

IN THE COURT OF APPEALS 12/03/96
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00020 COA

SHESHADRI RAJU

APPELLANT

v.

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JAMES E. GRAVES, JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

TERRYL K. RUSHING

KENNETH A. RUTHERFORD

DENISE F. SCHREIBER

ATTORNEY FOR APPELLEE:

MICHAEL FARRELL

NATURE OF THE CASE: PROFESSIONAL INSURANCE CONTRACT

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT IN FAVOR OF ASSOCIATED
BECAUSE THE INSURANCE CONTRACT DID NOT COVER THE CLAIM

BEFORE FRAISER, C.J., KING, AND PAYNE, JJ.

FRAISER, C.J., FOR THE COURT:

Pursuant to a bankruptcy court order lifting the automatic stay only as to professional insurance policies, Sheshadri Raju received a default judgment from James F. Tyson as a principal of Architects Plus for architectural malpractice in the amount of \$811,639.00. Raju attempted to garnish the proceeds of an insurance policy from Associated International Insurance Company (Associated) held by Tyson's current employer. Because the policy unambiguously prohibited such a recovery, the trial court dismissed the garnishment proceeding. Raju appealed arguing: (A) that the trial court erred in dismissing his claim against Associated because the policy was ambiguous as to whether Tyson was covered for past architectural malpractice and thus, not ripe for summary disposition; and (B) that the trial court erred in dismissing his claim because discovery was incomplete. Raju's allegations of error are without merit; therefore, we affirm.

FACTS

In 1986, Raju employed Architects Plus, Inc., a professional association, to design and supervise the renovation of a building in downtown Jackson. Architects Plus failed to properly supervise and oversee the renovation. As a result of Architects Plus's failure, Raju incurred substantial damages. Architects Plus developed severe financial problems and dissolved in the fall of 1989.

James F. Tyson was a shareholder of Architects Plus who had not worked on Raju's account. After Architects Plus dissolved, Tyson was eventually employed by the Clarksdale architectural firm of Godbold, Dickson & Associates (the Godbold Firm), a subchapter "S" corporation. While Tyson's name was added to the corporate name, he was only an employee and never acquired any ownership interest in the Godbold Firm.

In 1991 Raju filed suit against Architects Plus and its four shareholders (including Tyson) for architectural malpractice. Tyson filed for and received relief in bankruptcy court. Eventually the bankruptcy court lifted the automatic stay and allowed Raju's action against Tyson to proceed. However, Raju's collection efforts were limited to garnishing malpractice insurance policies. Raju obtained a default judgment against Tyson for \$811,639.00. Tyson had no malpractice insurance coverage for the work Architects Plus attempted to perform for Raju. However, the Godbold Firm had a policy with Associated under which Tyson was insured for his employment with the Godbold Firm. The policy provided the following coverage:

I. COVERAGE FOR SERVICES YOU PERFORMED FOR THE POLICYHOLDER DURING THIS POLICY PERIOD

You are covered, subject to all other provisions of this policy, for a claim of

which we receive written notice during this POLICY PERIOD.

II. COVERAGE FOR SERVICES YOU PERFORMED FOR THE POLICYHOLDER PRIOR TO THIS POLICY PERIOD

You are covered, subject to all other provisions of this policy, for a claim of which we receive written notice during this POLICY PERIOD, provided that:

1. prior to this POLICY PERIOD you had no knowledge of the claim, controversy, dispute, situation or event that could reasonably be expected to give rise to the claim, and
2. your actual or alleged negligent act, error or omission upon which the claim is based took place subsequent to the PRIOR ACTS RETROACTIVE DATE but prior to the Effective Date as shown on the DECLARATIONS page of this policy, and
3. there is no other valid and collectible insurance available to you for your actual or alleged negligent act, error or omission that took place as specified in 2 above.

III. COVERAGE FOR SERVICES PERFORMED FOR ANOTHER ORGANIZATION

Any person designated as the POLICYHOLDER is covered, subject to all other provisions of this policy, for a claim arising out of professional services that person performed for an organization other than, the POLICYHOLDER, but only for liability arising from that person's negligent acts, errors or omissions while acting within their responsibilities as an officer, director, partner or proprietor of that other organization, and provided:

1. your actual or alleged negligent act, error or omission took place subsequent to the PRIOR ACTS RETROACTIVE DATE but prior to the Effective Date as shown on the DECLARATIONS page of this policy,
2. the claim is first reported to us and written notice received by us during this POLICY PERIOD,
3. prior to this POLICY PERIOD that person had no knowledge of the claim, controversy, dispute, situation or event that could reasonably be expected to give rise to a claim, and
4. there is no other valid and collectible insurance available to that person through the other organization.

