FILED
MAY 26 1994
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 4-126 / 93-1279

**JESUSA M. TORRES,**

Appellant,

**vs.**

**METROPOLITAN LIFE INSURANCE COMPANY,**

Appellee.

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Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge.

Plaintiff appeals a ruling of the district court granting summary judgment in favor of the defendant insurance company. **REVERSED AND REMANDED.**

Roger A. Huddle of Weaver & Huddle, Wapello, for appellant.

Cornelia E. Dude and Alvin A. Pasternak of Metropolitan Life Insurance Company, New York, New York, and Barbara A. Hering of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

**HUITINK, J.**

Jesusa Torres appeals a judgment of the district court dismissing her claim for life insurance benefits. We reverse and remand for trial.

Roberto H. Torres, Jesusa's deceased husband, purchased a $50,000 life insurance policy from Metropolitan. Metropolitan's agent assisted Roberto in completing the application for coverage relied on by Metropolitan when it issued the policy. The application failed to disclose Roberto's history of diabetes.

Roberto died of natural causes on March 6, 1992. Metropolitan denied Jesusa's timely filed claim for benefits and attempted to rescind the policy. Metropolitan claimed Roberto fraudulently misrepresented his medical condition.

Jesusa sued Metropolitan for breach of contract. Metropolitan filed a counterclaim alleging fraudulent misrepresentation and requested the court to confirm its earlier recision.

Our review is for errors at law. Iowa R. App. P. 4. This court applies the same principles that guide the trial court's consideration of a motion for summary judgment. Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.' Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e). The language of our rule and case law are substantially similar or identical to that of rule 56 of the Federal Rules of Civil Procedure, see, e.g., Matsushita Elec. Indust. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-88, 106 S. Ct. 1348, 1355-56, 89 L. Ed. 2d 538, 551-53 (1986), from which we may draw for guidance in interpreting our own rule. Sherwood, 179 N.W.2d at 339.

As the moving party Metropolitan was required to establish all of the elements of its fraudulent misrepresentation claim as a matter of law. These elements include all of the following:

(1) The insured (Roberto) made a representation to Metropolitan;
(2) The representation was false;
(3) The representation was material;
(4) The insured knew the representation was false;
(5) The insured intended to deceive Metropolitan; and,
(6) Metropolitan acted in reliance on the truth of the representation and was justified in so relying.

See Bates v. Allied Mut. Ins. Co., 467 N.W.2d 255, 260 (Iowa 1991); Sinnard v. Roach, 414 N.W.2d 100, 105 (Iowa 1987). The district court found that "no rational fact finder could reach any inference contrary to the six elements of fraud." We disagree.

The deposition testimony of Metropolitan's agent contains evidence that the agent and not Roberto may have been the source of false medical information. The deposition also suggests that Roberto may not have read the application before signing it and arguably may not have known if the answers to the questions were false.

Viewing the evidence in the light most favorable to the nonmoving party, we determine there are genuine issues of material fact as to whether Roberto made false representations or that he intended to deceive Metropolitan. We therefore reverse the judgment of the district court and remand for trial on these issues.

**REVERSED AND REMANDED.**