

sufficient consideration for the mortgages, and that Ponape Coconut Products's partial payments were on the whole debt and tolled the running of the limitations period against Ponape Coconut Products. We, however, vacate the mortgage foreclosures and remand the matter to the trial court for it to determine whether this is a case where the statute of limitations was also tolled for actions against the mortgagors, who seem to be in the nature of guarantors, as well as for the action against the principal, Ponape Coconut Products, Inc.

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FSM SUPREME COURT APPELLATE DIVISION

OCcidental LIFE INSURANCE CO. and NET)	APPEAL CASE NO. P9-2014
CARE LIFE AND HEALTH INSURANCE CO.,)	Civil Action No. 2013-002
Appellants,)	
vs.)	
KARLYNN JOHNNY,)	
Appellee.)	

OPINION

Argued: May 5, 2016
Decided: May 25, 2016

BEFORE:

Hon. Aliksa B. Aliksa, Specially Assigned Justice, FSM Supreme Court*
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court**
Hon. Benjamin F. Rodriguez, Specially Assigned Justice, FSM Supreme Court***

*Chief Justice, Kosrae State Court, Lelu, Kosrae
**Chief Justice, Chuuk State Supreme Court, Weno, Chuuk
***Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

For the Appellants:	Fredrick L. Ramp, Esq. Ramp & Mida Law Firm P.O. Box 1480 Kolonia, Pohnpei FM 96941
For the Appellee:	Salomon M. Saimon, Esq. Directing Attorney Micronesia Legal Services Corporation P.O. Box 129 Kolonia, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Standard – Civil Cases – Factual Findings

The standard of review for trial court factual findings is whether those findings are clearly erroneous since trial court findings are presumed correct and the appellate court will not substitute its judgment for the trial court's. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

When an appellant claims that a trial court finding is clearly erroneous, an appellate court will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

That the trial court found one witness's testimony more credible than another's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge was able to observe the witnesses and the manner in which they testified. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426, 427 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo

An appellate court reviews de novo any matters of law. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 426 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

The appellate court may disregard an assignment of error that a factual finding was clearly erroneous when, even if the finding was clearly erroneous, it would not affect the case's outcome. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

When the trial judge was able to observe the witnesses while they testified and the trial judge found one witness's testimony more credible than another's and analyzes why, the appellate court will not disturb that finding if it is supported by credible evidence in the record since the trial judge had the opportunity to observe the witnesses and the manner of their testimony and the appellate court did not have that opportunity. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

The appellate court will usually not hold a trial court finding clearly erroneous when it was the result of weighing conflicting evidence. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 427 (App. 2016).

Torts – Breach of Implied Covenant of Good Faith

The breach of an implied covenant of good faith and fair dealing is a common law tort claim that arises out of a contractual relationship between the parties because contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement. This tort requires some sort of bad faith on the defendant's part. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

Occidental Life Ins. Co. v. Johnny
20 FSM R. 420 (App. 2016)

Insurance; Torts – Breach of Implied Covenant of Good Faith

Not every mistake by an insurer or its agent rises to the level of bad faith – is automatically unreasonable or arbitrary. An insurance agent's misrepresentation, particularly an unintentional misrepresentation, may breach the agent's duty of care toward the insured rather than constitute bad faith and unreasonable and arbitrary conduct towards an insured. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

Insurance; Torts – Breach of Implied Covenant of Good Faith

When the insurance agents' failure to differentiate between the insured's life and cancer policies was careless, but not arbitrary and unreasonable, and did not deprive the insured of her bargained-for benefit, the trial court's conclusion that the insurers breached the implied covenant of good faith and fair dealing or that they engaged in bad faith conduct was reversible error. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428-29 (App. 2016).

