



Global Sun Pools

2004 | Cited 0 times | Court of Appeals of Texas | April 26, 2004

REVERSED and RENDERED

MEMORANDUM OPINION

Global Sun Pools, Inc., appeals the trial court's summary judgment in favor of the Burlington Insurance Company. In three issues, Global argues the trial court erred in granting Burlington's motion for partial summary judgment and denying Global's motion for partial summary judgment, and the trial court's order is erroneous. We reverse the trial court's judgment and render judgment in favor of Global.

In 2001, Global, doing business as The Pool Depot, built an above-ground swimming pool for Phyllis and Donald Reed. The Reeds subsequently filed suit against Global, asserting that Global sent "its builders to construct the pool and deck," the deck was not constructed in a good and workmanlike manner, and Phyllis was injured when she leaned against part of the deck railing and it collapsed. Global tendered the lawsuit to Burlington for defense and indemnity. Paul Simmons, the man who actually constructed the pool, had a policy with Burlington that covered the installation of above-ground swimming pools and named Global as an additional insured.

Nevertheless, Burlington denied coverage, arguing that nothing showed any connection between the Reeds' claims and the operations of its named insured, Simmons. Global responded that, under the applicable law, the evidence showed the Reeds sued on the basis of the actions of "its builders" in constructing the deck. Both sides moved for partial summary judgment, the trial court granted Burlington's motion and denied Global's motion, and this appeal followed.

In its first and second issues, Global argues the trial court erred in granting Burlington's motion for partial summary judgment and denying Global's motion for partial summary judgment. The standard of review of a summary judgment is well established. See *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). When both parties move for summary judgment, each party "bears the burden of establishing that it is entitled to judgment as a matter of law. *Guynes v. Galveston County*, 861 S.W.2d 861, 862 (Tex. 1993). A motion for summary judgment must itself expressly present the grounds upon which it is made and must stand or fall on those grounds alone. *Espalin v. Children's Med. Ctr. Of Dallas*, 27 S.W.3d 675, 688 (Tex. App.-Dallas 2000, no pet.).

When the summary judgment order does not state the grounds upon which it is based, the party challenging the order must show that each of the independent arguments alleged in the motion is



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insufficient to support the order. *Jones v. Hyman*, 107 S.W.3d 830, 832 (Tex. App.-Dallas 2003, no pet.); *Williams v. City of Dallas*, 53 S.W.3d 780, 785 (Tex. App.-Dallas 2001, no pet.). When we review cross-motions for summary judgment, we consider both motions and render the judgment the trial court should have rendered. *Coastal Liquids Transp., L.P. v. Harris County Appraisal Dist.*, 46 S.W.3d 880, 883 (Tex.2001). An insurer's duty to defend is determined by the allegations in the pleadings and the language of the insurance policy. *Nat'l Union Fire Ins. Co. v. Merch. Fast Motor Lines*, 939 S.W.2d 139, 141 (Tex. 1997). This is referred to as the "eight corners" rule. *Id.* When applying the eight corners rule, we give the allegations in the petition a liberal interpretation. *Id.* Where the complaint does not state facts sufficient to clearly bring the case within or without the coverage, the general rule is that the insurer is obligated to defend if there is, potentially, a case under the complaint within the coverage of the policy. *Id.*; *Heyden Newport Chem. Corp. v. Southern Gen. Ins. Co.*, 387 S.W.2d 22, 26 (Tex. 1965). Stated differently, in case of doubt as to whether or not the allegations of a complaint against the insured state a cause of action within the coverage of a liability policy sufficient to compel the insurer to defend the action, such doubt will be resolved in the insured's favor. *Nat'l Union*, 939 S.W.2d at 141; *Heyden*, 387 S.W.2d at 26.

Here, the petition at issue alleged the Reeds contracted with Global to build a pool, and Global "did send its builders to construct the pool and deck." The petition further alleged that Phyllis Reed was injured when the deck railing collapsed because it was not constructed in a good and workmanlike manner. Burlington's policy at issue here shows Paul Simmons as the named insured engaged in the business of installing above-ground swimming pools. An endorsement to the policy named Global as an additional insured "with respect to liability arising out of [Simmons'] operations or premises owned by or rented to [Simmons]." The policy also shows a \$50 payment on behalf of Global. Burlington argues the Reeds' petition failed to state that any party other than Global performed the pool construction and, therefore, the petition did not create any potential for coverage under Burlington's policy with Simmons. On the contrary, Global was an additional insured as to liability arising out of Simmons' activities as an installer of above-ground pools. The Reeds' petition referred to Global and "its builders." Interpreting the matter liberally and resolving all doubts in the insured's favor, we conclude the language of the petition and the insurance policy create the potential for a case under the complaint within the coverage of the policy. See *Nat'l Union*, 939 S.W.2d at 141; *Heyden*, 387 S.W.2d at 26. Thus, the trial court erred in granting Burlington's motion for summary judgment and denying Global's motion for summary judgment on the issue of whether Burlington had the duty to defend Global in the underlying lawsuit. See *Nixon*, 690 S.W.2d at 548. We sustain Global's first and second issues. Because of our disposition of Global's first and second issues, we need not address Global's third issue.

Accordingly, we reverse and render judgment that Burlington had a duty to defend Global.

DAVID L. BRIDGES JUSTICE

