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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002068-MR

RICHARD L. HUMPHREY

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS FOUST, JUDGE
CIVIL ACTION NO. 99-CI-00405

AMERIQUEST MORTGAGE COMPANY;
WESTERN RIVERS CORPORATION;
GRANGE MUTUAL CASUALTY COMPANY;
KELLEY ALLEN HUMPHREY; AND
CHADWICK RUTLEDGE

APPELLEES

OPINION
AFFIRMING IN PART AND
DISMISSING IN PART

** ** *

BEFORE: BARBER AND MINTON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: Richard Humphrey, the owner of a house situated on the banks of Kentucky Lake in Western Kentucky, appeals from a summary judgment that denied his claim for insurance benefits and related damages arising from the partial destruction of his house by fire. This litigation arose after a fire at Humphrey's lake house in Marshall County on May

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

23, 1998. Humphrey and his wife, Mary, were in the midst of divorce proceedings, and the divorce was finalized May 18, 1998. Mary and the couple's children lived in the marital home in Missouri, while Humphrey primarily resided at the lake house after separating from Mary in late 1996. Also in 1996, Humphrey began dating Kelley Allen, a former exotic dancer who lived in Nashville, Tennessee. Humphrey frequently traveled to Nashville to visit Kelley and typically paid all of her monthly expenses. Unknown to Humphrey, however, Kelley began an intimate relationship with her personal trainer, Chadwick Rutledge.

In April 1998, Humphrey undertook to refinance the lake house with Ameriquest Mortgage Company. Ameriquest is a national company with an office in Louisville, Kentucky. The majority of the loan process was conducted via telephone and fax by Humphrey and Ameriquest agents in Louisville. Humphrey sought funds to pay off personal debts and also planned to finance a romantic weekend during which he planned to propose marriage to Kelley. Humphrey intended to recreate a scene from the movie "Indecent Proposal," where money would be spread across a bed for an intimate encounter.

On May 23, 1998, Humphrey received his portion of the proceeds from the loan, approximately \$7,000.00. That evening, Humphrey set the romantic mood by spreading the money on the sofa in the living room of the lake house. Unfortunately for

Humphrey, a masked intruder forced his way into the home and brandished a gun. A physical altercation ensued and the intruder was revealed to be Chadwick. During the scuffle, Humphrey was shot in the buttocks and knocked unconscious. While the two men were fighting, Kelley gathered the money in a garbage bag and ran outside. Candles were inadvertently knocked over and the couch was engulfed in flames. Chadwick dragged Humphrey outside the burning house and fled with the cash. Chadwick and Kelley were subsequently prosecuted for their roles in the arson, assault and robbery.

On May 28, 1998, Humphrey filed a claim for the damage with Western Rivers Corporation, his local insurance agency. Western Rivers informed Humphrey that his homeowner's policy had been cancelled by his insurance carrier, Grange Mutual Casualty Company, for non-payment of premium on May 14, 1998. Humphrey claimed he never received notice that his policy was to be cancelled.

In October 1999, Humphrey sued Ameriquest asserting several claims, including breach of contract and misrepresentation, because Ameriquest had failed to pay the insurance premium on Humphrey's behalf. In June 2001, Humphrey filed an amended complaint naming Western Rivers and Grange as additional defendants. Humphrey sued Western Rivers and Grange

for breach of contract, misrepresentation and violation of Kentucky's Unfair Claims Settlement Practices Act.

Marshall Circuit Court granted all three defendants' motions for summary judgment. After Humphrey's motion to alter, amend or vacate the judgment was denied, Humphrey appealed to this Court.

When reviewing a summary judgment, we consider whether there is a genuine issue as to any material fact and, if not, whether the moving parties are entitled to judgment as a matter of law.²

I. Claims against Grange Mutual Casualty Company

Humphrey claims Grange was not entitled to summary judgment because material facts are in dispute as to whether proper notice of cancellation was given by Grange and whether Humphrey filed suit against Grange within the contractual limitations period.

The insurance policy issued by Grange to Humphrey contains a limitations provision requiring that legal action must be initiated within one year of any claimed loss. In Kentucky, it is proper for a home-owner's insurance policy to contractually shorten the limitations period (ordinarily fifteen

² Ky. R. of Civ. Proc. (CR) 56.03; *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

years on a written contract) to one year.³ In this case, Humphrey did not amend his complaint to add Grange as a party defendant until three years after the fire. Contrary to Humphrey's assertion, whether Grange was on notice of the pending litigation against Ameriquest is irrelevant. Humphrey did not file suit against Ameriquest until more than a year after the fire, which is also beyond the Grange policy's one-year limitations period.

Humphrey also insists that Grange did not give proper notice that it intended to cancel the policy covering his lake house for non-payment of premium. Kentucky Revised Statutes (KRS) 304.20-320(2) addresses cancellations:

(a) A notice of cancellation of insurance subject to KRS 304.20-300 to 304.20-350 by an insurer shall be in writing, shall be delivered to the named insured or mailed to the named insured at the last known address of the named insured, shall state the effective date of the cancellation, and shall be accompanied by a written explanation of the specific reason or reasons for the cancellation.

