

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001255-MR

HOMESTRETCH LOGISTICAL SOLUTIONS, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN SCHULTZ GIBSON, JUDGE
ACTION NO. 14-CI-000165

JOHNSON LAWRENCE
WALKER INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: ACREE, NICKELL AND TAYLOR, JUDGES.

NICKELL, JUDGE: Homestretch Logistical Solutions, Inc. (“Homestretch”), has appealed from the Jefferson Circuit Court’s dismissal of its action against Johnson Lawrence Walker Insurance Agency (“JLW”). Following a careful review, we affirm.

Homestretch is a shipping company operating a fleet of semi-trucks, a number of which are leased from Penske Truck Leasing (“Penske”). Pursuant to its leasing agreements, Homestretch was obligated to maintain collision and comprehensive insurance coverage on all trucks leased from Penske. Homestretch engaged JLW to procure insurance coverage to satisfy the lease requirements. To facilitate the procurement process, JLW was informed of Homestretch’s business practices and corresponding insurance needs and was authorized to deal directly with Penske to ascertain pertinent information on the leased trucks including make, model, Vehicle Identification Number (VIN) and lease terms.

Upon receiving the appropriate information on the leased portion of the Homestretch fleet, JLW obtained an insurance policy through National Indemnity Company (“National”).¹ JLW informed Homestretch the policy would satisfy its needs and covered, among other things, physical damage to vehicles covered by the policy. On April 23, 2013, a collision caused substantial damages to a 2011 Freightliner truck leased by Homestretch from Penske. Homestretch filed a claim under the insurance policy but National denied the claim, stating the truck in issue had been specifically removed from the policy coverage on March 13, 2013, pursuant to instructions from JLW. Because the 2011 Freightliner was not listed as a covered automobile under the policy, it did not qualify for physical property damage coverage. Throughout this time period, Homestretch had paid National monthly premiums for the 2011 Freightliner as if it were covered.

¹ A copy of the policy does not appear in the record before us.

It was subsequently discovered the 2011 Freightliner was mistakenly removed from the policy. On or about March 12, 2013, Homestretch returned a 2012 Freightliner to Penske and sought to have it removed from the insurance policy. However, in an email to JLW, Homestretch erroneously identified the returned vehicle as the 2011 Freightliner which was damaged in the April collision. Besides this lone email message, no further communication regarding the returned vehicle occurred between JLW, National or Homestretch. JLW and National refused to work with Homestretch to correct the claim or provide information regarding policy changes or cancellations. After meeting such resistance—and unsure of its insured status—Homestretch obtained replacement coverage for its fleet using a different agent and insurer. No refund of unearned premiums was ever issued.

On January 4, 2014, Homestretch filed the instant suit against JLW and National, accusing both of breach of contract and violation of the Unfair Claims Settlement Practices Act² (“UCSPA”). It also asserted claims of negligence against JLW, and bad faith and violations of the timely settlement requirements of KRS 304.12-235 against National. Homestretch sought compensatory and punitive damages from each defendant.³

² Kentucky Revised Statutes (KRS) 304.12-230.

³ Homestretch’s claims against National are still pending in the trial court and are not at issue in this appeal.

Rather than answering the complaint, JLW moved to dismiss the action against it pursuant to CR⁴ 12.02 for failure to state a claim upon which relief could be granted. As set forth by the trial court, the motion contended

Homestretch's breach of contract claim against JLW fails as a matter of law, since JLW is not a party to the insurance contract and cannot be held liable for any alleged breach of the policy as a matter of law; that JLW cannot be subject to liability under the UCSPA, since there is no contractual obligation to pay Homestretch's claim under the express terms of an insurance policy and JLW cannot be sued for bad faith liability because the Complaint does not allege that JLW actually managed or controlled the disposition of Homestretch's underlying claim; that Homestretch's claim of negligence against JLW fails as a matter of law, as any negligence is solely attributable to Homestretch and JLW did not breach a duty owed to Homestretch; and that Homestretch's claim for punitive damages against JLW fails as a matter of law, as punitive damages are not recoverable in a breach of contract action, any alleged damages in this case are the result of negligence of Homestretch and JLW acted in accordance with its request from Homestretch to remove the 2011 Freightliner from the insurance policy.

In response, Homestretch argued the insurance policy procured by JLW did not meet its request for insurance, its business model or its insurance needs.

Further, JLW failed to properly process paperwork related to changes in the fleet, provide documentation of policy changes, and when problems were discovered, failed to return phone calls or otherwise communicate with Homestretch. Based on these allegations, Homestretch contended the Complaint adequately set forth claims of negligence and breach of contract against JLW. Finally, because

⁴ Kentucky Rules of Civil Procedure.

discovery had not yet commenced, Homestretch argued the motion to dismiss was premature and a waste of judicial resources.

JLW replied, asserting Homestretch failed to address—and thereby conceded—the deficiencies in the bad faith claim. It noted Homestretch had not argued JLW was a party to the insurance policy nor that JLW had a contractual obligation of any kind to pay Homestretch's claim under the policy issued by National. As it was not a party to the contract, JLW argued it could not be held liable for any breach thereof. Finally, JLW noted Homestretch admitted in its complaint that it sought to remove the 2012 Freightliner from the policy but identified the wrong vehicle in its communications with JLW, thereby negating any potential claims of negligence by JLW for removing the vehicle Homestretch directed to be removed as such action was based on and strictly complied with Homestretch's express directions to do so.

