

No. 1-10-3500

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAYMOND J. BENDER, Special Administrator)	Appeal from the
of the Estates of Shirley Bender, Deceased and)	Circuit Court of
Raymond F. Bender, Deceased,)	Cook County
)	
Plaintiff-Appellant,)	No. 08 CH 29411
)	
v.)	Honorable
)	Rita M. Novak,
ILLINOIS CASUALTY COMPANY, an Illinois)	Judge Presiding.
corporation,)	
)	
Defendant-Appellee.)	

JUSTICE STERBA delivered the judgment of the court.
Justice Lavin and Justice Fitzgerald Smith concur in the judgment.

ORDER

¶ 1 *HELD:* The circuit court did not err in granting defendant's motion for summary judgment where a generic statement to the insured's agency that the insured had "everything done" did not constitute compliance with the mandatory loss requirement verification. Moreover, the issue of whether the insured's insurance agency was also an agent of defendant is not relevant where sufficient verification of compliance was not provided to the insurance agency.

¶ 2 Plaintiff-appellant Raymond J. Bender appeals the circuit court's grant of summary

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judgment in favor of defendant-appellee Illinois Casualty Company (Illinois Casualty) in a declaratory judgment action. Bender contends that summary judgment was improper because deposition testimony established that the insured party complied with the mandatory loss control requirements, or at least raised a genuine issue of material fact on the compliance issue.

Moreover, Bender contends that notice of compliance to the insured party's broker was notice to Illinois Casualty. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 On January 4, 2003, Shirley Bender was injured in a fall at the Niagara Drive Inn, Inc. She and her husband, Ray Bender, filed a lawsuit against the restaurant and its owner, Panagiotis Georgopoulos. Notice of the lawsuit was sent to Illinois Casualty, which had issued a general liability policy to the restaurant effective July 30, 2002. Illinois Casualty declined to participate in the lawsuit on the grounds that the policy was not in force at the time of the accident. Shirley died on December 27, 2006, and Ray was appointed special administrator of her estate.

¶ 5 A judgment was entered on May 14, 2007, in favor of Ray individually and as special administrator in the amount of \$150,000. The restaurant and Georgopoulos later assigned their rights against Illinois Casualty to Ray and to Shirley's estate. On August 12, 2008, Ray filed a declaratory judgment action seeking a declaration that the Illinois Casualty policy was in force at the time of the accident and that Illinois Casualty was obligated to satisfy the \$150,000 judgment. Ray died on June 18, 2009, and Bender, Ray and Shirley's son, was appointed special administrator of both estates.

¶ 6 Illinois Casualty filed a motion for summary judgment on the grounds that the policy had

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been canceled prior to Shirley's fall. The insurance policy contained a provision that allowed Illinois Casualty to make inspections and surveys of the premises at any time and issue reports and recommendations. Any inspections, surveys, reports or recommendations were related solely to insurability. On September 16, 2002, Illinois Casualty sent a representative to the restaurant to inspect the premises. The restaurant received a letter from Illinois Casualty dated September 26, 2002, containing the results of the inspection. The letter listed a mandatory loss control requirement, namely, that the restaurant must install a "K" type fire extinguisher in the kitchen area. The letter also listed several loss control recommendations relating to fire protection and lighting, to be completed at the restaurant's earliest convenience.

¶ 7 The letter explained that for the mandatory loss control requirement, Illinois Casualty must receive verification of compliance by October 29, 2002. Examples of acceptable verification were listed as signed maintenance contracts, photographs, paid receipts, etc. The letter stated that "[a]ll items verifying compliance should be sent to your insurance agent," and noted that absent verification by the specified date, a direct notice of cancellation would be sent. The letter concluded as follows: "Your agency has been provided with a copy of this letter: should you have any questions or need clarification, they will be able to assist you." A copy of the letter was sent to Pirpiris Insurance Agency.

