

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 99-0090

EDWIN GREY

vs.

WILLIAM T. FINN INSURANCE AGENCY, INC. & another<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

The plaintiff, Edwin Grey, filed this negligence action against defendants William F. Finn Insurance Agency, Inc. and Western Massachusetts Electric Company<sup>2</sup> based on the destruction of his barn by fire and alleged underinsurance of the premises. The defendant now moves for summary judgment on the grounds that the defendant owed the plaintiff no duty to ascertain his insurance needs or to advise the plaintiff regarding proper coverage. For the reasons set forth below, the defendant's motion for summary judgment is **ALLOWED**.

**BACKGROUND**

Construed in the light most favorable to the plaintiff, the facts are as follows. In May 1996, the plaintiff contacted Martha Finn ("Finn") of the defendant agency seeking an insurance quote for his home and barn located in Bernardston. Finn then requested

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<sup>1</sup> Western Massachusetts Electric Company.

<sup>2</sup> By stipulation of the parties, the court dismissed Western Massachusetts Electric from the action, with prejudice, on October 2, 2000.

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an interview with the plaintiff to answer questions regarding the property and to complete an application for insurance coverage. At that meeting, the defendant agreed to secure an insurance policy for the property.

On June 3, 1996, the plaintiff completed and signed an insurance application prepared by the defendant for a policy with Dorchester Mutual Insurance Company ("Dorchester Mutual"). This application expressly stated that the policy would provide \$25,000 in coverage for the barn. The plaintiff eventually purchased a homeowners' insurance policy through the defendant from Dorchester Mutual.

On June 13, 1996, the plaintiff received the Dorchester Mutual insurance policy detailing the coverage amounts for the home and the barn. The plaintiff briefly perused the document, saw that it was the policy, not a premium bill, and promptly filed it. He never reviewed the policy to verify the coverage amounts.

On December 9, 1996, a fire destroyed the plaintiff's barn. When the plaintiff filed an insurance claim with the defendant, he was informed that the policy entitled him to \$25,000 in coverage for the barn. The plaintiff told the defendant that he thought that he had obtained \$250,000 in coverage for the barn, equal to the amount purchased for his home.

On July 27, 1999, the plaintiff filed this action against the defendant alleging that it breached its duty in failing to obtain \$250,000 in coverage for the plaintiff's barn as he had requested.<sup>3</sup>

## DISCUSSION

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<sup>3</sup> The plaintiff's complaint had also alleged a negligence claim against the now-dismissed defendant Western Massachusetts Electric Company.

Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); Highlands Ins. Co. v. Aerovox, Inc., 424 Mass. 226, 232 (1997). An adverse party may not defeat a motion for summary judgment by resting merely on the allegations and denials of its pleadings, but must set forth specific facts with affidavits, deposition testimony, answers to interrogatories, or admissions on file showing that there is a genuine issue for trial. Mass. R. Civ. P. 56(e). See Kourouvacilis v. General Motors Corp., 410 Mass. 706, 711 (1991).

Affidavits used to support or oppose a summary judgment motion, moreover, must “be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters therein.” Mass. R. Civ. P. 56(e); TLT Constr. Corp. v. A. Anthony Tappe and Assoc., 48 Mass. App. Ct. 1, 11 (1999). See Symmons v. O’Keeffe, 419 Mass. 288, 295 (1995); McKenzie v. Brigham & Women’s Hospital, 405 Mass. 432, 437 (1989). “Bare assertions and conclusions are not enough to withstand a well pleaded motion for summary judgment.” Dupont v. Dracut, 41 Mass. App. Ct. 293, 297 (1996), citing Polaroid Corp. v. Rollins Env’tl. Servs., 416 Mass. 684, 696 (1993).