Equity – Estoppel

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are usually referred to collectively as "detrimental reliance," and detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. A finding of detrimental reliance does not depend upon finding any agreement or consideration. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

Equity – Estoppel

When the supposed "promise" might better be characterized as a careless misrepresentation, the plaintiff has failed to prove one of promissory estoppel's four elements. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

Torts – Negligent Misrepresentation

The elements of negligent misrepresentation are: 1) false information is supplied as a result of the failure to exercise reasonable care or competence in communicating the information; 2) the person for whose benefit the information is supplied suffered the loss; and 3) the recipient relies upon the misrepresentation. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Torts – Negligent Misrepresentation

For negligent misrepresentation, a plaintiff must establish: 1) negligence in making 2) a misrepresentation 3) that is material and 4) that causes detrimental reliance. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Torts – Negligent Misrepresentation

The elements of negligent misrepresentation are: 1) justifiable and detrimental reliance on 2) information provided without reasonable care 3) by one who owed a duty of care. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Torts – Negligent Misrepresentation

The essential elements of a claim for negligent misrepresentation are that plaintiffs justifiably relied to their detriment on information prepared without reasonable care by a person who owed the relying party a duty of care. Misrepresentation contains the elements of reasonable reliance and damages. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Civil Procedure – Pleadings; Judgments

A trial judge is not required to limit his analysis to the causes of action pled in the complaint because, under the rules, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Appellate Review – Standard – Civil Cases; Torts – Negligent Misrepresentation

When the plaintiff did not plead a negligent misrepresentation cause of action even though many of her factual allegations met all the tort's elements and when the evidence at trial proved that she was entitled to relief under that theory, the elements of which overlap those of the promissory estoppel and detrimental reliance theory that she pled and the trial court analyzed and granted her judgment on, the appellate court will affirm the trial court judgment on the ground that the plaintiff was entitled to relief for negligent misrepresentation because the record contained adequate and independent support that the plaintiff detrimentally relied on an agent's misrepresentation that her daughter was covered until age 25 "no matter what," and that that misrepresentation was material and made without reasonable care. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

Appellate Review – Standard – Civil Cases

An appellate court may affirm a trial court decision on a different theory or on different grounds when the record contains adequate and independent support for that basis. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

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COURT'S OPINION

ALIKSA B. ALIKSA, Specially Assigned Justice, presiding:

This appeal is from the trial court's March 28, 2014 decision holding Occidental Life Insurance Co. and Net Care Life and Health Insurance Co. liable, on the grounds of promissory estoppel and the breach of the implied covenant of good faith and fair dealing, to Karlynn Johnny for \$10,000 plus interest, because her daughter Primrose Mudong, was diagnosed with cancer. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014). We affirm the trial court judgment on a different ground. Our reasons follow.

I. BACKGROUND

In 1996, Karlynn Johnny, a Pohnpei Hospital nurse, signed up with a Moylan's insurance agent for life and cancer insurance policies issued by Occidental Life Insurance Co. Johnny and her husband Billy Mudong had one daughter, Primrose Mudong (Primrose).

The life insurance policy covered Johnny herself, and as a rider, her husband and daughter Primrose, who was 11 years old at the time. The life insurance policy accrued cash value and could be borrowed against.

The cancer insurance policy covered Johnny herself, and as a rider, her husband and Primrose until the age of 21, but, if Primrose was still in school and dependent upon Johnny, coverage would continue until age 25. The cancer insurance policy did not accrue cash value and could not be borrowed against. One premium amount covered Johnny herself and another amount covered the rider for her dependents (spouse and children), regardless of how many dependents she had. Under the

424
Occidental Life Ins. Co. v. Johnny
20 FSM R. 420 (App. 2016)

policy's terms, the policy would be paid up after twenty years of premium payments, after which no more premiums would be due but coverage would continue. The cancer insurance policy paid Johnny a lump sum benefit of \$20,000 if she was diagnosed with cancer, or a lump sum benefit of \$10,000 if a covered dependent was diagnosed with cancer.

Johnny stated that when she purchased the insurance policies she was told by the agent that her whole family would be covered if they were diagnosed with cancer anytime within the policy's twenty-year period. Based on that information, it was Johnny's understanding that her insurance policies would be in effect for 20 years for herself and her husband and daughter.

Johnny kept up with all of her premium payments for both policies. She lost her copies of the policies in a storm and never asked for replacement copies. In 1999, the policies were transferred from Occidental Life Insurance Co. ("Occidental") to Net Care Life and Health Insurance Co. ("Net Care") as Occidental ceased doing business in the FSM. The policy terms remained the same and Moylan's remained as the local agent. Usually about every couple of years, a Moylan's insurance agent would call Johnny to inform her of increases to her premiums. They never informed her that Primrose was no longer covered.

