

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

CAREER ADVANCEMENT STUDIES
IN HEALTHCARE INSTITUTE,

Plaintiff,

vs.

Case No. 2015-838-CB

JOE SCORDALAKES and TFC
& ASSOCIATES, INC. d/b/a
TFC O'CONNELL AGENCY,

Defendants.

OPINION AND ORDER

Defendants have filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff is involved in the healthcare training industry and operated its business out of a leased premises located at 247 Cass Ave, Mt. Clemens, MI ("Premises"). Beginning in 2008, Defendant Joe Scordalakes ("Defendant Scordalakes") was retained as Plaintiff's independent insurance agent for the purposes of handling all of Plaintiff's insurance needs. In 2011, Defendant Scordalakes began working for Defendant TFC & Associates, Inc. d/b/a TFC O'Connell Agency ("Defendant TFC").

Until 2014, Plaintiff was insured by Western World Insurance Co. ("WWIC") through a policy covering both personal property and liability. When the WWIC policy came up for renewal, WWIC advised Plaintiff and Defendant Scordalakes/Defendant

TFC that it had elected not to renew the policy. The WWIC policy was set for expire on April 13, 2014.

Despite numerous communication between Plaintiff and Defendants, a replacement policy was not obtained and in place prior to a May 4, 2015 fire which completely destroyed the Premises. On March 11, 2015, Plaintiff filed its complaint in this matter in which it states a single claim of negligence against both Defendants. On November 2, 2015, Defendants filed their instant motion for summary disposition. On December 7, 2015, Plaintiff filed its response. On December 14, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

In their motion, Defendants contend that Plaintiff's negligence claim fails because they did not have a duty to advise Plaintiff that its coverage was insufficient.

Although an insurance policy is a contractual agreement between the insurer and the insured, an insurance agent typically acts on behalf of the parties to facilitate the sale and execution of the policy. *Genessee Foods Services, Inc. v Meadowbrook, Inc.*, 279 Mich App 649, 654; 760 NW2d 259 (2008). The fiduciary duty that the insurance agent owes each party varies in relation to the agent's status as an independent or exclusive agent. *Id.* In this case, it is undisputed that Defendant TFC is an independent insurance agency, and that Defendant Scordalakes is an independent insurance agent. (See ¶10 of Answer to Complaint and Plaintiff's Exhibit 2, at 12, 52.)

An independent agent/agency is considered the agent of the insured rather than an agent of the insurer. *Genessee*, 279 Mich App at 656 [internal citation omitted]. Where an agent/agency is independent when they assist a plaintiff, their primary fiduciary duty of loyalty rests with the plaintiff, and the plaintiff can depend on the duty of loyalty to insure that the agent/agency was acting in his best interests, both in terms of finding an insurer that could provide him with the most comprehensive coverage and in ensuring that the insurance contract properly addressed his needs. *Id.* An agent's duty requires an agent to use reasonable diligence and care to procure insurance as requested by an insured. *Zaremba Equipment Inc v Hsrco Nst'l Ins Co*, 280 Mich App 16, 37-38 (2008). The sole argument Defendants have advanced in their motion is that they did not owe Plaintiff a duty. However, based on the authority cited above, Defendants, as an independent agency/agent owed a duty to Plaintiff, i.e. the insured. Consequently, Defendants' position is without merit and their motion must be denied.

In addition, Defendants' position is based on *Harts v Farmers Ins Exch*, 461 Mich 1; 597 NW2d 47 (1999), a case which is not on point. While the Michigan Supreme

Court in *Harts* held that an insurance agent whose principal is the insurance company owes no duty to advise a potential insured about any coverage, *Id.* at 8, *Harts* involved a situation in which the agent was not an independent agent, but rather the agent solely of the insurance company. As such, the facts presented in this case are clearly distinguishable from those present in *Harts* where Defendants were independent rather than exclusive at all times pertinent to this matter. As a result, Defendants did owe Plaintiff a duty. See *Genessee*, 279 Mich App 649; *Stover v Secura Ins Co*, unpublished per curiam opinion of the Court of Appeals, decided June 9, 2005 (Docket Nos. 252613, 252625). Consequently, Defendants' reliance of *Harts* is misplaced.

Finally, while Plaintiff has requested that summary disposition be granted in its favor pursuant to MCR 2.116(1)(2), the Court is convinced that such relief is inappropriate. Defendants' motion addressed only one of the elements necessary to sustain a negligence claim. While Plaintiff's response addresses the remaining elements (breach, causation and damages), Defendants were not afforded an opportunity to respond to those portions of the response. Accordingly, the Court is convinced that any request for summary disposition by Plaintiff should be made by filing its own dispositive motion, which will permit Defendants to properly respond to the request. For these reasons, the Court is convinced that Plaintiff's request for summary disposition pursuant to MCR 2.116(1)(2) must be denied.

IV. Conclusion

For the reasons discussed above, Defendants' motion for summary disposition is DENIED. Further, Plaintiff's request for summary disposition pursuant to MCR

2.116(1)(2) is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: FEB 02 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge