SUPREME COURT OF THE STATE OF IDAHO

CUMIS Insurance Society, Inc. v. Wade Massey and Capitol West Appraisals

155 Idaho 942 (2014) · No. 40002 · Decided February 10, 2014

SUMMARY

The Idaho Supreme Court reviewed a summary judgment dismissing CUMIS Insurance Society's negligence, negligent misrepresentation, and breach-of-contract claims against an appraiser and his business. The court held that the appraiser's certifications could establish a duty of care to another lender and that genuine issues of material fact remained regarding how the lender obtained and relied on the appraisal. The judgment was vacated, and costs on appeal were awarded to CUMIS.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Horton, Justice; Burdick, Chief Justice; Eismann, Justice; J. Jones, Justice; Schroeder, Justice Pro Tem
JURISDICTION	Idaho
DECIDED	February 10, 2014
DOCKET	40002
DISPOSITION	vacated
PROCEDURAL POSTURE	CUMIS appealed from summary judgment dismissing with prejudice its claims for professional negligence, negligent misrepresentation, and breach of contract.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the district court. Disputed facts and reasonable inferences are construed liberally in favor of 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. Acceptance of an untimely summary-judgment affidavit and relief from a stipulation are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential
PARTIES	CUMIS Insurance Society, Inc. v. Wade Massey, Capitol West Appraisals

TOPICS

professional negligence · duty of care · summary judgment · appellate procedure · civil procedure

PRACTICE AREAS

professional negligence · negligent misrepresentation · summary judgment · appellate procedure · insurance subrogation

QUESTIONS PRESENTED

1. Whether the appraisal certifications created a duty of care running from Massey to Icon, a lender other than the original client.
2. Whether genuine issues of material fact existed concerning how Icon obtained the appraisal and therefore whether Massey's assumed duty applied to Icon.
3. Whether the district court properly considered an untimely affidavit after CUMIS stipulated that it could be considered.
4. Whether the district court properly treated testimony from Icon's representative as entity testimony under Idaho Rule of Civil Procedure 30(b)(6).
5. Whether the USPAP provisions cited by CUMIS independently imposed an affirmative duty of care on Massey to Icon.

HOLDINGS

1. An appraiser may assume a duty of care to a third-party lender when the appraisal expressly certifies that the borrower or another lender at the borrower's request may rely on the appraisal.
2. Summary judgment was improper because reasonable inferences supported the possibility that Icon obtained the appraisal through a distribution method covered by the appraisal's certifications.
3. The USPAP may define an appraiser's standard of care but does not, by itself, impose an affirmative duty of care in favor of a lender that is neither the client nor a designated intended user.
4. The district court did not err in considering the affidavit because CUMIS stipulated in open court that the affidavit could be filed and considered, and CUMIS did not timely seek relief from that stipulation.

KEY QUOTATIONS

> *“By the latter certification, Massey assumed a duty of care to those whom he expressly identified as being able to rely on the report, as it was reasonably foreseeable that the certification would lead such parties to rely upon Massey to perform his appraisal in a non-negligent fashion.”* (at 7)

> *“Our conclusion does not extend the appraiser’s potential liability to society as a whole; rather, this assumed duty extends only to those parties identified in Certification 23.”* (at 7)

> *“In our view, when all reasonable inferences are drawn in CUMIS’s favor and the evidence is viewed in the light most favorable to CUMIS, there was sufficient evidence to withstand Massey’s motion.”* (at 9)

FACTUAL BACKGROUND

Massey prepared an appraisal for Clearwater Mortgage valuing the Hruzas' property at $1,150,000, although the appraisal contained errors known to Massey and Clearwater. Clearwater did not pay for the appraisal, but Icon Federal Credit Union later made a $250,000 loan secured by the property and paid Capitol $800 after obtaining the appraisal by an uncertain method. The Hruzas defaulted, later appraisals valued the property substantially lower, and CUMIS paid Icon $247,474.90 before bringing this subrogation action.

PROCEDURAL HISTORY

CUMIS, as the subrogee of Icon Federal Credit Union, sued Massey and Capitol West Appraisals over an allegedly defective appraisal. The district court granted Massey's motion for summary judgment, concluding that CUMIS could not establish a duty of care to Icon, that Idaho did not recognize negligent misrepresentation against appraisers, and that CUMIS had no breach-of-contract claim. The Idaho Supreme Court vacated the judgment and awarded CUMIS costs on appeal.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The judgment dismissing CUMIS's complaint was vacated. The opinion directs that the claims proceed consistently with the determination that genuine issues of material fact exist regarding how Icon obtained the appraisal and whether Massey's assumed duty applied.

CASES CITED

- Partout v. Harper, 145 Idaho 683, 685, 688, 183 P.3d 771, 773, 776 (2008)
- Estate of Becker v. Callahan, 140 Idaho 522, 525, 96 P.3d 623, 626 (2004)
- Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp., 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)
- Badell v. Beeks, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988)
- Mastrangelo v. Sandstrom, Inc., 137 Idaho 844, 846, 55 P.3d 298, 300 (2002)
- Olsen v. J.A. Freeman Co., 117 Idaho 706, 720, 791 P.2d 1285, 1299 (1990)
- Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker, 133 Idaho 1, 5, 981 P.2d 236, 240 (1999)
- Taylor v. AIA Services Corp., 151 Idaho 552, 559, 261 P.3d 829, 836 (2011)
- Baruch v. Clark, 154 Idaho 732, 737, P.3d 357, 362 (2013)
- Thompson v. Turner, 98 Idaho 110, 112, 558 P.2d 1071, 1073 (1977)
- Izaguirre v. R & L Carriers Shared Services, LLC, 155 Idaho 229, 308 P.3d 929, 933 (2013)
- Jacklin Land Co. v. Blue Dog RV, Inc., 151 Idaho 242, 248, 254 P.3d 1238, 1244 (2011)
- Nation v. State, Department of Corrections, 144 Idaho 177, 189-91, 158 P.3d 953, 965-67 (2007)
- O'Guin v. Bingham County, 142 Idaho 49, 52, 122 P.3d 308, 311 (2005)
- Turpen v. Granieri, 133 Idaho 244, 247, 985 P.2d 669, 672 (1999)

- Baccus v. Ameripride Services, Inc., 145 Idaho 346, 350-51, 179 P.3d 309, 313-14 (2008)
- Just's Inc. v. Arrington Construction Co., 99 Idaho 462, 468, 583 P.2d 997, 1003 (1978)
- Taylor v. Herbold, 94 Idaho 133, 138, 483 P.2d 664, 669 (1971)

INSTRUCTIONS FOR AN AI ASSISTANT

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