In December 2008, Johnny met with Elizabeth Franklin, a Moylan's insurance account executive who could sell policies, to ask about her life insurance policy's cash value. Franklin asked about the age of Johnny's daughter and when told that she was 23 or 24, Franklin told Johnny that Primrose was no longer covered under her insurance policies unless she was still in school. Primrose had attended the College of Micronesia-FSM in 2002 and 2003, but having gotten pregnant, had left in 2003 to give birth. Johnny asked Franklin what she should do and Franklin told her that she could sign Primrose up for a separate policy. Johnny signed a discontinuation of ridership for Primrose. During this meeting, there was no differentiation made between the life and cancer insurance policies. Franklin prepared documentation for a separate life insurance policy for Primrose, but did not prepare any documentation for a cancer insurance policy for Primrose.

Sometime later, Melner Isaac, Moylan's Pohnpei branch manager, contacted Johnny and told her to come to his office to pick up a check for her life insurance policy's cash value. When Johnny got to the office, Isaac told her that Franklin had just started working when she had met with Johnny and that she had misunderstood the policies' terms. He said that what Franklin had told her applied to policies issued by Net Care but not to policies that had originally been issued by Occidental, which had coverage different from the standard Net Care policies. Johnny's policies were originally Occidental policies. Isaac told her that Primrose was covered until age 25. Johnny withdrew her cancellation of Primrose's coverage as Primrose was 24 at the time.

According to Johnny, during her meetings at Moylan's, Franklin and Isaac did not differentiate between her two (life and cancer) insurance policies. Johnny stated that Franklin and Isaac had used the Pohnpeian plural word for "policies" and not the singular word for "policy." Johnny had thought that the two Moylan's agents were referring to both life and cancer policies and that their representations applied to both policies. Johnny testified that she had been told that Primrose was covered until the age of 25 with no conditions. Isaac testified that his conversation with Johnny was only about the life insurance policy.

Later in 2009, Primrose was diagnosed with cancer. Primrose was then 24 years old and dependent on Johnny and her husband. On December 22, 2009, Johnny submitted a claim for Primrose's cancer diagnosis. On January 26, 2010, a Net Care letter to Johnny informed her that her claim had been denied based on information that they had received.

Primrose went to the Philippines for medical treatment. After her second trip in July, 2010, the cancer seemed under control. In July, 2012, Primrose again left for treatment in the Philippines, but on July 23, 2012 while on the way there, she died on Guam, at age 27, from complications of cancer of the cervix.

On February 1, 2013, Johnny filed suit against both Occidental and Net Care, alleging that the two insurance companies were liable to her for breach of contract; promissory estoppel and detrimental reliance; unjust enrichment; third-party beneficiary; reimbursement and indemnification; violation of statutory authority; incontestability; and breach of the implied covenant of good faith and fair dealing. The insurers defended on the ground that Primrose's diagnosis did not meet the coverage conditions in Johnny's cancer policy. Trial was held October 15-16, 2013. During trial, Johnny withdrew her incontestability claim.

The trial court ruled that the insurance contract had not been breached because, although Primrose was 24 when diagnosed with cancer, she was not enrolled as a full-time student in a post-secondary institution of higher learning for five or more calendar months and thus was not covered under the cancer policy's terms. *Johnny*, 19 FSM R. at 358. It also held that the unjust enrichment claim did not apply because there was a legally binding insurance contract and that a third-party beneficiary claim did not apply because no evidence had been presented that could support it. *Id.* at 360. The trial court rejected the indemnification claim because the cancer policy did not pay that benefit and MiCare insurance had paid, *id.* at 360-61, and it rejected relief based on statutory violations because any violation was de minimis, *id.* at 361. It did find the insurers liable under a promissory estoppel and detrimental reliance theory, *id.* at 358-60, and for the breach of the implied covenant of good faith and fair dealing, *id.* at 361-63. Judgment was entered against both insurers for \$10,000 plus 9% interest from December 24, 2009.

The insurance companies timely appealed.

