.
3. Whether appellants' allegations could support a negligence claim against their attorney for failing to ensure delivery of the smoke-detector certificate or advise the client concerning the statutory requirements.
4. Whether appellants stated a breach-of-contract claim against the seller's agent and agency.

HOLDINGS

1. The action against Maine Mutual was untimely because it was filed more than one year after the December 5, 1998 loss, and the policy's one-year limitation provision was clear, unambiguous, valid, and enforceable.
2. Dismissal of the negligence-based claims against Conley Country and Michael Conley was premature because the complaint and the power of attorney could support an argument that Conley had responsibility to deliver the smoke-detector certificate required by statute.
3. Dismissal of the negligence-based claim against Bjornlund was premature because the complaint alleged facts potentially supporting fiduciary, contractual, and professional duties concerning delivery of the smoke-detector certificate.
4. Appellants failed to state a breach-of-contract claim against Conley Country or Michael Conley because there was no contract between appellants and those seller-side defendants.

KEY QUOTATIONS

> *"When reviewing a grant of summary judgment, this Court applies the same standard of review as the trial court: summary judgment is appropriate when the record before the court clearly shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."* (74)

> *"A court should not dismiss a cause of action for failure to state a claim upon which relief may be granted "unless it appears beyond doubt that there exist no circumstances or facts which the plaintiff could prove*

> *about the claim made in his complaint which would entitle him to relief."”* (77)

> *“There was no contract between appellants and Conley Country or Michael Conley, the agent for the seller.”* (78)

FACTUAL BACKGROUND

Brad Gilman purchased a single-family home in Derby, Vermont, on October 14, 1998, with Michael Conley acting under the seller's power of attorney and Bruce Bjornlund representing Gilman. A fire on December 5, 1998, caused extensive property damage and physical injury to Lisa Emerson; appellants alleged that the home's smoke detectors failed to function. Maine Mutual paid Gilman $58,389.07 under a homeowners policy, and the insurer closed its claim file after the last communications concerning additional payments in June 1999. Appellants later alleged that the real-estate defendants and Bjornlund failed to ensure delivery of the smoke-detector certificate required by Vermont law and that Maine Mutual acted in bad faith in adjusting the loss.

PROCEDURAL HISTORY

After a fire damaged appellants' newly purchased home, appellants sued the seller's real-estate agent and agency, their closing attorney, and their insurer. The superior court dismissed the claims against the real-estate defendants and attorney under V.R.C.P. 12(b)(6), and granted Maine Mutual summary judgment based on a one-year contractual suit limitation. The Vermont Supreme Court affirmed the summary judgment for Maine Mutual, reversed the dismissals in part as to negligence-based claims against the Conley defendants and Bjornlund, affirmed the dismissal of the contract claim against the Conley defendants, and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The cause was remanded for further proceedings consistent with the order, including continued consideration of the negligence-based claims against Conley Country, Michael Conley, and Bruce Bjornlund.

CASES CITED

- City of Burlington v. Nat'l Union Fire Ins. Co., 163 Vt. 124, 127, 655 A.2d 719, 721 (1994)
- Lussier v. Truax, 161 Vt. 611, 612, 643 A.2d 843, 844 (1993) (mem.)
- Hebert v. Jarvis & Rice and White Ins., Inc., 134 Vt. 472, 475, 365 A.2d 271, 273 (1976)
- Schlitz v. Lowell Mut. Fire Ins. Co., 96 Vt. 334, 336-37, 119 A. 516, 517 (1923)
- John Morrell & Co. v. New England Fire Ins. Co., 71 Vt. 281, 284-85, 44 A. 358, 358-59 (1899)
- Richards v. Town of Norwich, 169 Vt. 44, 48-49, 726 A.2d 81, 85 (1999)
- Ass'n of Haystack Prop. Owners, Inc. v. Sprague, 145 Vt. 443, 444, 494 A.2d 122, 123 (1985)
- Levinsky v. Diamond, 140 Vt. 595, 600-01, 442 A.2d 1277, 1280-81 (1982)
- Muzzy v. State, 155 Vt. 279, 583 A.2d 82 (1990)

- Knight v. Rower, 170 Vt. 96, 102, 742 A.2d 1237, 1242 (1999)
- Estate of Fleming v. Nicholson, 168 Vt. 495, 498, 724 A.2d 1026, 1028 (1998)
- Wentworth v. Crawford & Co., 174 Vt. ___, ___, 807 A.2d 351, 352 (2002)

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