STATE OF MICHIGAN

COURT OF APPEALS

CHARLES F. VAN SLOTEN,

Plaintiff-Appellant,

v

INSURANCE BY BURLEY,

Defendant-Appellee.

UNPUBLISHED
May 16, 1997

No. 191233
Emmet Circuit Court
LC No. 94-002935-NO

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

In this case, the trial court granted defendant's motion for a directed verdict and dismissed plaintiff's claim. Plaintiff now appeals as of right. We affirm

Plaintiff was injured when he fell into an open pit on the premises of the Emmet County Growers Cooperative ("the Co-op"). Plaintiff sued the Co-op and received a $209,893.59 judgment. The Co-op was insured through defendant with Auto-Owners Insurance Company, however, the policy only provided for coverage of up to $25,000 for a single occurrence. In a post-judgment settlement agreement with the Co-op, plaintiff received $25,000 and an assignment of a cause of action that the Co-op might have against defendant. In exchange, plaintiff agreed not to enforce the $209,893.59 judgment.

In pursuing the claim against defendant, plaintiff alleged that a special relationship existed between defendant and the Co-op which required defendant to advise the Co-op about the adequacy of its liability insurance coverage. Plaintiff contended that the Co-op was damaged by defendant's failure to inform it that its insurance coverage was not adequate. The trial court held that there was insufficient evidence of a special relationship to submit the issue to the jury. We agree.

In reviewing a trial court's grant of a directed verdict, this Court examines the testimony and all legitimate inferences that may be drawn in a light most favorable to the nonmoving party. If the evidence is insufficient to establish a prima facie case, then the motion should be granted. *Zander v Ogihara Corp,* 213 Mich App 438, 441; 540 NW2d 702 (1995).

Generally, an insurance agent has no affirmative duty to advise a client about the adequacy of a policy's coverage. *Bruner v League General Ins Co*, 164 Mich App 28, 31; 416 NW2d 318 (1987). However, a duty to advise may arise where there is a "special relationship" between an agent and a policyholder. *Id.* at 31-32; see also *Stein v Continental Casualty Co*, 110 Mich App 410, 416; 313 NW2d 299 (1981). It is undisputed that there was a longstanding relationship between defendant and the Co-op. However, to establish a special relationship there must additionally be some interaction on a question of coverage which causes the insured to rely on the expertise of the insurance agent to the insured's detriment. *Bruner, supra* at 34-35. In this case, plaintiff offered no evidence that the Co-op ever sought defendant's advice on the adequacy of its liability insurance or any other type of insurance. Accordingly, plaintiff failed to offer any evidence that the Co-op relied on any such advice to its detriment.

We note that, in *Palmer v Pacific Indemnity Co*, 74 Mich App 259, 266-267; 254 NW2d 52 (1977), this Court found an issue of fact regarding whether there was a special relationship where a defendant was the sponsored insurance representative of an occupational organization and held itself out as an expert in medical and professional malpractice insurance. However, in this case, no evidence was presented that defendant held itself out as an expert in liability insurance or that it was a sponsored representative of any trade or occupational organization. Accordingly, while we recognize that directed verdicts in negligence cases are viewed with disfavor, *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996), the trial court correctly granted defendant's motion for a directed verdict in this case because there was no evidence presented at trial to establish that defendant breached a duty owed to plaintiff. *Jenks v Brown*, 219 Mich App 415, 417; 557 NW2d 114 (1996).

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to 7.219.

/s/ Robert P. Young, Jr.
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh