

Mejia v. Farmers New World Life Ins. Co.

Court of Appeals of Texas, First District, Houston
February 17, 2000, Opinion Issued
NO. 01-99-00307-CV

Reporter: 2000 Tex. App. LEXIS 1110; 2000 WL 192971

MARIA C. MEJIA, INDIVIDUALLY and AS REPRESENTATIVE OF THE ESTATE OF JOSE A. MEJIA, Appellant v. FARMERS NEW WORLD LIFE INSURANCE COMPANY and GONZALO JIMENEZ INSURANCE AGENCY, Appellees * * * * FARMERS NEW WORLD LIFE INSURANCE COMPANY, Appellant v. MARIA C. MEJIA, INDIVIDUALLY and AS REPRESENTATIVE OF THE ESTATE OF JOSE A. MEJIA, Appellee

Notice: [*1] PURSUANT TO THE TEXAS RULES OF APPELLATE PROCEDURE, UNPUBLISHED OPINIONS SHALL NOT BE CITED AS AUTHORITY BY COUNSEL OR BY A COURT.

Prior History: On Appeal from the 157th District Court, Harris County, Texas. Trial Court Cause No. 96-26163.

Disposition: Reversed and remanded.

Core Terms

farmer, summary judgment, life insurance, cause of action, misrepresent, train

Case Summary

Procedural Posture

Appellant, individually and as representative of late husband's estate, appealed an order of the 157th District Court, Harris County, (Texas), which granted a take-nothing summary judgment granted in favor of appellees insurance company and agency.

Overview

Appellant and her late husband met with an insurance agent and soon afterward, purchased two policies, a life insurance policy and mortgage protection. After husband died, appellees insurance company and agency paid appellant under the universal life policy, but denied her claim of entitlement under the mortgage protection insurance. Appellant filed suit asserting causes of action for breach of contract, violations of the Deceptive Trade Practices-Consumer Protection Act, violations of the

Texas Insurance Code, breach of warranty, breach of the duty of good faith and fair dealing, breach of fiduciary duty, misrepresentation, negligence, and constructive fraud. Both appellees filed counterclaims seeking attorney's fees. Upon appellees' motion, the trial court granted a take-nothing summary judgment. The appellate court reversed and remanded for further proceedings because there were unresolved genuine issues of material fact still pending which precluded entry of summary judgment.

Outcome

The appellate court reversed the order granting take-nothing summary judgment in favor of insurance company and agency and remanded for further proceedings because there were unresolved genuine issues of material fact still pending which precluded entry of summary judgment.

LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

HNI A summary judgment may not be properly granted on a cause of action not addressed in a summary judgment proceeding.

Judges: Margaret Garner Mirabal, Justice. Panel consists of Justices Mirabal, Taft, and Price. ²

Opinion by: MARGARET GARNER MIRABAL

Opinion

In this life insurance dispute case, Maria C. Mejia, individually and as representative of the estate of Jose A. Mejia, appeals a take-nothing summary judgment granted

² The Honorable Frank C. Price, former Justice, Court of Appeals, First District of Texas at Houston, participating by assignment.

in favor of Farmers New World Life Insurance Company and Gonzalo Jimenez Insurance Agency. We reverse.¹

The following facts are undisputed:

1. In May, 1994, Maria and Jose Mejia met with an insurance agent to purchase life insurance. [*2] The agent came to their home.
2. Soon thereafter, the Jimenez Agency issued two Farmers policies to the Mejias: (a) a \$ 100,000 universal life policy, insuring Jose's life; and (b) mortgage protection insurance in the amount of \$ 45,000.
3. Jose died on December 4, 1994.
4. In 1995, Farmers paid Maria \$ 100,000 under the universal life policy.
5. Farmers denied Maria's claim of entitlement to \$ 45,000 under the mortgage protection insurance.
6. Jose was the family wage earner. Maria was a homemaker and did not work outside the home.

After Farmers and the Jimenez Agency denied her \$ 45,000 claim, Mejia filed suit asserting causes of action for breach of contract, violations of the Deceptive Trade Practices-Consumer Protection Act ("DTPA"), violations of the Texas Insurance Code, breach of warranty, breach of the duty of good faith and fair dealing, breach of fiduciary duty, misrepresentation, negligence, and constructive fraud. Both Farmers and the Jimenez Agency filed counterclaims against Mejia seeking attorney's fees under the DTPA, asserting Mejia had filed a meritless cause of action against them.

