COURT OF APPEALS
DECISION
DATED AND FILED

May 28, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP1437 **Cir. Ct. No. 2006CV164**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

GREGORY S. BABCOCK,

PLAINTIFF-APPELLANT,

V.

STATE FARM FIRE AND CASUALTY COMPANY AND FORREST "WOODY" ERICKSON,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Iowa County: EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Vergeront, Lundsten and Storck,[1] JJ.

[1] Circuit Court Judge John R. Storck is sitting on this appeal pursuant to the Judicial Exchange Program.

¶1 PER CURIAM. Gregory Babcock appeals from a summary judgment decision that dismissed his lawsuit for reformation of an insurance policy. The lawsuit was based upon allegations that Babcock's insurance agent negligently failed to procure sufficient replacement cost coverage on a policy that adjusted annually for inflation. We affirm for the reasons discussed below.

BACKGROUND

¶2 Babcock contacted State Farm Insurance agent Forrest Erickson in 1994 to obtain a total replacement cost policy for a house he had just bought. State Farm sent someone to take measurements of the house in order to determine the appropriate initial policy limit. Based upon its measurements, State Farm issued a policy with a $90,000 coverage limit, which was thereafter adjusted annually for inflation. That figure comported with Babcock's own perception of the property's value. The policy indicated that Babcock should contact State Farm if he made improvements to the property or had any questions about his coverage. State Farm also sent Babcock periodic renewal certificates which suggested he review his coverage limits to ensure the policy met his needs and which indicated that the replacement cost set forth in the policy was an "estimated cost based on general information," that "the actual cost to replace your home could be significantly different," that State Farm did not "guarantee the figure," and that the insured could choose to have his own appraisal done.

¶3 Babcock made a number of improvements to the house over the years, such as installing new kitchen cabinets and flooring, remodeling bedrooms, and replacing windows, doors and siding. By 2004 the appraised value of the house had increased to $194,000. Babcock did not notify State Farm about the improvements or provide it with copies of the increased appraisals.

¶4 A fire destroyed Babcock's house in 2005. By that time the inflation adjustments had increased Babcock's policy limit from $90,000 to $153,700. However, Babcock obtained an estimate showing that the actual cost to replace the home was going to be $231,435.

¶5 Babcock filed suit, raising claims for negligence and reformation of the insurance policy to obtain the $77,735 shortfall in replacement coverage. The trial court dismissed the suit on summary judgment, concluding that the materials before it established no material factual dispute that State Farm had issued a properly underwritten replacement cost policy in 1994 and that any failure to appropriately increase coverage afterwards was due to Babcock's own inattention to his coverage needs.

STANDARD OF REVIEW

¶6 This court reviews summary judgment decisions de novo, applying the same methodology and legal standard employed by the circuit court. ***Brownelli v. McCaughtry***, 182 Wis. 2d 367, 372-73, 514 N.W.2d 48 (Ct. App. 1994). The summary judgment methodology is well established and need not be repeated here. *See, e.g.*, ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶¶20-23, 241 Wis. 2d 804, 623 N.W.2d 751. The legal standard is whether there are any material facts in dispute that entitle the opposing party to a trial. ***Id.***, ¶24. We view the materials in the light most favorable to the party opposing the motion. ***Id.***, ¶23.

DISCUSSION

¶7 Reformation of an insurance contract is appropriate when an insurance agent fails to procure coverage that the insured actually requested. *See* ***Appleton Chinese Food Serv. v. Murken Ins., Inc.***, 185 Wis. 2d 791, 802-03 & n.5, 519 N.W.2d 674 (Ct. App. 1994). Here Babcock asserts that he requested replacement coverage and that State Farm either set the initial replacement value too low, or it failed to make inflation adjustments at a sufficient rate.

¶8 With regard to the calculation of the initial replacement value, Babcock himself estimated the entire property, including outbuildings, to have been worth $80,000 to $90,000 when he bought the policy. He points out that State Farm acknowledged that market value does "not necessarily" equate to replacement value. While that may be true, the problem for Babcock is that his summary judgment materials did not provide any other admissible estimate as to what the replacement cost of the house should have been in 1994. A mere allegation that the insurance limit ultimately proved inadequate to cover the loss is insufficient to establish a mistake in setting the initial coverage amount. *See generally* ***Lenz Sales & Serv., Inc. v. Wilson Mut. Ins. Co.***, 175 Wis. 2d 249, 257-58, 499 N.W.2d 229 (Ct. App. 1993). Therefore the trial court properly determined that the materials were insufficient to create a material factual dispute that the replacement value of Babcock's house in 1994 was any more than $90,000.

¶9 With regard to the periodic adjustments of the replacement cost figure for inflation, Babcock concedes in his reply brief that State Farm had no continuing duty to inform him of his coverage needs after the policy was issued. *See* ***Nelson v. Davidson***, 155 Wis. 2d 674, 456 N.W.2d 343 (1990). We agree that

under the circumstances of this case it was Babcock's own obligation, not that of State Farm, to evaluate whether his level of coverage was adequate before renewing the policy, given both the language in the policy and renewal notices and the fact that Babcock had made substantial improvements to his house without notifying State Farm. Moreover, even assuming that State Farm had some obligation to exercise reasonable diligence in setting the inflation rate, Babcock provided no information to show that industry standards would have required some other rate or calculation. In short, the summary judgment materials were insufficient to establish that State Farm breached any duty to Babcock in setting the inflation rate. Accordingly, the trial court properly dismissed Babcock's claims.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).