(b) The notice of cancellation referred to in paragraph (a) of this subsection shall be mailed or delivered by the insurer to the named insured at least fourteen (14) days prior to the effective date of the cancellation if the cancellation is for nonpayment of premium

(c) Proof of mailing of notice of cancellation or of reasons for cancellation

³ *Webb v. Kentucky Farm Bureau Ins. Co.*, 577 S.W.2d 17, 19 (Ky. App. 1978).

to the named insured at the address shown in the policy shall be sufficient proof of notice.

It is indisputable that Grange gave proper statutory notice that the policy would be cancelled for non-payment. It is also undisputed that Mary, who was a named insured on the policy, continued living at the Missouri address where Grange sent the cancellation notices. Furthermore, it was Humphrey's responsibility to ensure that Grange had the proper contact information if he expected to receive mail at his lake house. Once Grange properly cancelled the policy for non-payment, Grange no longer owed any duty to Humphrey. The parties' relationship was based on contractual obligation, and Grange was not obligated to provide coverage after Humphrey failed to pay for the policy.

Humphrey also attempts to couch any alleged duty owed as a fiduciary relationship. "[A] [fiduciary] relationship is one founded on trust or confidence reposed by one person in the integrity and fidelity of another and which also necessarily involves an undertaking in which a duty is created in one person to act primarily for another's benefit in matters connected with such undertaking."⁴ It is clear there was no such obligation on the part of Grange.

⁴ *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 485 (Ky. 1991).

Finally, Humphrey alleges he has a right to recover under KRS 304.12-230, the Unfair Claims Settlement Practices Act (UCSPA). The UCSPA allows an insured to recover when an insurance company "[m]isrepresent[s] pertinent facts or insurance policy provisions relating to coverages at issue."⁵ Humphrey has no viable claim under the UCSPA because Grange did not make any material misrepresentations.

Accordingly, summary judgment was properly granted in favor of Grange as a matter of law.

II. Claims against Western Rivers Corporation

Humphrey next contends Western Rivers, his insurance agent, did not properly give notice of cancellation of the insurance policy. Western Rivers is an agent for Grange, but it owed no duty to Humphrey to notify him that the policy covering his lake house was about to be cancelled for non-payment of premium. KRS 304.20-320(2) clearly provides that notice of cancellation is the responsibility of the insurance carrier, Grange. Western Rivers, nevertheless, made a good faith attempt to notify Humphrey of the cancellation once it received notice from Grange: it sent a photocopy of the notice to Humphrey's Missouri address.

Humphrey also contends that Western Rivers, as his agent, was acting in a fiduciary capacity. In fact, Western

⁵ Ky. Rev. Stat. (KRS) 304.12-230(1).

Rivers owed no obligation to Humphrey, fiduciary or otherwise. Consequently, the agent had no duty to notify Humphrey that the policy on his lake house was about to be cancelled for non-payment of premium.

Finally, Humphrey argues Western Rivers is liable under the UCSPA. We disagree. Western Rivers was not obligated to disclose the status of Humphrey's policy, and it otherwise made no material misrepresentations.

Consequently, Humphrey's claims must fail, and we find summary judgment for Western Rivers was proper as a matter of law.

III. Claims against Ameriquest Mortgage Company

Humphrey next claims that a factual dispute exists as to whether Ameriquest undertook to procure hazard insurance covering Humphrey's lake house. The circuit court determined, and we agree, that Ameriquest was under no duty to procure insurance covering the lake house nor did it undertake to pay the premium on the policy. Ameriquest contacted Western Rivers to verify Humphrey's coverage in the days prior to cancellation of the policy. Ameriquest checked the status of the policy for its own benefit, not out of any obligation to Humphrey. The loan agreement between Humphrey and Ameriquest clearly places the burden of maintaining hazard insurance on the borrower, Humphrey:

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the property insured against loss by fire, hazards included within the term 'extended coverage' and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. .

. .

While it was undoubtedly in Ameriquest's best interest for the mortgaged property to be adequately insured, the burden of securing insurance may not be shifted from Humphrey to Ameriquest.

Humphrey points out that two earlier dates were set by Ameriquest to close the loan before the transaction was completed on the third attempt. Humphrey observes that the paperwork provided for each of the first two closings contained a disbursement from the loan proceeds to Western Rivers for insurance covering the lake house. On the third and final attempt, there was no mention of a disbursement to Western Rivers, but Humphrey executed the documents anyway. Although Humphrey may have assumed the disbursement was included in the final documents, he must accept the consequences of failing to read the documents he signed.⁶ Furthermore, by the time the loan was finally closed on May 19, 1998, the insurance policy covering the lake house had already been cancelled.

⁶ See *Cline v. Allis-Chalmers Corp.*, 690 S.W.2d 764 (Ky. App. 1985); *Brenard Mfg. Co. v. Jones*, 269 S.W. 722 (Ky. 1925).

Kelley Allen Humphrey and Chadwick Rutledge are named as appellees in Humphrey's notice of appeal. However, no judgment affecting these parties has been entered and they are not mentioned, except incidentally, in Humphrey's brief on appeal. Consequently, the appeal as to these parties is dismissed.

The judgment is affirmed.

ALL CONCUR.

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NO BRIEF FOR APPELLEES
KELLEY ALLEN HUMPHREY AND
CHADWICK RUTLEDGE