SUPREME COURT OF MONTANA

Smith v. Farmers Union Mutual Insurance Company

260 P.3d 163 (2011) · No. DA 10-0638 · Decided August 30, 2011

SUMMARY

The Montana Supreme Court reviews summary judgment in a dispute over whether an insurance policy was reinstated after the insureds mailed a money order following nonpayment of a renewal premium. The court holds that the insurer's employee's alleged statements were admissible as party-opponent statements and created a genuine issue of material fact regarding acceptance or promissory estoppel. It also concludes that the unsigned money order was not necessarily invalid payment as a matter of law, reversing summary judgment for the insurer while affirming denial of the insureds' partial summary judgment motion.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Beth Baker; James C. Nelson; Michael E. Wheat; Jim Rice; Brian Morris
JURISDICTION	Montana
DECIDED	August 30, 2011
DOCKET	DA 10-0638
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Smiths appealed the Eleventh Judicial District Court's grant of Farmers Union Mutual Insurance Company's motion for summary judgment and denial of the Smiths' motion for partial summary judgment in an insurance-coverage dispute.
STANDARD OF REVIEW	Summary judgment and evidentiary rulings made in the context of summary judgment are reviewed de novo. The court determines whether there is no genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law, drawing reasonable inferences in favor of the nonmoving party.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion
PARTIES	Patrick Smith, Pamela Smith v. Farmers Union Mutual Insurance Company

TOPICS

insurance coverage · summary judgment · hearsay · uniform commercial code · appellate procedure

PRACTICE AREAS

insurance law · contract law · evidence · civil procedure

QUESTIONS PRESENTED

1. Whether the District Court erred in granting FUMIC summary judgment on the grounds that the Smiths failed to make timely payment and that the unsigned money order was invalid payment.
2. Whether statements by FUMIC's agent concerning acceptance of the payment were admissible under Montana Rule of Evidence 801(d)(2)(D) and created a genuine issue of material fact.
3. Whether the Smiths were entitled to partial summary judgment declaring that the loss was covered.

HOLDINGS

1. The Smiths' knowledge that Treweek was no longer affiliated with FUMIC defeated a reasonable belief in actual or ostensible agency, so Treweek's receipt of the payment, without more, could not be imputed to FUMIC as timely receipt.
2. The mailbox rule did not make the Smiths' payment effective upon mailing because the reinstatement offer expressly required payment to be received by the due date.
3. FUMIC's investigation of the fire did not constitute a binding admission of an insurance contract or estop FUMIC from denying coverage.
4. The alleged statements by FUMIC's agent, Terri Humble, were not hearsay under Montana Rule of Evidence 801(d)(2)(D), and the dispute over what was said created a genuine issue of material fact concerning FUMIC's acceptance of the payment.
5. The unsigned money order was not necessarily invalid payment merely because it did not qualify as a negotiable instrument or did not comply with the agreement printed on the money order. Whether it would have been honored presented a genuine issue of material fact.
6. FUMIC was not entitled to summary judgment because genuine issues of material fact remained regarding whether its agent accepted the payment and whether the money order would have been honored.

KEY QUOTATIONS

> “*The plain language of Rule 801(d)(2)(D) places Humble's statements outside the hearsay bar.*” (260 P.3d 170)

> “*Indeed, the weight of authority makes clear that it is the instrument's actual ability to serve as payment that is dispositive.*” (260 P.3d 173)

> “*We conclude that whether Smith submitted "payment" to FUMIC depends on whether the order would have been honored.*” (260 P.3d 174)

> *“We therefore conclude that FUMIC is not entitled to summary judgment, as genuine issues of material fact remain.”* (260 P.3d 175)

FACTUAL BACKGROUND

The Smiths' homeowner's policy expired on December 13, 2008, and FUMIC offered to reinstate coverage if payment was received by December 29. After being told that the former agent was no longer affiliated with FUMIC, Patrick Smith mailed an unsigned $176 MoneyGram money order to the former agent's office; FUMIC's employee allegedly directed the office to send the payment to FUMIC for review, but the parties disputed what was said. The Smiths' house burned on December 29, and FUMIC investigated the fire before denying coverage, asserting that payment was untimely and that the unsigned money order was invalid.

PROCEDURAL HISTORY

The Smiths sued FUMIC for damages arising from denial of coverage for a house fire and sought a declaration that the loss was covered. The District Court granted FUMIC summary judgment and denied the Smiths' partial-summary-judgment motion, concluding that no coverage existed as a matter of law. The Montana Supreme Court affirmed the denial of the Smiths' motion, reversed the grant of FUMIC's motion, and remanded for further proceedings.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion, including determination of the disputed facts concerning the alleged statements by FUMIC's agent and whether the money order would have been honored upon presentation.

CASES CITED

- Park Place Apts., L.L.C. v. Farmers Union Mut. Ins. Co., 2010 MT 270, ¶ 11, 358 Mont. 394, 247 P.3d 236
- Goettel v. Estate of Ballard, 2010 MT 140, ¶ 10, 356 Mont. 527, 234 P.3d 99
- Patch v. Hillerich & Bradsby Co., 2011 MT 175, ¶ 11, 361 Mont. 241, 257 P.3d 383
- In re Estate of Harmon, 2011 MT 84, ¶ 14, 360 Mont. 150, 253 P.3d 821
- PPL Mont., LLC v. State, 2010 MT 64, ¶ 85, 355 Mont. 402, 229 P.3d 421
- Lorang v. Fortis Ins. Co., 2008 MT 252, ¶¶ 52-53, 345 Mont. 12, 192 P.3d 186
- Semenza v. Kniss, 2008 MT 238, ¶ 23, 344 Mont. 427, 189 P.3d 1188
- Turjan v. Valley View Estates, 272 Mont. 386, 394, 901 P.2d 76, 82 (1995)
- Butkovich v. Industrial Commission, 690 P.2d 257, 259 (Colo. App. 1984)
- C. Haydon v. Montana Mining Properties, 286 Mont. 138, 148-49, 951 P.2d 46, 52-53 (1997)
- Stevens v. Novartis Pharmaceuticals Corp., 2010 MT 282, ¶ 28, 358 Mont. 474, 247 P.3d 244

- Triffin v. Travelers Express Co., Inc., 370 N.J. Super. 399, 851 A.2d 667, 670 (N.J. Super. Ct. App. Div. 2004)
- Blanco v. Holder, 572 F.3d 780, 783-84 (9th Cir. 2009)
- Dubost v. U.S. Patent & Trademark Office, 777 F.2d 1561, 1565-66 (Fed. Cir. 1985)
- State v. Propps, 376 N.W.2d 619, 622 (Iowa 1985)
- Triffin v. Dillabough, 552 Pa. 550, 716 A.2d 605, 608-10 (1998)
- Payne Realty & Hous. v. First Sec. Bank, 256 Mont. 19, 28, 844 P.2d 90, 95 (1993)
- Bingham v. Stevenson, 148 Mont. 209, 215, 420 P.2d 839, 842 (1966)

Retrieved from lawtools.ai · https://lawtools.ai/cases/state/montana-supreme-court-of-montana/2011/smith-v-farmers-union-mutual-insurance-company-qa41z81c