

BOISE, IDAHO, MAY 13, 2024, AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRUNOBUILT, INC., an Idaho corporation,)	
)	
Plaintiff-Appellant,)	Docket No. 49587-2022
)	
v.)	
)	
AUTO-OWNERS INSURANCE COMPANY,)	
a Michigan corporation,)	
)	
Defendant-Respondent,)	
)	
and)	
)	
RANDY L. RICHARDSON, an individual;)	
RICHARDSON INSURANCE SERVICES,)	
INC., an Idaho corporation,)	
)	
Defendants.)	
)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Lynn G. Norton, District Judge.

McConnell Wagner Sykes & Stacey PLLC, Boise, for Appellant.

Brassey Crawford, PLLC, Boise, for Respondent.

This case concerns the availability of insurance coverage for a parcel of real property in the Boise foothills (“Dempsey Property”) that was damaged by a landslide. Brunobuilt, Inc. contracted to build a residence on the Dempsey Property. Brunobuilt had previously retained Randy Richardson and Richardson Insurance Services, Inc. (collectively “Richardson”) to advise Brunobuilt on available insurance coverage and, when necessary, assist in obtaining coverage for its business operations. With Richardson’s assistance, Brunobuilt purchased a builder’s risk insurance policy issued by Auto-Owners Insurance Company that excluded coverage for damage resulting from landslides. Brunobuilt instructed Richardson to add the Dempsey Property to its policy in July 2015.

In March 2016, Brunobuilt’s policy was set for an annual renewal. Brunobuilt allegedly instructed Richardson to ensure that the renewed policy would continue to cover the Dempsey Property. Sometime between April and June 2016, the Dempsey Property suffered visible damage

from a landslide. Shortly thereafter, Brunobuilt contacted Richardson to inquire about the value of coverage for the Dempsey Property under the renewed policy. After speaking with Auto-Owners, Richardson informed Brunobuilt that the renewed policy did not cover the Dempsey Property.

Brunobuilt sued Richardson and Auto-Owners. Brunobuilt alleged that Richardson was negligent for failing to properly advise Brunobuilt regarding landslide insurance and by failing to maintain coverage for the Dempsey Property under the renewed policy. Brunobuilt alleged that Auto-Owners was responsible for Richardson's negligence under a theory of respondeat superior because Richardson was acting as Auto-Owners' agent.

Auto-Owners filed two motions for partial summary judgment. The first motion argued that Richardson was not acting as Auto-Owners' agent when Richardson failed to procure landslide coverage for Brunobuilt. The second motion argued that Auto-Owners could not be held liable for Richardson's alleged failure to provide coverage for the Dempsey Property because the renewed policy excluded coverage for damage caused by landslides.

On the first motion, the district court granted summary judgment in favor of Auto-Owners, concluding that Auto-Owners could not be liable for Richardson's negligence because Auto-Owners did not provide landslide coverage, including in Brunobuilt's original policy and renewed policy. In assessing the second motion, the district court treated Brunobuilt's opposition as a motion for reconsideration of its decision on the first summary judgment motion. The district court denied Brunobuilt's motion for reconsideration and reaffirmed that Brunobuilt's original policy and renewed policy did not cover damages caused by a landslide. Brunobuilt moved for reconsideration of the district court's grant of summary judgment and denial of its motion for reconsideration. The district court denied the motion and entered judgment in favor of Auto-Owners.

Brunobuilt timely appealed from the judgment in favor of Auto-Owners and argues that the district court erred when it: (1) decided issues not raised by the parties when it granted Auto-Owners' first motion for partial summary judgment; (2) treated Brunobuilt's opposition to Auto-Owners' second motion for partial summary judgment as a motion for reconsideration of the first summary judgment decision; (3) concluded that Richardson was not acting as Auto-Owners' agent; (4) concluded that both the original and the renewed policy excluded coverage for damage caused by landslides; and (5) denied Brunobuilt's motion for reconsideration.