

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001618-MR

BLUEGRASS SPECIALTY FLOORING, INC.

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN MINTON, JUDGE  
ACTION NO. 95-CI-01097

AMERICAN HARDWOOD FLOORS AND VENTS, INC.;  
SPECTRUM TRANSPORTATION, INC.; AGTRANS, INC.;  
and RANDY GOODFELL

APPELLEES

OPINION  
AFFIRMING  
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BEFORE: COMBS, HUDDLESTON, and KNOPF, Judges.

COMBS, JUDGE: Bluegrass Specialty Flooring Inc. (Bluegrass Flooring), brings this appeal from a summary judgment entered on May 28, 1988, by the Warren Circuit Court. Ky. R. Civ. Proc. (CR) 56. We affirm.

In May and August 1995, Ralph Broadaiz, acting for American Hardwood Floors and Vents, Inc., ordered flooring material from Bluegrass Flooring. Bluegrass Flooring extended credit to the customer and shipped the material to Palatine, Illinois. Bluegrass Flooring was not paid for the flooring material, and on October 18, 1995, it filed this action against

Ralph Broadaiz and American Hardwood Floors and Vents, Inc., seeking to recover \$45,821.56, plus interest. On February 22, 1996, Bluegrass Flooring amended its complaint to allege a claim of fraud against Broadaiz.

On May 28, 1996, the parties entered into an agreed judgment pursuant to which American Hardwood Floors and Vents, Inc. was to pay to Bluegrass Flooring \$45,821.56 plus interest in monthly installments of \$2,000 each. Bluegrass Flooring agreed to continue supplying materials to the corporation on a "cash on delivery" basis only. The claims asserted against Ralph Broadaiz, individually, were to be held in abeyance.

On November 7, 1996, Bluegrass Flooring filed a motion to reopen the case and to amend its complaint again. On January 8, 1997, Bluegrass Flooring filed the amended complaint and added the appellee, Spectrum Transportation Inc., ("Spectrum") as a party-defendant.<sup>1</sup> In the amended complaint, Bluegrass Flooring recounted how it had again arranged for the delivery of materials to Ralph Broadaiz and had again failed to receive payment. Bluegrass Flooring alleged that Broadaiz "somehow tricked" Spectrum "into delivering the load of flooring materials and not receiving the C.O.D. payment in return for delivery." (Amended Complaint at 76). It alleged that Spectrum had violated express warranties by failing to receive payment at the time of delivery and sought payment for the shipment from Spectrum. In its answer, Spectrum explained that it was merely a broker of freight

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<sup>1</sup>The action against American Hardwood Floors and Vents, Inc., was stayed pending proceedings in bankruptcy.

transportation and thus bore no responsibility for the actual delivery of the materials.

On April 14, 1997, Bluegrass Flooring filed another amended complaint. In this complaint, Bluegrass Flooring asserted claims against appellees, Randy Goodfell and Agtrans, Inc. Bluegrass Flooring claimed that Agtrans, Inc., the carrier of the flooring materials, and Randy Goodfell, its driver, negligently delivered the materials without collecting payment. These defendants denied the allegation, asserting that under the terms of the bill of lading, they were never under an obligation to demand payment for the shipment of materials.

Following a period of discovery, Spectrum Transportation, Agtrans, Inc., and Randy Goodfell filed separate motions for summary judgment. In their memoranda, the appellees referred to the absence of any instruction on the bill of lading requiring it to collect payment for the shipped materials at the time of delivery. In its response to the motions, Bluegrass Flooring reiterated that its claims sounded in **negligence**; it made no argument with respect to the terms of the bill of lading. Following oral argument, the trial court entered summary judgment, concluding that neither Spectrum Transportation nor Agtrans, Inc. and Randy Goodfell owed a duty of care to Bluegrass Flooring. This appeal followed.

Bluegrass Flooring contends that the circuit court erred by entering summary judgment in favor of Spectrum Transportation, Agtrans, Inc., and Randy Goodfell. It contends

that these parties owed a duty (in tort) to collect payment for the shipped materials.<sup>2</sup>

Actionable negligence in tort law requires a duty on the part of the defendant to the plaintiff, a breach of that duty, and subsequent injury. Mullins v. Commonwealth life Insurance Co., Ky., 839 S.W.2d 245 (1992). Whether the defendant owes a duty to the plaintiff is a question of law. Id.

It is undisputed that the flooring materials transported by Agtrans, Inc. and its driver Randy Goodfell were delivered undamaged to the buyer, Ralph Broadaiz. As the trial court aptly noted, this fundamental fact negates all basis for the appellant's cause of action sounding in tort. It is also undisputed that the terms of the bill of lading for this shipment of materials did not require Agtrans, Inc., acting through its driver Randy Goodfell, to collect payment for the shipped goods upon delivery to the buyer. Thus, there was no breach of a contractual duty to collect payment. Finally, the trial court assessed statements purportedly made in connection with an arm's length commercial transaction and held that they were insufficient to alter the duty of care undertaken by a freight transport broker, a carrier, and its driver, imposing no duties beyond those specified in the documents pertaining to the delivery. We find no error.

The Appellant has not shown that there existed a dispute with respect to any material issue of fact. The circuit

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<sup>2</sup>In its statement of the case, the appellant also made reference to a breach of contract claim.

court did not err by concluding that the appellees were entitled to judgment as a matter of law. See CR 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). Consequently, the entry of summary judgment was proper.

The judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE SPECTRUM  
TRANSPORTATION, INC.:

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