¶ 8 A notice was mailed on October 30, 2002, informing the restaurant that the policy would be canceled at 12:01 a.m. on January 1, 2003, due to noncompliance with the mandatory loss control requirements. The notice stated that in accordance with Illinois law, a named insured wishing to appeal the reason for cancellation must mail or deliver a written request for a hearing

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which clearly states the basis for the appeal at least 20 days prior to the effective date of cancellation. Finally, the notice said: "You should contact your agent concerning coverage through another insurer."

¶ 9 Anne Thomas, an underwriter for Illinois Casualty, was deposed and testified that Illinois Casualty never received any verification that the fire extinguisher had been installed. She further stated that it was not the policy of Illinois Casualty to follow up with the insured's agent to determine whether notice of compliance had been received by the agent. Thomas testified that even if the fire extinguisher had been installed, the policy would have been canceled if she had not received notification of the installation. Thomas stated that if Illinois Casualty had received notice of compliance, the cancellation would have been rescinded.

¶ 10 Georgopoulos was also deposed. At his deposition, he testified that his insurance agent was the Pirpiris Insurance Agency. He said he had used Pirpiris for years, and that the insurance agents at Pirpiris were Greek and could speak to him in Greek and explain insurance issues to him. Georgopoulos testified that he is not able to read English but that his wife can read English. He said that he hired Pirpiris to take care of all insurance matters for him and Pirpiris was supposed to come over and check everything and tell him what he needed to do.

¶ 11 When asked about the cancellation notice, Georgopoulos first said he never received it. He then stated that he received it a "couple of days" before the insurance expired and took it over to Pirpiris to ask why his insurance had been canceled when he had "everything done." He testified that Pirpiris told him not to worry and that someone at Pirpiris would take care of it. He then stated that the cancellation notice was sent by Pirpiris, not by Illinois Casualty, and that he

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received it one or two days before or after the accident happened.

¶ 12 Georgopoulos also acknowledged receipt of the letter containing the results of the inspection. He testified that Illinois Casualty told him to fix things he had already fixed. He said he already had a fire extinguisher in the kitchen underneath a table but was told it needed to be mounted on the wall instead. Georgopolous stated that after the inspection, he mounted the fire extinguisher on the wall himself. He said he then waited for someone from Pirpiris to come over and check on it, but nobody came. He acknowledged that he did not tell anyone that he put the fire extinguisher on the wall, but said that Pirpiris received the same letter and he expected someone to come and check everything.

¶ 13 Bender filed a response to the summary judgment motion, arguing that a genuine issue of material fact existed regarding whether the fact that the fire extinguisher had been installed was ever communicated to Pirpiris. Bender argued that Pirpiris was acting as the agent of Illinois Casualty for the purpose of verifying compliance and therefore, notice to Pirpiris constituted notice to Illinois Casualty. In response, Illinois Casualty stated that Pirpiris was Georgopoulos' insurance broker, not an agent of Illinois Casualty. Moreover, even if Pirpiris was treated as an agent of Illinois Casualty, Georgopolous did not provide verification of compliance to Pirpiris by October 29, 2002.

¶ 14 The circuit court granted Illinois Casualty's motion for summary judgment on June 4, 2010. The circuit court stated that there was no disputed issue of fact where the deposition testimony established that Pirpiris had been hired by Georgopoulos as his agent, and that Georgopoulos admitted receiving the compliance letter and the cancellation notice but simply

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waited for his agent to come and inspect the premises. The circuit court denied Bender's motion to reconsider and Bender timely filed this appeal.

¶ 15 ANALYSIS

¶ 16 Summary judgment is proper when the pleadings, depositions, and affidavits demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *State Farm Mutual Automobile Insurance Co. v. Coe*, 367 Ill. App. 3d 604, 607 (2006). We review *de novo* an order granting summary judgment. *Hall v. Henn*, 208 Ill. 2d 325, 328 (2003). In reviewing a grant of summary judgment, the appellate court will construe the record strictly against the movant and liberally in favor of the nonmoving party. *Nettleton v. Stogsdill*, 387 Ill. App. 3d 743, 748 (2008).