On September 12, 1997, Farmers and the Jimenez Agency jointly moved for summary [*3] judgment on all of Mejia's claims asserted in Plaintiff's Original Petition. On September 26, 1997, Mejia filed her First Amended Petition, in which she expanded some claims, dropped others, and, for the first time, alleged that Pablo Garcia -- rather than Gonzalo Jimenez -- was the agent who had met with the Mejias at their home. Mejia further alleged for the first time:

1. "Farmers treated the Mejias unfairly because any reasonable investigation would have revealed that Pablo Garcia sold the policy to the Mejias without authority to do so."
2. "Farmers misrepresented that Pablo Garcia had the authority to evaluate risks, take applications and sell policies of insurance for Farmers."

3. "[Farmers] misrepresented that Pablo Garcia had the authority to sell life insurance issued by Farmers Insurance Company."

4. "[Plaintiff] was also told that she was dealing with a Farmers representative when she was not."

5. "Due to their complete inexperience, the Mejias deferred entirely to Farmers and Pablo Garcia on all insurance matters. So when Mr. Garcia told the Mejias that the policy at issue would pay the mortgage should Mr. Mejia die, the Mejias believed it."

6. "[Farmers] misrepresented [*4] that Pablo Garcia had the authority to sell life insurance issued by Farmers Insurance Company. . . . Farmers allowed the Gonzalo Jimenez Insurance Agency to send an unqualified representative to meet with the Mejias and sell them a Farmers product without the training required to do so."

7. "Farmers acted negligently in at least the following ways: . . . failing to disclose Pablo Garcia's lack of training, skill, capacity, knowledge and expertise in selling Farmers Insurance products."

8. "Farmers also knew that Pablo Garcia was unqualified to sell life insurance to the Mejias."

9. "[Gonzalo Jimenez] also misrepresented that the agent it sent to deal with the Mejias had skill, experience, authority, training and expertise in selling Farmers Insurance products when he did not."

10. "[Gonzalo Jimenez] misrepresented that Pablo Garcia had the authority to sell life insurance issued by Farmers Insurance Company."

11. "Due to their complete inexperience, the Mejias deferred entirely to Gonzalo Jimenez and Pablo Garcia on all insurance matters. So when Mr. Garcia told the Mejias that the policy at issue would pay the mortgage should Mr. Mejia die, the Mejias believed it. The Mejias [*5] also believed Gonzalo Jimenez's representations, through Pablo Garcia, about its skill and expertise in insuring lives and selecting proper coverages."

12. "[Gonzalo Jimenez] represented that Pablo Garcia had the authority to sell life insurance issued by Farmers Insurance Company. . . . Gonzalo Jimenez sent an unqualified representative to meet with the Mejias and sell them a Farmers product without the training required to do so."

13. "Gonzalo Jimenez acted negligently in at least the following ways: . . . failing to disclose Pablo Garcia's lack

¹ Additionally, Farmers appeals the portion of the judgment denying it attorney's fees.

of training, skill, capacity, knowledge and expertise in selling Farmers Insurance products.”

14. “By itself and through its agent, Pablo Garcia, Gonzalo Jimenez misrepresented material facts to the Mejias to induce them to purchase its insurance policy. . . . Gonzalo Jimenez also knew that Pablo Garcia was unqualified to sell life insurance to the Mejias.”

In Mejia’s response to the motion for summary judgment, Mejia specifically stated that she had amended her petition and provided a summary of the amendments. Even so, Farmers and the Jimenez Agency did not amend or supplement their motion for summary judgment to address any of the [*6] new claims enumerated above. On October 28, 1997, the trial court granted defendants a take-nothing summary judgment on all of Mejia’s causes of action.

Mejia asserts the trial court erred in entering the take-nothing summary judgment when Farmers and the Jimenez Agency did not address the new causes of action asserted in Mejia’s amended petition. We agree.

HNI A summary judgment may not be properly granted on a cause of action not addressed in a summary judgment

proceeding. *Black v. Victoria Lloyds Ins. Co.*, 797 S.W.2d 20, 27 (Tex. 1990); *Chessher v. Southwestern Bell Tel. Co.*, 658 S.W.2d 563, 564 (Tex. 1983) (per curiam); *Johnson v. Rollen*, 818 S.W.2d 180, 183 (Tex. App.--Houston [1st Dist.] 1991, no writ). Therefore, because there are unresolved genuine issues of material fact still pending in this case, the trial court erred in granting Farmers and the Jimenez Agency a complete take-nothing summary judgment against Mejia. *Rollen*, 818 S.W.2d at 183.

We sustain Mejia’s issue.

In light of our sustaining Mejia’s issue, we overrule Farmer’s issue complaining about the trial court’s denial of attorney’s fees to Farmers.

[*7] We reverse the judgment and remand the case to the trial court.

Margaret Garner Mirabal

Justice

Panel consists of Justices Mirabal, Taft, and Price. ²

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