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Armstrong v. Farmers Insurance Co. of Idaho Appellant's Reply Brief Dckt. 34250

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRIAN ARMSTRONG and GLENDA
ARMSTRONG, husband and wife,

Plaintiffs/Appellants,

vs.

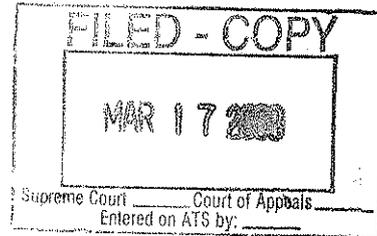
FARMERS INSURANCE COMPANY OF
IDAHO, an Idaho corporation; CORPORATE
DOES I – X, whose true names are unknown,

Defendants/Respondents.

Supreme Court No. 34250

Case No. CV 03-9214

APPELLANTS' REPLY BRIEF



APPELLANTS' REPLY BRIEF

Appeal from the District Court of the
First Judicial District for Kootenai County

The Honorable Charles W. Hosack, District Judge, Presiding

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ARGUMENT

The issue presented on appeal is whether the District Court erred in its broad determination that Farmers is not obligated to compensate the Armstrongs under contract or any other theory of law. The Armstrongs argue that the District Court impermissibly granted summary judgment to non-moving party Farmers on issues that were not raised or addressed by moving party Armstrongs and that the District Court incorrectly interpreted the Armstrongs' insurance policy as a matter of law.

I. The District Court, in error, granted summary judgment to the non-moving party (Farmers) on an issue that was not raised or addressed by the moving party (Armstrongs).

The Armstrongs moved the District Court for partial summary judgment in the form of a declaration interpreting a provision of their homeowner's insurance policy and enforcing their right to coverage. *R. p. 79*. The sole contract provision that the Armstrongs sought interpretation of was the provision providing coverage for loss caused by sudden, accidental discharge of water from a household appliance. *R. p. 82*. The Farmer's Policy includes a blanket exclusion for water. However, within the water damage exclusion some coverage is given back (i.e. – loss caused by water which has escaped from an appliance).

Farmers never made a cross motion for summary judgment. However, it did respond to the Armstrongs' motion. In Farmers' response, it acknowledged that the only issue before the Court was whether an ambiguity under the policy exists. *R. p. 91*. Further, Farmers' briefing only addressed the ambiguity related to the policy provision providing coverage for

water from within a household appliance. *R. p. 101*. Farmers' summary judgment briefing also pointed to disputes of facts unrelated to the appliance provision.

The Armstrongs' Reply briefing focused the District Court on the narrow issue of the appliance provision. *R. p. 145*. The Armstrongs informed the District Court that for purposes of their motion for summary judgment, the Armstrongs were not raising issues of coverage unrelated to the appliance provision of the Policy. *R. p. 145*. The Armstrongs acknowledged that issues of fact existed on other theories of recovery. *Id.* That is precisely why the Armstrongs narrowed their summary judgment argument. The District Court then broadly ruled that under the facts of this case, Farmers was not obligated to compensate the Armstrongs for their losses under any theory. *R. p. 180*.

The Armstrongs are not appealing the District Court's denial of their Motion for Partial Summary Judgment. They are appealing the District Court's ruling granting summary judgment to non-moving party Farmers. The District Court, in a procedural game of hopscotch, granted summary judgment to non-moving Farmers by having Farmers file a motion for summary judgment after the ruling was already made. *See, Tr. p. 3, ll. 16 -25; p. 4, ll. 1-6 (2007)*.

The District Court recognized that it could have granted summary judgment against the Armstrongs *sua sponte* when ruling on the Armstrongs' motion for summary judgment. However the Court did not "take that extra step" since no cross-motion for summary judgment had been made. *See, Tr. p. 4, ll. 19-25 (2007)*. The District Court acknowledge that granting Farmer's Motion for Summary Judgment was the same as if it had granted the

non-moving party summary judgment at the time the Armstrongs' filed their motion for Summary Judgment. *See, Tr. p. 6, ll. 5-19; p. 7, ll. 1-7 (2007)*. All parties agreed that this was the proceeding that was taking place.

