STATE OF MICHIGAN

COURT OF APPEALS

TRIANGLE BUSINESS CENTER, LLC, Plaintiff-Appellant,	UNPUBLISHED November 29, 2012
v	No. 305504 Oakland Circuit Court
HARTFORD CASUALTY INSURANCE COMPANY, Defendant, and	LC No. 2009-102384-CK
MEADOWBROOK INSURANCE GROUP, INC., KIMBERLY LEWIS, and KENN ALLEN, Defendants-Appellees.	

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Plaintiff Triangle Business Center, LLC (Triangle), appeals as of right the trial court's order granting summary disposition in favor of defendant Meadowbrook Insurance Group, Inc., and its employees, defendants Kimberly Lewis and Kenn Allen.[1] We affirm.

Triangle's sole member was Abdel Khidhir, and his sister, Amal Francis, handled the day-to-day business affairs of the company. Triangle owned a commercial building upon which Fidelity Bank (Fidelity) held a mortgage. Zurich Insurance Company (Zurich) insured Fidelity's mortgage on the building. A fire destroyed the commercial building in April 2009. The building had been covered by a fire insurance policy issued by defendant Hartford Casualty Insurance Company (Hartford) in 2008 that Triangle procured through insurance agent Meadowbrook. The policy, however, had been canceled by Hartford prior to the fire for failure to make a premium

[1] We shall collectively refer to these three defendants as "Meadowbrook."

payment.[2] Triangle last made a payment on the policy in November 2008, extending coverage through January 2009, but Triangle failed to make any additional premium payments before the fire occurred. Triangle was experiencing financial difficulties at the time of cancellation. In March 2009, about a month before the fire, Hartford had mailed a notice of cancellation for nonpayment of premiums to the business address of Triangle's corporate office located in the commercial building. The notice of cancellation, which reflected an amount owing of $878, was found in the building after the fire. Hartford copied Meadowbrook with respect to the cancellation notice, but Meadowbrook did not separately contact Triangle regarding the cancellation, and Lewis testified that it was not Meadowbrook's practice to contact clients about impending insurance policy cancellations. Lewis, who handled the opening of Triangle's accounts and was the contact person between Meadowbrook and Triangle, also testified that she never saw the cancellation notice that Hartford copied to Meadowbrook. Meadowbrook had similarly not contacted Triangle in regard to the two cancellation notices sent by Hartford in connection with the 2007 fire insurance policy.

Triangle, which denied receiving any cancellation notice, asserted that Francis had sent a letter to Hartford in January 2009, notifying Hartford that Triangle was changing its business mailing address from the commercial building to a party store owned by one of Khidhir's sisters. Hartford denied receipt of the letter. Triangle did not send a similar change-of-address letter to Meadowbrook or mortgagee Fidelity, and Khidhir testified that Triangle did not complete a change of address with the United States Post Office. There was evidence that Lewis, through informal channels, had become fully aware of the fact that Triangle had changed the location of its business office prior to the cancellation notice and fire. Lewis did not notify Hartford of any change in address for Triangle. However, when questioned whether he asked Lewis to inform Hartford of the change in address, Khidhir simply responded:

> I told her we moving, so I don't know what – how she's going to take moving to. I told her we shut everything down. We no longer taking any position, any of the offices here because we are moving. I had to close down shop.

[2] Hartford had previously insured Triangle's commercial building under a policy issued in 2006, which was canceled for nonpayment of premiums. Subsequently, Hartford insured the building under a policy issued in early 2007. In April 2007, Hartford sent a notice of cancellation for nonpayment of premiums, but Triangle paid the outstanding premium and the policy remained operative. In June 2007, Fidelity provided mortgage refinancing relative to the building, removing former Triangle members from the existing mortgage. In July 2007, Hartford again sent a notice of cancellation for nonpayment of premiums, and the 2007 policy was later canceled after payment was not received. The building then went uninsured for approximately 13 months before Hartford issued the policy at issue here in September 2008. Triangle obtained the 2007 and 2008 Hartford insurance policies through Meadowbrook. The 2006 policy was obtained through a different insurance agent.