In this case, the defendant contends that it owed no duty to the plaintiff to advise him regarding the proper insurance coverage to obtain for the barn. The plaintiff asserts that it breached its duty as his agent in failing to obtain \$250,000 in coverage on the barn.<sup>4</sup>

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<sup>4</sup> Although the parties’ summary judgment motions both address whether the defendant negligently misrepresented to the plaintiff that it had obtained \$250,000 in coverage for his

An insurance agent owes a greater duty to the insured than does an insurance company. Campione v. Wilson, 422 Mass. 185, 195 (1996). In Massachusetts, however, no fiduciary relationship exists between an agent and the insured. Baldwin Crane & Equip. Corp. v. Riley & Reilly Ins. Agcy. Inc., 44 Mass. App. Ct. 29, 31-32 (1997). See Robinson v. Charles A. Flynn Ins. Agcy. Inc., 39 Mass. App. Ct. 902, 902-903 (1995). Absent a showing of “special circumstances of assertion, representation and reliance,” moreover, an insurance agency has no duty to inform or advise its clients as to the availability of insurance coverage, Baldwin Crane, *supra*, at 32-33, quoting Bicknell, Inc. v. Havlin, 9 Mass. App. Ct. 497, 500-501 (1980); Robinson, *supra*, at 902-903. “An expanded agency agreement, arrangement, or relationship sufficient to require a greater duty from the agent ... exists where the agent holds himself out as an insurance specialist or counselor and receive[s] compensation and advise apart from the premiums paid by the insured.” Baldwin Crane, *supra*, at 32.

The summary judgment record is devoid of evidence that a special relationship existed between the defendant and the plaintiff which would expand the general duty owed by the defendant. The plaintiff did not select the defendant based on any understanding that the defendant possessed special insurance expertise, nor did he compensate the defendant beyond the monthly premiums paid. Their relationship was not one of an extended duration. The contacts, furthermore, between the plaintiff and the defendant, such as the defendant’s on-site review of the property prior to filing the

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barn, because the plaintiff neither pled a negligent misrepresentation cause of action in his complaint, nor did he amend his complaint to include this claim, the court will not consider these arguments.

insurance application, constituted the normal business dealings required to draft an insurance policy.<sup>5</sup> They do not evince circumstances which would create a special relationship between the parties.

Here, the undisputed facts show that the defendant exercised reasonable care and competence in obtaining an insurance policy for the plaintiff. The defendant requested that the plaintiff complete and sign an insurance application which outlined the coverage the defendant would seek for his property. This application expressly stated that the policy would provide \$25,000 in coverage for the barn. The defendant then secured insurance coverage for the property with Dorchester Mutual. Any fault in this case lies squarely with the plaintiff, who failed to review adequately the policy statement detailing the coverage amounts and, if so desired, request additional coverage. While an insured and an insurance agent are in a principal-agent relationship, an insured "cannot abandon all responsibility for ascertaining the terms of the coverage his [agent] obtained." Campione, supra at 196.

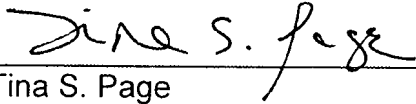
As the plaintiff fails to establish any genuine issues of material fact proving that the defendant owed him a legal duty to advise the plaintiff regarding his insurance coverage, summary judgment must issue for the defendant as a matter of law.

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<sup>5</sup> The court declines to consider whether the defendant's alleged recommendation to the plaintiff that he obtain \$250,000 coverage for the barn reflects an assertion, representation or reliance which would trigger a duty on the part of the agency, as these alleged statements, detailed in the plaintiff's affidavit, constitute inadmissible hearsay upon which summary judgment may not rest. See McKenzie, supra, at 437-438; Madsen v. Erwin, 395 Mass. 715, 721 (1985).

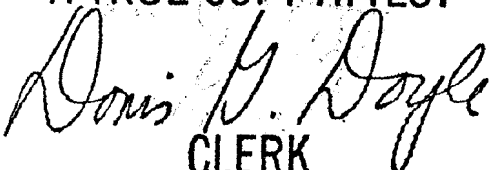
**ORDER**

It is hereby **ORDERED** that the Defendant's Motion for Summary Judgment is **ALLOWED.**

  
Tina S. Page  
Justice of the Superior Court

**Dated:** November 1, 2000

**Entered:** November 1, 2000

A TRUE COPY ATTEST  
  
CLERK