In granting Farmers' Motion for Summary Judgment the District Court was trying to avoid "hassles" on appeal from a procedural basis. *See, Tr. p. 3 ll. 16-22 (2007)*. The intent of parties' procedural actions was to avoid the appellate court from saying there's some question about the appealability of this case. *Tr. p. 6, ll. 1-5 (2007)*.

The issue that the District Court and the parties was trying to avoid is the same procedural issue that Farmers is now raising. Farmers' argues that the Armstrongs should not be allowed to appeal the denial of their motion for summary judgment while at the same time raising issues for the first time on appeal. The Armstrongs are not raising issues for the first time on appeal, nor are they appealing a denial of their motion for summary judgment. The Armstrongs are raising issues that were never considered by the court when it granted summary judgment to Farmers. Summary judgment cannot be based on issues raised sua sponte by the District Court without affording parties adequate advance notice and opportunity to respond to issues raised by the court. *Mason v. Tucker and Assoc.*, 125 Idaho 429, 432, 871 P.2d 846, 849 (*Ct. App.* 1994). In instances where summary judgment is granted to the non-moving party, the record should be liberally construed in favor of the party against whom summary judgment was entered. *Harwood v. Talbert*, 136 Idaho 672, 677-678, 39 P.3d 612, 617-618 (2001).

As a result of the Armstrongs' Motion for Partial Summary Judgment the District Court made a blanket determination that the no coverage existed for the Armstrongs' claims. *R. p. 180*. This had the same effect as granting summary judgment to Farmers. In fact this was the same bases that Farmers raised for moving for summary judgment in its motion. *R. pp. 190-191*. The District Court had already ruled that Farmers was not obligated under any theory of law to compensate the Armstrongs. Based on this ruling the Armstrongs did not have a basis to oppose Farmers' Motion for Summary Judgment. A district court must not be allowed to decide a issue that a party did not have advance notice of and opportunity to demonstrate why summary judgment should not be entered. *Harwood v. Talbert*, 136 Idaho at 678, 39 P.3d at 618.

As the non-moving party, the Armstrongs had no occasion to raise issues of fact regarding their other claims for coverage. In their complaint the Armstrong's alleged causes of action for breach of contract of insurance, breach of covenant of good faith and fair dealing, negligent investigation and claim adjustment, unfair trade practice in violation of I.C. § 41-1329 and 41-1831, and constructive fraud relating to the issue of whether there was insurance coverage. Each of these claims on any theory of law were wiped out by the District Court's premature ruling that no coverage existed.

The sole issue presented in Armstrongs' Motion for Partial Summary Judgment was the interpretation of the appliance provision. This created no need for the Armstrongs to present evidence on their other theories of recovery. Nor did Farmer's motion alert them to submit legal authorities and argument regarding other theories of recovery. The Armstrongs

had no notice that their entire case about to be dismissed. Therefore, they had no opportunity to demonstrate that it should not be dismissed. Once the Armstrongs had notice of Farmers' motion for summary judgment, the District Court had already made its ruling. This case must be sent back on remand.

II. The District Court's decision should be vacated and the case remanded for further proceedings on the issue of whether Farmers is obligated by contract or oral binder to compensate the Armstrongs for their loss to dwelling and personal property.

In its determination that no coverage existed for the Armstrongs' claimed losses, the court did not consider coverage arguments other than the narrow one present to it in the Armstrongs' Motion for Partial Summary Judgment. Theories of recovery based on provisions in the policy other than the appliance provision and other equitable and public policy theories were not considered by the District Court. The Armstrongs must be allowed to present other theories of their case that were not presented at summary judgment. The Armstrongs purposely avoided those theories because they recognized that material issues of fact existed and a trial would need to be heard by a fact finder. The Armstrongs incorporate by reference their previous arguments on appeal and on summary judgment below.

CONCLUSION

The District Court's Orders should be vacated and the case remanded for further proceedings. The District Court erred in its ruling that Farmers is not obligated to compensate the Armstrongs under any contract theory or any other theory of law.

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Respectfully submitted this 13th day of March, 2008.

RAMSDEN & LYONS, LLP

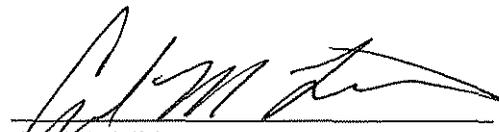
By 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of March 2008, I served two (2) true and correct copies of the foregoing by the method indicated below, and addressed to the following:

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