II. ISSUES PRESENTED

Occidental Life Insurance Company and Net Care Life and Health contend that the trial court erred:

1) by finding as fact that when Johnny bought her cancer insurance policy in 1996, she was told, understood, and believed she was getting coverage for herself, her husband, and her dependent daughter Primrose Mudong for twenty years although the very first page of that policy, which she acknowledged possessing and reading, stated that the premiums continue for twenty years and thereafter no premiums are owed and also contained specific limitations on the duration of the dependent daughter's coverage;

2) by finding as fact that Johnny had been told that the cancer policy coverage for her daughter continued to age 25 "no matter what";

3) by concluding that Johnny was entitled to recover on the basis of promissory estoppel and detrimental reliance since that varied the clear and unambiguous terms of a written instrument to which Johnny was a party; and

4) by concluding that Johnny was entitled to recover for breach of implied covenant of good faith and fair dealing since that varied the clear and unambiguous terms of a written instrument to which Johnny was a party.

III. STANDARDS OF REVIEW

The standard of review for trial court factual findings is whether those findings are clearly erroneous. Ihara v. Vitt, 19 FSM R. 595, 600 (App. 2014). Trial court findings are presumed correct. *Id.* We will not substitute our judgment for the trial court's. *Id.* When an appellant claims that a trial court finding is clearly erroneous, we will find reversible error only: 1) if the trial court finding was not supported by substantial evidence in the record; or 2) if the trial court's factual finding was the result of an erroneous conception of the applicable law; or 3) if, after reviewing the entire body of the evidence and construing it in the light most favorable to the appellee, we are left with a definite and firm conviction that a mistake has been made. *Id.* That the trial court found one witness's testimony more credible than another's is not a ground for reversal since the trial court was in the best position to judge the witnesses' demeanor and credibility because the trial judge was able to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

We review de novo any matters of law. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 593 (App. 2014); Simina v. Kimeuo, 16 FSM R. 616, 619 (App. 2009).

IV. ANALYSIS

A. Factual Findings

During oral argument, the insurers retreated somewhat from their position that certain trial court factual findings were clearly erroneous and acknowledged that on appeal they would have to accept the trial court's findings as facts. Nonetheless, in an abundance of caution, we will analyze the arguments in their opening brief.

1. Johnny's Knowledge When Cancer Insurance Purchased

The insurers contend that the trial court's Finding of Fact # 5 is clearly erroneous. In particular, they take issue with the trial court finding that Johnny was told by the Moylan's insurance salesman that her family, including her husband and child, would have coverage if they were diagnosed with cancer anytime during the policy's 20-year period. Johnny, 19 FSM R. at 355.

The insurers note that when the policies were purchased, Johnny was about 30 years old, clearly very intelligent, fluent in English, and educated as a nurse and employed at Pohnpei Hospital, and had the cancer policy in her possession for some significant time after it was issued, and testified that she must have read it. They argue that her testimony that she was told the policy would continue for twenty years, is contradicted by two other statements of hers. One is Johnny's insistence that Isaac told her by his use of the plural term "policies" that the policies lasted until Primrose was 25, but she did not argue with him then that he was wrong because she knew the policies lasted twenty years (that is, until 2016). The other is that once Primrose was diagnosed, Johnny was reluctant to disclose Primrose's medical information to Moylan's if there was no coverage.

The insurers contend that because of these contradictory statements and because Johnny's seventeen-year-old memory of what she was told when she bought the policies is self-serving, we can only be left with the definite and firm conviction that this finding is clearly erroneous. But the trial court had the opportunity to observe Johnny as she testified and it could have reasonably found that this is what she believed she was told when she originally purchased the insurance policies. More importantly, this finding is not particularly relevant to the appeal.

The trial court, at the start of its promissory estoppel and detrimental reliance discussion, briefly mentions that Johnny was initially told that the policies were good for twenty years. *Johnny*, 19 FSM R. at 358, but does not mention it again and relies instead on Johnny's 2009 meeting with Isaac as the reason Johnny canceled her application for separate insurance for Primrose, *id.* at 359. The trial court found that Johnny detrimentally relied on those 2009 statements, not on the insurance salesman's 1996 statement. It held that "Isaac's misrepresentation caused Johnny to keep Primrose under her cancer policy, making Primrose ineligible at the time she was diagnosed with cancer because she did not qualify as a Covered Family Member under the provisions that were part of the policy." *Id.* And, the salesman's 1996 representation is not mentioned in the discussion on the insurers' liability for the breach of the implied covenant of good faith and fair dealing. Thus, even if this finding was clearly erroneous, it did not affect the case's outcome. We therefore disregard this assignment of error.

