Circuit Court for Anne Arundel County
Case No. C02CV19002387

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1479

September Term, 2020

STATE FARM FIRE AND CASUALTY CO., ET AL

v.

SHARON MORELAND, ET AL

Nazarian,
Beachley,
Murphy, Joseph, F., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Murphy, J.

Filed: January 20, 2022

In the Circuit Court for Anne Arundel County, Sharon and John Moreland ("Plaintiffs" and Appellees in this court) filed an action against State Farm Fire and Casualty Company, State Farm Mutual Automobile Insurance Company, and Marc Carella ("Defendants" and Appellants in this court), asserting that the Defendants negligently failed to provide the Plaintiffs with the amount of "uninsured/underinsured" coverage requested by the Plaintiffs when they purchased insurance policies from the Defendant companies. The circuit court entered summary judgment in favor of the Appellants, but an In Banc Review panel of the court reversed that decision on the ground that "[t]he issue of how much reliance was justifiably placed in the agent, broker, or employee of the insurance company by the [Appellees] is an issue that should ultimately be decided by a jury." Even though the In Banc Review panel ruling obviously requires further proceedings in the circuit court, that ruling is appealable to and reviewable by this Court.[1] For the reasons that follow, we agree with the In Banc Review panel and therefore remand this case for further proceedings not inconsistent with this opinion.

I.

Appellees' complaint included the following assertions:

> 1. Plaintiff, Sharon Moreland, was involved in a motor vehicle accident in Anne Arundel County, Maryland on or about March 27, 2014, in which she suffered serious and permanent injuries.
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[1] *See Estep v. Estep,* 285 Md. 416, 421 (1979); *Dabrowski v. Dondalski,* 320 Md. 392, 396 (1990).

> 7. The Plaintiffs are long-time policyholders with State Farm.
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> 8. [In 2005, t]he Plaintiffs contracted with State Farm through its agent, Marc Carella, after informing the State Farm agent that Plaintiffs wanted to increase their insurance coverage up to $1,000,000.00 to cover all of their potential injuries and damages they could incur in a car crash, and relied on the expertise and experience of their agent to select the type of umbrella policy that would fully and completely cover Plaintiffs. Plaintiffs, at the behest of and with the guidance and advice from the State Farm agent (which State Farm claims was Marc Carella), purchased a policy from State Farm and their agent, Plaintiffs had been promised would protect them in the event of an accident involving another negligent party where that party's insurance coverage was insufficient to cover all of the injuries and damages sustained by Plaintiffs' family.
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> 14. Plaintiff's injuries and damages would have been covered had State Farm either: 1.) sold Plaintiff's umbrella policy as Plaintiffs requested, or 2.) had properly advised Plaintiffs they needed to obtain that coverage through an umbrella policy with another carrier, or 3.) advised Plaintiffs to increase their liability and underinsured coverages on their existing State Farm policy to $1,000,000.00.
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> WHEREFORE, Plaintiffs, Sharon Moreland and John Moreland demand judgment against all Defendants in the sum of One-Million Dollars ($1,000,000.00).

II.

We are required to review the record "in the light most favorable to [the Appellees, who are] the nonmoving part[ies] and construe any reasonable inferences that may be drawn from the facts against [the Appellants, who are] the moving part[ies]." *Myers v.*

Kayhoe, 391 Md. 188, 203 (2006). As this Court stated in *Est. of Adams v. Cont'l Ins. Co.*, 233 Md. App. 1, 24 (2017):

> "We generally limit our review to the grounds relied upon by the trial court." *Benway v. Md. Port Admin.*, 191 Md. App. 22, 46, 989 A.2d 1239 (2010). *Accord PaineWebber Inc. v. East*, 363 Md. 408, 422, 768 A.2d 1029 (2001) (stating that, "In appeals from grants of summary judgment, Maryland appellate courts, as a general rule, will consider only the grounds upon which the lower court relied in granting summary judgment."). "We may, however, affirm the grant of summary judgment on a ground not relied upon by the circuit court if the alternative ground is one upon which the circuit court would have no discretion to deny summary judgment." *Rogers v. Home Equity USA, Inc.*, 228 Md. App. 620, 635, 142 A.3d 616 (2016) (internal quotation marks and citations omitted) (quoting *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 635, 985 A.2d 156 (2009)).

The record shows that Appellees previously asserted a "contract" action against the Appellants, and that the parties have continued to skirmish over the identity of the State Farm agent who allegedly responded to Mrs. Moreland's request for the increase in uninsured/underinsured coverage by stating, "I know what you want. We can take care of that." Under these circumstances, we are persuaded that this case is one in which we must limit our review to the grounds upon which the hearing court and the In Banc Review Panel relied.