Raju claimed he could recover under section III of the coverage portion of the policy. Raju's counsel had a writ of garnishment issued to Associated. Associated answered denying the policy covered Tyson during his previous employment with Architects Plus. Specifically, Associated argued that section III covered only the policyholder. The declarations page designated only the Godbold Firm as the policyholder; therefore, Tyson was not covered under section III. Raju filed a notice of contest, and Associated responded with a motion to dismiss and quash. After a hearing on the motion, the trial court granted Associated's motion to dismiss.

DISCUSSION

A. THE TRIAL COURT CORRECTLY DISMISSED

RAJU'S CLAIM AGAINST ASSOCIATED

Because Associated's motion to dismiss was accompanied by matters outside the pleadings, the trial court's dismissal is reviewed as a summary judgment motion. *Westbrook v. City of Jackson*, 665 So.2d 833, 836 (Miss. 1995). This Court reviews grants of summary judgment de novo. *Id.* In the reviewing the record, we, like the trial court, review the evidence in the light most favorable to the nonmoving party. *Id.* If there are no disputes over material facts and the moving party is entitled to summary judgment as a matter of law, then the trial court's grant of summary judgment must be affirmed. *Id.*

Raju argues that the trial court erred in dismissing his claim against Associated because the policy was ambiguous as to whether Tyson was covered for past architectural malpractice and thus, not ripe for summary disposition. Associated responds that the contract is unambiguous that Tyson is not

covered for architectural malpractice committed by his former firm before he was employed by the Godbold Firm. We conclude that the law and undisputed facts of this case support the trial court's dismissal of this case.

Whether or not a contract is ambiguous is a question of law, which is ripe for determination by summary judgment. *Lamb Construction Co. v. Town of Renova*, 573 So. 2d 1378, 1383 (Miss. 1990). "Where a contract is clear and unambiguous, its meaning and effect are matters of law which may be determined by the court." *Overstreet v. Allstate Ins. Co.*, 474 So. 2d 572, 575 (Miss. 1985); *Dennis v. Searle*, 457 So. 2d 941, 945 (Miss. 1984); *Pfisterer v. Noble*, 320 So. 2d 383, 384 (Miss. 1975). The insurance policy unambiguously does not cover Tyson's actions while a principal at Architects Plus. The policy unambiguously provides for three types of coverage. Section I provides coverage for services performed by employees for the policyholder during this policy period. Section II provides coverage for services performed by employees for the policyholder prior to this policy period, and Section III provides coverage for services performed by the policyholder for another organization.

Raju cannot recover under the first two types of coverage, because the policy clearly states that it only covers services performed by the Godbold Firm's employees for the policyholder, the Godbold Firm itself. Raju also cannot recover under the third type of coverage, "coverage for services performed for another organization." The policy unambiguously states that only the policyholder is covered for services performed for another organization. The policyholder is the Godbold Firm, not Tyson. Tyson was only an employee of the Godbold Firm with no ownership interest. Consequently, the policy does not insure Tyson's actions prior to joining the Godbold Firm, and the trial court correctly concluded that summary judgment was proper.

B. THE TRIAL COURT CORRECTLY DISMISSED RAJU'S CLAIM

EVEN THOUGH DISCOVERY WAS INCOMPLETE

Next, Raju argues that the trial court erred in dismissing his claim, via summary judgment, because discovery was incomplete. Raju argues that the discovery process would have lead to other extrinsic evidence of the intent of the parties, which supports his interpretation of the insurance policy. This argument fails as a matter of law. Since the terms of the insurance policy were unambiguous, the parol evidence rule excludes the use of extrinsic evidence of the intent of the parties. *Bedford v. Kravis*, 622 So. 2d 291, 295 (Miss. 1993); *Pursue Energy Corp. v. Perkins*, 558 So. 2d 349, 351-53 (Miss. 1990). Thus, even if Raju could amass a mountain of extrinsic evidence through further discovery, the trial court could not have considered it in determining the meaning of the insurance policy. Raju's inability to complete discovery could not affect the disposition of his case; therefore, summary judgment was proper.

For the foregoing reasons, the judgment of the trial court is affirmed.

**THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS AFFIRMED.
APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**