There is no evidence in the record that Lewis was directly asked to contact Hartford about the address change, which would have been an odd request assuming the truth of Triangle's own claim that Francis directly notified Hartford by letter about the change in address, nor is there any evidence in the record that Hartford required or made a request to Meadowbrook to contact Triangle about the cancellation of the 2008 policy. Moreover, although Lewis ostensibly knew of Triangle's address change and Meadowbrook had received a copy of the notice of cancellation from Hartford, which reflected Triangle's old office address at the commercial building, there is no documentary evidence suggesting that Lewis or anyone else at Meadowbrook had actually become aware or cognizant of the fact that the cancellation notice was mistakenly mailed to the old address. Lewis testified that she never saw copies of cancellation notices, whether they pertained to Triangle or other clients, when the copies came to Meadowbrook. Triangle asserted that it would have paid the overdue premium had it received the cancellation notice on the 2008 policy.

It is undisputed that Fidelity was not listed as an additional insured on the 2008 policy. There was deposition testimony by Khidhir and Francis that the vice-president of commercial lending for Fidelity, Brady Vibert, had told Khidhir that Triangle needed to make sure that Fidelity was listed on the policy as an additional insured, that Khidhir then told Francis to contact Meadowbrook about adding Fidelity to the policy, that Francis proceeded to tell Lewis to have Fidelity listed on the policy as an additional insured, and that Lewis indicated to Francis that she would take care of the matter, but it never came to fruition. Khidhir testified that in a personal conversation with Vibert a few months before the fire, he informed Vibert that Triangle was moving its office to the new address. Khidhir explained that he gave Vibert the party store address and told Vibert to send Fidelity's future mailings to the new address. Khidhir acknowledged that, despite the conversation, Fidelity continued to send mail to the old address at the commercial building.

Triangle sued Hartford[3] and Meadowbrook, alleging the latter breached duties to (1) inform Hartford of the change in mailing address, (2) properly identify Fidelity as an additional insured on the policy, (3) monitor the status of the policy and notify Triangle and Fidelity of the impending cancellation, and to (4) ensure that Triangle and Fidelity were fully protected against risks. Triangle asserted that as a result of Meadowbrook's breaches of these duties, Triangle suffered uncovered losses, including $1.5 million to replace the building, plus business interruption and other damages. The trial court granted summary disposition in favor of Meadowbrook pursuant to MCR 2.116(C)(10), ruling that Meadowbrook did not have a duty to monitor the status of the policy, did not have a duty to notify Triangle of the impending cancellation, and did not have a duty to inform Hartford of the change in address. The court found that there was no documentary evidence establishing the existence of a special relationship between Meadowbrook and Triangle that would have given rise to a duty, nor was there any evidence of an express agreement between Meadowbrook and Triangle whereby Meadowbrook

[3] Hartford was dismissed from the suit after reaching a settlement agreement with Triangle and Zurich, which had intervened in the action as a subrogee of Fidelity.

promised to perform the duties alleged to have been breached. The trial court later denied Triangle's motion for reconsideration.

On appeal, Triangle initially argues that, assuming Meadowbrook was an exclusive and not an independent insurance agent, a genuine issue of material fact existed concerning whether there was a special relationship between Meadowbrook and Triangle that gave rise to a duty by Meadowbrook to notify Triangle of the cancellation. Triangle additionally argues that the trial court committed palpable error when it ignored Triangle's unchallenged expert's opinion that Meadowbrook was an independent insurance agent. Finally, Triangle maintains that, because Meadowbrook was an independent insurance agent, it owed Triangle duties of loyalty and expertise that went beyond simply taking insurance orders in proper fashion, which duties were breached and encompassed by Triangle's claims.