2. *Whether Johnny Was Told Primrose's Cancer Coverage Continued to Age 25 "No Matter What"*

The insurers also contend that the trial court's Findings of Fact # 13 and 14 are clearly erroneous. In particular, they challenge the findings that "Isaac told [Johnny] that her daughter Primrose would be covered until age 25 no matter what" and that "Franklin and Isaac had used the plural word 'policies' and not the singular word 'policy' [so that] Johnny had thought that the two agents were referring to both life and cancer policies and that what she had been told applied to both policies." *Johnny*, 19 FSM R. at 356. They do not dispute the finding that "Isaac had thought that his conversation with Johnny referred only to the life insurance policy." *Id.* at 357.

The insurers repeat here the same argument they made about Johnny having made three contradictory statements about what she thought was Primrose's coverage under the cancer policy and emphasize that, in their view, all three cannot be true therefore none of them should be deemed reliable and any findings that rely on Johnny's testimony and not Isaac's contrary testimony must be clearly erroneous. As mentioned before, Johnny's initial belief that the cancer policy coverage was for twenty years is not particularly relevant since that is not the statement(s) that the trial court found Johnny to have relied upon to her detriment. Johnny's reluctance to provide Primrose's personal (and potentially embarrassing) information (while she was still alive and being treated) because she was unsure whether the claim would be allowed is understandable in light of the fact that she had recently received two different and contradictory statements from Moylan's employees about whether Primrose was covered.

The key relevant statement is Isaac's that Primrose's coverage under the policies continued to age 25 "no matter what." Both Isaac and Johnny (the only two witnesses) testified at trial. Both testified about what was said at their meeting. Isaac testified that the only policy they discussed was Johnny's life insurance policy and Johnny testified that Isaac used the plural Pohnpeian word for policies, so that they were talking about, or Johnny assumed they were talking about, the cancer policy as well.

The trial court found Johnny's testimony more credible than Isaac's. The trial judge was able to observe the witnesses while they testified. When a trial judge finds one witness's testimony more credible than another's and analyzes why, we will not disturb that finding if it is supported by credible evidence in the record since the trial judge had the opportunity to observe the witnesses and the manner of their testimony and we did not have that opportunity. *Narruhn v. Aisek*, 16 FSM R. 236, 239 (App. 2009). We will usually not hold a trial court finding clearly erroneous when it was the result of weighing conflicting evidence. *Id.* Thus, we do not consider the trial court's findings to be clearly erroneous.

B. Causes of Action on Which Johnny Prevailed

The insurers' argument that the trial court result is at variance with the cancer insurance policy's clear and unambiguous terms would prevail if the trial court had found the insurers liable on the breach of contract theory. But it did not. It found the insurers liable on non-contract theories. Promissory estoppel is a doctrine in equity and the breach of the implied covenant of good faith and fair dealing is a tort theory.

1. Breach of Implied Covenant of Good Faith and Fair Dealing

The insurers contend that the trial court conclusion that they breached the implied covenant of good faith and fair dealing was erroneous because that conclusion was not supported by the evidence and was contrary to law as it sought to vary the cancer insurance policy's clear and unambiguous terms. They further contend that the elements of a breach of the covenant were not met.

The breach of an implied covenant of good faith and fair dealing is a common law tort claim that arises out of a contractual relationship between the parties because contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014); FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009); Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004). This tort requires some sort of bad faith on the defendant's part. See Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

The trial court concluded that in an insurance context, bad faith did not refer to misconduct of a malicious or immoral nature, but instead the bad faith concept emphasized unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. The trial court relied on Johnson v. Mutual Benefit Life Insurance Co., 847 F.2d 600, 602 (9th Cir. 1988), which held that bad faith could be shown when the insurer deprived the insured of her bargained-for benefit and that "a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds." Johnny, 19 FSM R. at 362 (quoting Johnson). The insurers emphasize that the bargained-for benefit in question was cancer coverage for Primrose up to age 21 if she was not in school. The trial court held that the insurers'

actions, through its agents, were unreasonable because there was no distinction made between the life and cancer policies during the meetings between Johnny and Franklin, and later, with Isaac. There are differences in the policies, that would require the agents to differentiate between the policies and its terms and conditions.