¶ 17 Bender first argues that the circuit court erred in granting summary judgment because Georgopoulos' deposition testimony established that he complied with the mandatory loss requirements. Georgopoulos testified that after the inspection, he personally installed the "K" type fire extinguisher on the wall as required. He further testified that a few days before the insurance expired, he went to his insurance agency and asked why his insurance had been canceled when he had "everything done." Bender argues that this constitutes evidence of compliance.

¶ 18 The record does not support this argument. The September 26, 2002, letter from Illinois Casualty explained that for the mandatory requirement that the fire extinguisher be properly installed, verification of compliance must have been provided to the restaurant's insurance agent and received by Illinois Casualty by October 29, 2002. Examples of acceptable verification were

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listed as signed maintenance contracts, photographs, paid receipts, etc. The letter stated that "[a]ll items verifying compliance should be sent to your insurance agent," and noted that absent verification by the specified date, a direct notice of cancellation would be sent.

¶ 19 Georgopoulos' deposition testimony does not establish that he complied with this requirement. Indeed, when asked whether he had ever notified Pirpiris that he had properly installed the fire extinguisher, Georgopoulos acknowledged that he had not. Instead, Georgopoulos testified that he simply waited for Pirpiris to come out and do an inspection but nobody came. Moreover, Georgopoulos' testimony that he went to Pirpiris a few days before the insurance expired on January 1, 2003, and told them that he had "everything done" is not sufficient to comply with the requirement for some type of verification, such as a photograph, demonstrating compliance by the deadline of October 29, 2002.

¶ 20 Bender contends that the letter only provided examples of types of acceptable verification and did not exclude oral notification. We disagree with this interpretation. The examples given make it clear that oral notification is not sufficient where all of the examples involve some type of tangible proof that the work in question had been completed. Moreover, the letter specifically instructs the insured to *send* items verifying compliance to its insurance agent, further supporting an interpretation that oral notice is insufficient. However, even if we were to accept Bender's contention that oral verification is acceptable, a generic statement that Georgopoulos had "everything done" does not constitute verification that the fire extinguisher had been installed on the wall as required.

¶ 21 Bender further contends that the deadline of October 29, 2002, was waived because

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Georgopoulos went to Pirpiris before the policy had actually been canceled and he still had time to obtain a replacement policy, and because Pirpiris told him they would "take care of it."

Bender argues that because Pirpiris was an agent of Illinois Casualty, the fact that Pirpiris did not say that the policy would be canceled indicates that the deadline was waived. As an initial matter, we note that the record contains conflicting testimony about when Georgopoulos went to Pirpiris about the cancellation notice. Georgopoulos first testified that he never received the notice, then that he received it a few days before the cancellation date, and finally that he received it one or two days before or after the accident on January 4, 2003. He further testified that when he received the notice he went to Pirpiris, but did not specify whether he went the same day he received it or another day. However, even viewing the evidence in the light most favorable to the nonmoving party and accepting that Georgopoulos went to Pirpiris before January 1, and even accepting that although he did not comply with the deadline he still had time to rescind the cancellation, a statement that he had "everything done" is not sufficient to provide verification that the fire extinguisher was properly installed.

¶ 22 Bender next argues that because the letter from Illinois Casualty directed the restaurant to send items verifying compliance to its insurance agent, Illinois Casualty was, in effect, appointing Pirpiris as its agent. Bender then argues that notice to Pirpiris as Illinois Casualty's agent constituted notice to Illinois Casualty.

¶ 23 We need not address the issue of whether or not Pirpiris was, in fact, an agent of Illinois Casualty, because the issue is not relevant to the resolution of this case. Georgopoulos testified that he never told Pirpiris that he had properly installed the fire extinguisher. He further testified

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that Pirpiris never came to inspect the property to determine whether the fire extinguisher had been installed. Again, even if Georgopoulos did go to Pirpiris before the effective date of cancellation, a generic statement that he had "everything done" does not constitute verification of compliance with the mandatory loss requirement. Thus, whether or not notice to Pirpiris constituted notice to Illinois Casualty is irrelevant because Georgopoulos never provided sufficient verification of compliance to Pirpiris.

¶ 24 For the reasons stated, we hold that the circuit court did not err in granting summary judgment in favor of Illinois Casualty.

¶ 25 Affirmed.