The trial court agreed with JLW, finding the sole contract at issue was the insurance policy between National and Homestretch, to which JLW was not a party and could not therefore be held liable for any breach thereof. Likewise, because JLW was not an insurer, nor did it manage or control the disposition of Homestretch's underlying claim, no action could lie against it for bad faith or violation of the UCSPA. On Homestretch's negligence claim, the trial court found JLW breached no duty owed to Homestretch and the erroneous removal of the 2011 Freightliner from the insurance coverage was caused solely by Homestretch's own negligence and mistake, thereby relieving JLW of any potential liability. The

trial court also determined Homestretch's claim for punitive damages failed as a matter of law as no allegations of intentional misconduct or reckless disregard of Homestretch's rights as an insured had been advanced pertaining to JLW. Having found no possible avenues of relief against JLW, the trial court granted JLW's motion to dismiss. This appeal followed.

Homestretch advances no argument the trial court erred in dismissing its claims for JLW's alleged violations of the UCSPA or for punitive damages. Accordingly, the trial court's judgment is affirmed as confessed in those respects. *See Osborne v. Payne*, 31 S.W.3d 911, 916 (Ky. 2000). Instead, Homestretch argues its complaint sufficiently alleged a cause of action for breach of contract against JLW and the trial court erred in not so finding. It further alleges, contrary to the trial court's holding, that any possible contributory negligence on its part does not foreclose the possibility of recovery from JLW. We disagree and affirm.

Under Kentucky law, parties may only sue for a breach of contract if privity of contract existed. *Presnell Constr. Managers, Inc. v. EH Constr., LLC*, 134 S.W.3d 575, 579 (Ky. 2004) (internal marks and citations omitted) (citing Black's Law Dictionary for the proposition that "[p]rivacy of contract is '[t]he relationship between parties to a contract, allowing them to sue each other but preventing a third party from doing so'"). In this action, there is no contract between Homestretch and JLW, as the trial court correctly found. The sole contract at issue is the insurance policy issued by National intending to cover

Homestretch.⁵ JLW's name does not appear anywhere on or in the policy. Because JLW is not a party to the contract, no privity exists between it and Homestretch. Thus, Homestretch has no right to recover damages from JLW for any alleged breach of the insurance policy. Dismissal was proper.

Homestretch next argues the trial court erroneously concluded Homestretch's mistake in identifying the 2011 Freightliner as the vehicle to be removed from the insurance coverage was the only negligent action involved in the instant suit. It further contends the trial court compounded the error by making inappropriate findings of fact before concluding Homestretch's own negligence foreclosed any possible recovery from JLW for negligence related to removal of the vehicle in question from the policy. As it did below, while acknowledging its own error, Homestretch attempts to shift liability to JLW based on a theory that JLW carelessly undertook its duty of ensuring Homestretch's insurance needs were satisfied. In essence, Homestretch asked the trial court—and now this Court—to save it from its own mistakes.

To recover under a theory of negligence, a plaintiff must prove three elements: 1) duty; 2) breach of that duty; and 3) consequent injury. The term “consequent injury” encompasses two distinct elements—actual injury and legal causation between the breach and the injury.

⁵ Homestretch alludes to a “separate agreement” between itself and JLW in an attempt to save its breach of contract claim. The substance of this alleged verbal agreement is vague at best, but somehow relates to JLW's agreement to procure insurance to meet Homestretch's needs. Contrary to Homestretch's assertions, we cannot say—based on the facts presented—this purported “separate agreement” is sufficient to prove the first element of a breach of contract claim, *i.e.*, the existence of a contract. Thus, we agree with the trial court's determination only one contract existed between any of the parties to this action.

Pathways, Inc. v. Hammons, 113 S.W.3d 85, 88–89 (Ky. 2003). The absence of proof on any one of the required elements is fatal to a negligence claim. *M & T Chemicals, Inc. v. Westrick*, 525 S.W.2d 740, 741 (Ky. 1974).

Keaton v. G.C. Williams Funeral Home, Inc., 436 S.W.3d 538, 542 (Ky. App. 2013).

The only alleged duty owed by JLW to Homestretch was to use reasonable care in procuring insurance coverage for the fleet. Homestretch admits JLW procured insurance through National and all of its vehicles were covered—including the 2011 Freightliner. It contends JLW breached its duty by carelessly removing a vehicle from the policy, subsequently resulting in damages to Homestretch. We disagree. As the trial court correctly concluded, JLW did exactly what it was tasked to do. It followed the explicit directions given by Homestretch to inform National to remove the 2011 Freightliner from the insurance policy. Contrary to Homestretch’s assertion, we cannot say JLW breached its duty nor that its actions were the legal cause of any injury incurred by Homestretch. The financial losses sustained following the collision involving the uninsured 2011 Freightliner were occasioned solely because of Homestretch’s own actions and instructions. Taking all of the factual allegations asserted as true, Homestretch has simply failed to make a *prima facie* showing of actionable negligence against JLW. There was no error in the trial court’s dismissal.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Theodore W. Walton
Louisville, Kentucky

BRIEF FOR APPELLEE:

Matthew W. Breetz
Bethany A. Breetz
Kristina M. Wetterer
Louisville, Kentucky