Further, Isaac's assertion that Primrose was covered up to the age of 25 was also unreasonable. Given his years of experience of dealing with policies, the court finds that Isaac should have known of the age limitations and other restrictions under the cancer policy. The court therefore finds in favor of Johnny under her claim for breach of implied covenant of good faith and fair dealing.

Johnny, 19 FSM R. at 362. The insurers have a point here. Not every mistake by an insurer or its agent rises to the level of bad faith – is automatically unreasonable or arbitrary. An insurance agent's misrepresentation, particularly an unintentional misrepresentation, may breach the agent's duty of care toward the insured rather than constitute bad faith and unreasonable and arbitrary conduct towards an insured.

Here, Isaac's (and Franklin's) failure to differentiate Johnny's life and cancer policies was

Occidental Life Ins. Co. v. Johnny
20 FSM R. 420 (App. 2016)

careless, but not arbitrary and unreasonable, and did not deprive Johnny of her "bargained-for benefit" which was coverage for Primrose that ceased at age 21 if she was not in school. We therefore reverse the trial court conclusion that the insurers breached the implied covenant of good faith and fair dealing or that they engaged in bad faith conduct.

2. Detrimental Reliance and Promissory Estoppel

The insurers also contend that the evidence did not support the trial court's conclusion that they were liable for promissory estoppel and detrimental reliance and that that conclusion was contrary to law because it sought to vary the cancer insurance policy's clear and unambiguous terms. They assert that the elements of promissory estoppel were not met.

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011) (if a government is the defendant, a further element must be proven). Elements 3 and 4 are usually referred to collectively as "detrimental reliance," and detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008); AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191-92 (Pon. 2006). The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

The insurers' argument relies in part on the trial court finding that Johnny was told that Primrose's coverage lasted until she was 25 "no matter what" being clearly erroneous. The insurers contend that Isaac did not assure Johnny that the cancer policy covered Primrose because Isaac was only talking about Johnny's life insurance policy, not her cancer policy. The insurers further contend that Isaac could not have reasonably expected this "promise" to have induced substantial action by Johnny because he did not know he had made a "promise" since he was not even talking about Johnny's cancer policy or its coverage of Primrose. They further contend that there was no detrimental reliance because the court could not know whether Johnny would have actually purchased cancer coverage for Primrose. They contend that the trial court's conclusion must be reversed since Johnny failed to prove three of promissory estoppel's four elements and failure to prove any one element is failure to prove a cause of action. The insurers contend that under the policy's clear and unambiguous terms, no promises were made to Johnny that were not delivered.

The trial court found that the "promise" that Johnny detrimentally relied on was Isaac's statement that Primrose was covered to age 25 "no matter what." Johnny, 19 FSM R. at 358. This "promise" might better be characterized as a careless misrepresentation. It caused Johnny to cancel her attempt to obtain separate coverage for Primrose, although, apparently unknown to Johnny, Moylan's had only prepared a life insurance policy for Primrose, not life and cancer policies. *Id.* at 358-59.

The cancer policy omission would have been discovered when the time came to finalize the new policy. There was evidence of a history of a tendency for cancer in the family so Johnny was concerned, and that was why she had signed up for a cancer policy in the first place. Johnny had started what she thought was the application process to retain the coverage Primrose had lost, although it turned out that the Moylan's agents had only prepared the paperwork for a life insurance policy.

Johnny thus relied on the age 25 misrepresentation to her detriment. A better fit for Johnny's

detrimental reliance claim is the tort of negligent misrepresentation. Like promissory estoppel, the tort of negligent misrepresentation includes the requirement of detrimental reliance, although various courts formulate the tort's elements slightly differently.

