

FILED

JAN 27 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES JOHNSON, d/b/a JOHNSON)
APPLIANCE,)

Plaintiff-Appellant,)

vs.)

CLARENCE SAVAGE, d/b/a CLARENCE)
SAVAGE INSURANCE AGENCY,)
J. CHARLES WELLS, and JAMES L.)
WELLS,)

Defendants-Appellees,)

and **GREAT RIVER GAS CO.,**)

Defendant.)

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Filed January 27, 1988

7-446
87-399

Appeal from the Iowa District Court for Lee County (No. CL827(S)0685),

D B Hendrickson, Judge.

Plaintiff appeals from a decision for the defendants in the district court on his claims for the fair market value of a building which collapsed, the cost of demolition, the loss of use of the building, lost income, and punitive damages on theories of fraudulent misrepresentation, negligent misrepresentation, and negligence in insuring his property. **AFFIRMED.**

George E. Wright of Napier, Wright & Wolf, Fort Madison, for plaintiff-appellant.

William J. Cahill of Hirsch, Adams, Hoth, Krekel, Putnam & Cahill, Burlington, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

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Plaintiff appeals from a decision for the defendants in the district court for damages sustained when the building which contained his appliance store collapsed. We affirm.

Plaintiff James Johnson and his wife Susan owned and operated an appliance store. They were insured by the Jelly Wells Agency and had an all-risk policy which was issued by Transamerica Insurance Services. In 1983, Charles and James Wells left the Jelly Wells Agency and joined the Savage Insurance Agency. Charles and James told the Johnsons they could get better coverage for less money through Savage. In February 1985, the Johnsons got a policy with Tower Insurance Company through Savage. Tower cancelled this policy in March 1985. Charles Wells got a policy from IMT Insurance Company in April 1985 for the Johnsons, but it was a named risk policy, not an all-risk policy. This policy was more expensive than the Transamerica policy. Soon after, the building housing the appliance store collapsed. The Johnsons' new insurance policy did not cover the loss.

The Johnsons brought this action seeking damages for the fair market value of the building, the cost of demolition, the loss of use of the building, lost income, and punitive damages on theories of fraudulent misrepresentation, negligent misrepresentation, and negligence in insuring the property. The district court found for defendants on the grounds that they had not made any misstatements or misrepresentations to the Johnsons. Plaintiff appeals.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Plaintiff claims they have established all the essential elements of negligent misrepresentation as set forth in Beeck v. Kapalis, 302 N.W.2d 90, 96-97 (Iowa

1981) and, in addition, that they proved the elements of fraudulent misrepresentation, also set forth in Beeck, 302 N.W.2d at 94.

In finding defendants not liable to plaintiff on the theory of fraudulent misrepresentation, the trial court stated:

The Court has found that Defendants were able to place insurance for the Johnsons with the Tower Insurance Company, Inc., which was equal to or better than the prior coverage. On this basis, the Court is unable to conclude that Defendants fraudulently misrepresented any facts when they induced the Johnsons to change insurance companies. The fact that Tower Insurance Company, Inc., subsequently cancelled the coverage does not change the Court's conclusion in the absence of any evidence that Defendants knew or should have known that Tower would not accept coverage.

In finding defendants not liable to plaintiff on the theory of negligent misrepresentation, the trial court recited the same reasons as previously stated with respect to the fraudulent misrepresentation conclusion. We find the conclusions of the trial court with regard to plaintiff's claims of fraudulent misrepresentation and negligent misrepresentation are supported by substantial evidence and thus affirm the trial court.

Plaintiff also contends that the defendants acted recklessly in not providing sufficient information to Tower Insurance Company before the policy was issued because it caused them to cancel their policy with Transamerica. They feel this reckless conduct makes the defendants liable for punitive damages. Plaintiff's amended petition alleged defendants' actions were "willful, malicious, intentional, and grossly negligent," without reference to this particular assertion. The trial court did not specifically refer to the issue now posited for our consideration, but instead treated plaintiff's negligence theory as an issue relating to whether the defendants breached their duty to notify plaintiff that an all-risk policy could not be located in time to permit plaintiff to obtain coverage elsewhere. The trial court found defendants were not negligent in this regard. The specific contention now raised by plaintiff was not addressed by the trial

court, nor was it raised in plaintiff's petition. Since our scope of review is for the correction of errors at law, we decline to address this issue.

We affirm the trial court.

AFFIRMED.