The circuit court concluded that, under the authority of *Twelve Knotts Ltd. P'ship v. Fireman's Fund Ins. Co*., 87 Md. App. 88 (1991), the Appellants were entitled to summary judgment. The opinion of the circuit court included the following analysis:

> The facts of the instant case … demonstrate that Plaintiffs were provided with ample opportunity and notice as

> to the coverage provided under their PLUP policy. Not only did Plaintiffs receive a copy of the terms of the policy after purchasing it, they also received eight consecutive annual renewal notices which contained the same language. Although Plaintiffs may not be a "sophisticated business entity" like Twelve Knotts, they were familiar with purchasing insurance policies and specifically policies from State Farm. Plaintiffs received at least nine copies of the terms of the policy, either read them or failed to read them, and remained silent for nine years from the date they purchased the policy until the date of the accident.
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> Although Plaintiffs may have been reasonable in their reliance in initially purchasing the policy and assuming the allegedly requested coverage was included within its terms, it is unjustifiable to continually rely on the Defendants when Plaintiffs were provided with the terms of the policy on at least nine separate occasions.

The In Banc Review panel, however, concluded that, under the authority of *International Brotherhood of Teamsters v. Willis Corroon Corporation of Maryland,* 369 Md. 724 (2002), the Appellants were not entitled to summary judgment. The In Banc Review panel opinion included the following analysis:

> [In] *International Brotherhood of Teamsters v. Willis Corroon Corporation of Maryland,* 369 Md. 724 (2002)[,] … the Plaintiff sought insurance to cover it from loss associated with misbehavior of union officials and purchased a "$500,000.00 per loss" policy when it should have purchased a "$500,000.00 per union official covered" policy. After experiencing a loss well in excess of $500,000.00, the Union sued its insurance broker, alleging that it had sold the wrong coverage. The broker countered that the coverage was clearly stated in the policy, and that the Union was contributorily negligent in that it had not reviewed the policy and was thus unaware of the limits of its protection from loss under it. The Circuit Court for Montgomery County agreed with the broker and granted summary judgment in its favor.

The Court of Appeals (Wilner, J., writing for the Court) reversed the Circuit Court for Montgomery County saying:

> Because the issue in a negligence action is the reasonableness of the insured's conduct, it normally will be fact-specific and therefore, where there is any genuine dispute of relevant fact, for the trier of fact to determine.
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In the present case, the parties agree that the Plaintiffs/Appellants Morelands had various insurance policies with Defendant/Appellee State Farm over the course of forty (40) years and that in May 2005, the Morelands changed their liability coverage amounts on their policies. They also purchased a Personal Liability Umbrella Policy, which the parties agree did not contain uninsured/underinsured coverage. Similarly, it is not in dispute that the Morelands received declaration sheets every six (6) months before their policies renewed, and the Morelands did not read the details of their coverage on these sheets.

There is dispute, however, as to whether Mrs. Moreland requested with sufficient specificity that her uninsured/underinsured insurance coverage be raised. There is also dispute as to whether Defendant/Appellee Marc Carella or another State Farm agent or employee assured Mrs. Moreland that State Farm was going to supply her with the desired coverage. The agent with whom Mrs. Moreland dealt allegedly told her, "I know what you want. We can take care of that." (Hearing Transcript, 16). There is dispute as well as to whether Plaintiff/Appellants justifiably relied on Defendant/Appellants' assurances regarding the policy purchased and whether Plaintiff/Appellants were reasonable in doing so.

The above-described facts are material to the issue of contributory negligence in this case, and they are clearly in dispute.

III.

The following principles are applicable to appellate review of a trial court's ruling on a motion for summary judgment. In *Delia v. Berkey*, 41 Md. App. 47 (1978), while reversing a summary judgment entered against a law enforcement officer who filed a "libel and slander" action against a motorist who had written a letter to the officer's employer "formally request[ing] a mental evaluation of [the officer,]" this Court stated that "even if it is found unlikely that the party opposing the motion will prevail at trial, this is insufficient to authorize a summary judgment against him." *Id.* at 50-51. While affirming that judgment in *Berkey v. Delia*, 287 Md. 302 (1980), the Court of Appeals stated:

> The function of a summary judgment proceeding is not to try the case or to attempt to resolve factual issues, but to determine whether there is a dispute as to a material fact sufficient to provide an issue to be tried. *Peck v. Baltimore County,* 286 Md. 368, 410 A.2d 7 (1979); *Honaker v. W. C. & A. N. Miller Dev. Co.,* 285 Md. 216, 231, 401 A.2d 1013 (1979); *Dietz v. Moore,* 277 Md. 1, 4-5, 351 A.2d 428 (1976), and cases there cited. All inferences must be resolved against the moving party when a determination is made as to whether a factual dispute exists. This is true even if the underlying facts are undisputed. *Peck,* 286 Md. at 381; *Honaker,* 285 Md. at 231; *Merchants Mortgage Co. v. Lubow,* 275 Md. 208, 217, 339 A.2d 664 (1975); *James v. Tyler,* 269 Md. 48, 53-54, 304 A.2d 256 (1973); *Roland v. Lloyd E. Mitchell, Inc.,* 221 Md. 11, 14, 155 A.2d 691 (1959); and *White v. Friel,* 210 Md. 274, 285, 123 A.2d 303 (1956). We have observed that the function of the trial judge on such a motion is much the same as that which he performs at the close of all the evidence in a jury trial when a motion for a directed verdict or a request for peremptory instructions makes it necessary that he determine whether an issue requires resolution by a jury or may be decided by the court as a matter of law. *Honaker*, 285 Md. at 232, citing *Porter v. General Boiler Casing Co.,* 284 Md. 402, 413, 396 A.2d 1090 (1979). In

> *Fenwick,* 258 Md. 134, 138, 265 A.2d 256, 258 (1970), cited in *Peck, Honaker* and *Porter,* we said, **"[E]ven where the underlying facts are undisputed, if those facts are susceptible of more than one permissible inference, the choice between those inferences should not be made as a matter of law, but should be submitted to the trier of fact."**

Id. at 304-05 (emphasis added).

In *Hill v. Wilson*, 134 Md. App. 472 (2000), the appellant in a medical malpractice action argued that the (patient, plaintiff) "appellee was contributorily negligent 'as a matter of law[]' [because he] 'recognized that his condition had gotten dramatically worse and failed to return for further medical care despite his training and despite being given explicit instructions to return if his condition did get worse.'" *Id.* at 491. While rejecting that argument, this Court stated:

> [Appellants] were entitled to - and did - present that argument to the jury, but we agree with [the circuit court] that appellants were not entitled to judgment as a matter of law.
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> **"**Ordinarily, the question of whether a plaintiff was contributorily negligen[t] or assumed the risk is one for the fact finder, not the court." *Campbell v. Montgomery County Bd. of Educ.,* 73 Md. App. 54, 64, 533 A.2d 9 (1987), *cert. denied*, 311 Md. 719, 537 A.2d 273 (1988). The issue of contributory negligence is generally "for the jury as long as there is a conflict of evidence as to material facts relied on to establish contributory negligence, or more than one inference may be reasonably drawn therefrom." *Id.*
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> Maryland "has adopted a very restrictive rule about taking cases from the jury in negligence actions." *Campbell v. Montgomery County Bd. of Educ.,* 73 Md. App. 54, 62, 533 A.2d 9 (1987). In fact, Maryland case law suggests that submission to the jury was proper "if there be any evidence, however slight, *legally sufficient* as tending to prove

> negligence, and the weight and value of such evidence will be left to the jury." *Id.* at 62-63. … This Court has also stated that "… even if the act done [by the plaintiff as claimed as his contributory negligent action] turns out to be an error of judgment, this alone does not make the act negligent if an ordinarily prudent person may have made the same error." *Faith v. Keefer*, 127 Md. App. 706, 747, 736 A.2d 422, *cert. denied*, 357 Md. 191, 742 A.2d 521 (1999) (citing *Sanders v. Williams*, 209 Md. 149, 120 A.2d 397 (1956)).

Id. at 491-93 (footnote omitted).

IV.

Although obviously not as numerous as criminal cases involving the admissibility of "other crimes (and/or other bad acts)" evidence,[2] cases in which an insurance company has denied (contract and/or tort) liability on the ground that the insured "failed to read" the policy at issue can be equally perplexing and often difficult to reconcile. This Court's opinions on that issue include *Johnson & Higgins v. Hale Shipping Corp*., 121 Md. App. 426 (1998), filed seven years after *Twelve Knotts* and four years prior to *International Brotherhood*. In *Johnson*, while affirming a judgment entered by the Circuit Court for Baltimore City on a jury verdict in favor of an insured against its insurance broker, this Court squarely rejected the broker's arguments that (1) the policyholder's failure to read insurance policies it had received over a four-year period of time "is a complete defense, as a matter of law, to the negligence and breach of contract actions [asserted in this case,]"