In Hawaii, the elements of negligent misrepresentation are: "'(1) false information [is] supplied as a result of the failure to exercise reasonable care or competence in communicating the information; (2) the person for whose benefit the information is supplied suffered the loss; and (3) the recipient relies upon the misrepresentation.'" Zanakis-Pico v. Cutter Dodge, Inc., 47 P.3d 1222, 1234 (Haw. 2002) (quoting Blair v. Ing, 21 P.3d 452, 474 (Haw. 2001)). It has also been held that "a plaintiff must establish four elements for negligent misrepresentation: (1) negligence in making (2) a misrepresentation (3) that is material and (4) that causes detrimental reliance." CNH America LLC v. United Auto. Workers, 645 F.3d 785, 794 (6th Cir. 2011). Yet another court stated, "The elements of negligent misrepresentation are: (1) justifiable and detrimental reliance on (2) information provided without reasonable care (3) by one who owed a duty of care." Chesterfield Exch. LLC v. Sportsman's Warehouse, Inc., 572 F. Supp. 2d 856, 866 (E.D. Mich. 2008). "The essential elements of a claim for negligent misrepresentation are that plaintiffs justifiably relied to their detriment on information prepared without reasonable care by a person who owed the relying party a duty of care." Bonham v. Wolf Creek Acad., 767 F. Supp. 2d 558, 570 (W.D.N.C. 2001). Misrepresentation, too, contains the elements of reasonable reliance and damages. AHPW, Inc., 14 FSM R. at 192.

Isaac's assurance that Primrose was still covered to age 25 was a misrepresentation made (negligently) to Johnny without reasonable care taken by Isaac to ascertain what all of Primrose's coverage was under Johnny's two policies and his duty to inform Johnny in response to her concern about Primrose's coverage.

Johnny did not plead a negligent misrepresentation cause of action even though many of her factual allegations met the tort's elements. The trial judge limited his analysis to the causes of action pled in the complaint. The judge is not required to do so. Under the rules, "[e]xcept as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." FSM Civ. R. 54(c). Although Johnny did not plead negligent misrepresentation, the evidence at trial proved that she was entitled to relief under that theory, the elements of which overlap those of the promissory estoppel and detrimental reliance theory the trial court analyzed.

Thus, we affirm the trial court judgment on the ground that Johnny was entitled to relief for negligent misrepresentation. We may affirm a trial court decision on a different theory or on different grounds when, as here, the record contains adequate and independent support for that basis. Actouka Executive Ins. Underwriters, 18 FSM R. at 121; FSM Dev. Bank v. Adams, 14 FSM R. 234, 249 (App. 2006); Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996). The record contains adequate and independent support that Johnny detrimentally relied on Isaac's misrepresentation that Primrose was covered until age 25 "no matter what," and that that misrepresentation was material and made without reasonable care.

C. Which Insurer is Liable?

Although not briefed by a party, we raised one more point at oral argument. Johnny's insurance policies were transferred from Occidental to Net Life in 1999, and the acts that gave rise to liability took place in 2008 and 2009, after the policies had become Net Life administered and owned although they had been issued by Occidental and still carried the Occidental's terms. The trial court entered judgment against both Occidental Life Insurance Co. and Net Care Life and Health Insurance Co. We therefore inquired whether the trial court should be ordered to modify its judgment to enter it against only one

431
Occidental Life Ins. Co. v. Johnny
20 FSM R. 420 (App. 2016)

insurer. Appellants' counsel assured us that if the trial court judgment is affirmed, the judgment would be paid and that it was an internal matter that would be worked out between the two insurance companies. Having received this assurance, we need go no further.

V. CONCLUSION

Accordingly, we affirm the trial court judgment on the ground that Karlynn Johnny proved that she detrimentally relied on a negligent misrepresentation and was thus entitled to relief.

* * * *

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2014-021
)	Consolidated with
Plaintiff,)	Civil Action No. 2014-023
)	
vs.)	
)	
BERYSIN SALOMON and NANCY SALOMON,)	
)	
Defendants.)	
<hr/>		
BERYSIN SALOMON and NANCY SALOMON,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
ANNA MENDIOLA, in her capacity as President)	
and Chief Executive Officer of FSM Development)	
Bank; BRANDON TARA, in his capacity as Chief)	
Financial Officer of the FSM Development Bank;)	
JOHN SOHL, in his official capacity as Chairman)	
of the FSM Development Bank Board of)	
Directors; and FSM DEVELOPMENT BANK,)	
)	
Defendants.)	
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ORDER IMPOSING SANCTIONS, COMPELLING RESPONSES, AND SUBSTITUTING PARTY

Ready E. Johnny
Associate Justice

Decided: May 25, 2016