IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY SAYERS,
Appellant,
vs.
ASSURANCE, LTD., A NEVADA CORPORATION,
Respondent.

No. 43894

FILED

MAR 22 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a summary judgment in an insurance coverage case. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

In this appeal, we consider whether an insurance agent's knowledge of a claim against a client obligated the agent to report the claim to the client's insurer. Under the circumstances presented in this case, we affirm.

FACTS AND PROCEDURAL HISTORY

When Larry Sayers became the president of Manetta Lane Homeowners' Association (HOA), he requested Assurance, Ltd. to procure an officers' and directors' liability insurance policy. Assurance procured the policy through Federal Insurance Company (Federal), effective March 15, 2001, through March 15, 2002. The policy contained provisions requiring submission of claim notices within the policy period.[1] When the policy came up for renewal in March 2002, Sayers was no longer president, having resigned in May 2001.

[1]We note that neither party litigated the validity of the policy's notice provisions from a public policy standpoint. See, e.g., Sparks v. St. Paul Ins. Co., 495 A.2d 406, 415-16 (N.J. 1985).

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Michael Braunstein was the new president and the person responsible for procuring officers' and directors' liability insurance on the HOA's behalf. Because Federal would not renew its coverage, Assurance requested Braunstein to complete a renewal application for a different carrier, CNA. This application contained a question asking if the entity or persons to be insured had knowledge of circumstances that could give rise to a future claim, to which Braunstein answered "yes." Braunstein signed and dated this application on March 13, 2002.

The next day, Assurance forwarded the application to Ian H. Graham, Inc. (IHG), the broker for CNA, who then requested additional information regarding the affirmative response. Assurance then faxed IHG a copy of the complaint filed by the HOA against Sayers for breach of various duties and conversion of HOA clubhouse furniture. The HOA had filed the initial complaint on December 18, 2001. However, Sayers did not receive formal service of the complaint until after the HOA filed the first amended version on April 12, 2002.

Sayers ultimately settled with the HOA, but later filed a complaint against Assurance alleging breach of fiduciary duty and negligence. Assurance impleaded Federal and IHG. Federal filed a motion for summary judgment, in which IHG joined without condition, and Sayers and Assurance joined with condition.

The district court granted summary judgment dismissing claims against Federal, Assurance, and IHG, reasoning that Braunstein's application for a new insurance policy failed to constitute notice of a potential claim on behalf of Sayers, and therefore Sayers had no basis for coverage or liability against the three parties. Sayers appeals.

DISCUSSION

This court reviews orders granting summary judgment de novo.[2] "Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law."[3]

We conclude that information provided in the application for new officers' and directors' coverage, which was received by Assurance the day before the previous coverage was set to lapse, was not a claim notice for reporting purposes. First, the mere response of "yes" to a question soliciting knowledge of a potential claim is insufficiently clear to constitute a claim notice. Second, the question specifically requested information regarding a future claim, not one that already existed. By the time Braunstein submitted the renewal application, the HOA had already filed a complaint against Sayers.

In this, we conclude that the complaint qualifies as a claim under the policy. However, we also conclude that Assurance had no duty to report the claim. The record contains no indication that Assurance assumed such a duty on behalf of Sayers, and Sayers has provided no case authority suggesting otherwise.[4]

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[2]Day v. Zubel, 112 Nev. 972, 977, 922 P.2d 536, 539 (1996).

[3]Vermef v. City of Boulder City, 119 Nev. 549, 551, 80 P.3d 445, 446 (2003) (citing NRCP 56(c)); see also Wood v. Safeway, 121 Nev. ___, ___, 121 P.3d 1026, 1031 (2005).

[4]In arriving at our conclusions concerning the claim notice, we note that we did not consider documentation submitted in appellant's reply brief appendix, as it was stricken by order of this court. In this, we note appellant's contention that an issue of fact exists regarding whether

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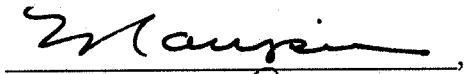
In the alternative, Sayers asserts that this court should remand this case to permit additional time for discovery under NRCP 56(f). However, Sayers failed to request such an extension below; therefore, we decline to address his request on appeal.[5]

We have considered Sayers' remaining contentions, and conclude they are without merit.

CONCLUSION

We conclude the district court committed no error in granting summary judgment below. Therefore, we

ORDER the judgment of the district court AFFIRMED.


, J.
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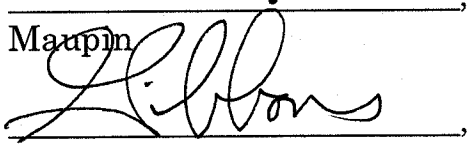
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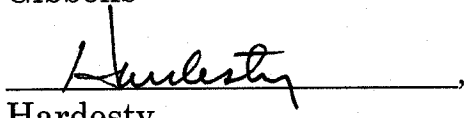
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Assurance notified Federal, by way of IHG, of the claim within the policy period. We have considered this issue, and conclude that nothing in the record supports this contention.

We also reject appellant's contentions regarding Assurance's duty to notify appellant of the policy's notice requirements or to extend the reporting period. We conclude that the policy is sufficiently clear in both respects, and that appellant had the responsibility to become familiar with its provisions. See Farmers Ins. Exch. v. Neal, 119 Nev. 62, 65, 64 P.3d 472, 473 (2003).

[5]See Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (stating that this court need not consider arguments raised for the first time on appeal).

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Clark & Richards
Hall Jaffe & Clayton, LLP
Clark County Clerk