[2] Over fifty years ago, Dean McCormick declared that cases dealing with the admissibility of "other crimes evidence" are "as numerous as the sands of the sea." McCormick, *Evidence,* 1954, p. 307 n.2. In Judge Weinstein's Evidence treatise, he comments that "the question of when evidence of a particular criminal act may be admitted is so perplexing that the cases sometimes seem as numerous 'as the sands of the sea' and often cannot be reconciled." 2 Weinstein's Evidence, P 404(08), p. 404-40 (1978).

id. at 438, and (2) the trial court erred "in declining to instruct the jury that the [insured's] failure to read the insurance policies defeated [its] claims against [the broker]." *Id.* at 443.

The *Johnson* opinion includes the following factual summary:

> The gravamen of the complaint was that Johnson & Higgins had failed to protect Hale Shipping's interests when it neglected to seek the deletion of a "refrigeration clause" [exclusion] from a marine insurance policy that covered Hale's transportation of refrigerated cargo on one of its barges. Refrigerated cargo transported by Hale Shipping was allegedly damaged and the presence of this clause resulted in the marine insurance carrier denying coverage. The owner of the cargo brought a claim against Hale Shipping in the United States District Court for the Southern District of New York. …
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> In the present case, Hale Shipping sought recovery for losses sustained in defending the United States District Court claims for alleged damage to the cargo in question, any potential liability for the alleged damage to the shipment, and disruption and loss of business due to inappropriate insurance coverage. At trial, the parties stipulated that Hale Shipping had incurred $50,000 worth of damages.

Id. at 430.

In *Johnson,* it was undisputed that the policyholder did not read the policies at issue.[3] Johnson & Higgins' trial counsel therefore requested that the trial court deliver the following jury instruction:

[3] The Record Extract in *Johnson*, which includes the testimony of Edwin Hale, Sr., of Hale Shipping Corporation, shows that the following transpired during Mr. Hale's cross-examination:

> Q: Mr. Hale, would you say you made a mistake in not having someone in your company review your insurance policies in 1987?

(continued…)

> An insured, such as Hale, has the duty to examine its insurance policy promptly when it receives it and to notify its broker or insurance company immediately if the policy or any of its terms, conditions, or exclusions are not acceptable. Failure to do so is a defense to a contract claim against the broker. It is also evidence of contributory negligence, which is a defense to a negligence or negligent misrepresentation claim against the broker.

Id. at 441-42. The trial court rejected that request, and instructed the jury as follows:

> [C]ontributory negligence is the doing of something that a person of ordinary prudence would not do under the same or similar circumstances, or failing to do something that a person of ordinary prudence would have done under the same or similar circumstances. Contributory negligence is fault on the part of the person injured, which is a proximate cause of the injury sustained. You are instructed that the burden is on the defendant to establish by a preponderance of the evidence in this case the claim that [Hale Shipping] was at fault and that

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A: The mistake I made [was] trusting Johnson & Higgins.

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Q: Is it possible for you to have somebody in your organization to actually read these policies when they came in?

A: We were a small, emerging company. I was just starting this business. I had my trucking company. It was certainly large enough but it was different than this. We trusted these people. They came to us, solicited us, told us how great they were. We didn't have a big staff of people. I still don't have a large staff of people on my marine operation.

Q: You have someone reviewing your marine insurance policies now, don't you?

A: I do now. After this, you can rest assured we do now, yes. As a result of what happened to us in 1987.

> such fault was a proximate cause of any loss which [Hale Shipping] sustained.

Id. at 442. After an extensive discussion of the *Twelve Knotts* case, the *Johnson* Court concluded that

> under the facts of this case, Hale Shipping was not contributorily negligent, as a matter of law, for failing to read the insurance policies. … Accordingly, the trial court committed no error in declining to instruct the jury that the failure to read the insurance policies defeated Hale Shipping's claims against Johnson & Higgins.

Id. at 443.

CONCLUSION

From our review of the above cited opinions, we hereby conclude that (1) while Appellants will certainly be entitled to argue to the jury for a verdict in their favor on the ground that (in the words of the circuit court opinion) "[Appellees] were provided with ample opportunity and notice as to the coverage provided under their PLUP policy[,]" (2) the jury must ultimately decide whether it is persuaded by a preponderance of the evidence that Appellees were "at fault" for assuming that the allegedly requested coverage was included in the policies at issue.

IN BANC PANEL ORDER AFFIRMED; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; APPELLANTS TO PAY THE COSTS.