This Court reviews de novo a ruling on a motion for summary disposition. *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). "Whether a duty exists is a question of law that is solely for the court to decide." *Harts v Farmers Ins Exch*, 461 Mich 1, 6; 597 NW2d 47 (1999). We review de novo questions of law. *Loweke*, 489 Mich at 6.[4]

In general, to prevail on a negligence cause of action, a plaintiff must show that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach was the proximate cause of the plaintiff's injury, and (4) that the plaintiff suffered damages. *Haliw v City of Sterling Heights*, 464 Mich 297, 309-310; 627 NW2d 581 (2001). The parties' arguments are focused on whether Meadowbrook owed a duty to Triangle in relationship to Triangle's claims.

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[4] In general, MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The trial court is not permitted to assess credibility, to weigh the evidence, or to resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). *Skinner*, 445 Mich at 161; *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

In *Harts*, 461 Mich 1, the plaintiffs, a married couple, owned a motor vehicle that was insured by the defendant Farmers Insurance. The policy was obtained "through defendant Gregory Pietrzak, a licensed insurance agent selling insurance exclusively for Farmers," and the policy did not include uninsured motorist coverage. *Id.* at 3. One of the plaintiffs was injured, and the plaintiffs' son was killed, in an accident with an uninsured motor vehicle, and the plaintiffs argued that Pietrzak was negligent for selling them an inadequate insurance policy, where it failed to include uninsured motorist benefits. *Id.* Our Supreme Court tackled the question "whether a licensed insurance agent owes an affirmative duty to advise or counsel an insured about the adequacy or availability of coverage." *Id.* at 2. And the Court held "that, except under very limited circumstances not present in this case, an insurance agent owes no such duty to an insured." *Id.* After noting that Pietrzak was Farmers' agent, and acknowledging that said relationship was governed by agency principles, the Court stated that Pietrzak "had a duty to comply with the various fiduciary obligations he owed to Farmers and to act for its benefit." *Id.* at 6-7. According to the Court, Pietrzak, on the other hand, did not have a common-law duty to advise the plaintiff insureds. *Id.* at 7. But, the Court acknowledged exceptions, stating:

> However, as with most general rules, the general no-duty-to-advise rule, where the agent functions as simply an order taker for the insurance company, is subject to change when an event occurs that alters the nature of the relationship between the agent and the insured. This alteration of the ordinary relationship between an agent and an insured has been described by our Court of Appeals as a "special relationship" that gives rise to a duty to advise on the part of the agent. While we agree with *Bruner* [*v League Gen Ins Co,* 164 Mich App 28; 416 NW2d 318 (1987),] that there must be "some type of interaction on a question of coverage," we do not subscribe to the possible reading of *Bruner* that holds reliance on the length of the relationship between the agent and the insured is the dispositive factor in transforming the relationship into one in which the traditional common-law "no duty" principle is abrogated. We thus modify the "special relationship" test discussed in *Bruner* and the other cases cited above so that the general rule of no duty changes when (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. [*Harts*, 461 Mich at 9-11 (citations omitted).]

Here, Triangle asserts that the *Harts* special-relationship exceptions to the no-duty rule are implicated, with Triangle necessarily operating under the assumption that the exceptions apply regardless of whether the insurance agent is an independent or exclusive agent.

We first note that the *Harts* Court addressed, and built its analysis around, a case involving an exclusive and not an independent insurance agent, and we also point out that *Harts* was focused on the duty to advise an insured about coverage adequacy and availability, not duties associated with cancellation notices. It appears to be beyond dispute here that Meadowbrook was an independent insurance agent, not a captive, exclusive agent, where it placed insurance with various insurance companies beside Hartford. *Mate v Wolverine Mut Ins*

Co, 233 Mich App 14, 20-21; 592 NW2d 379 (1998) (An independent insurance agency is one that has "the power to place insurance with various insurance companies."). Fiduciary duties owed by an insurance agency vary depending upon "the agent's status as an independent or exclusive agent." *Genesee Foods Services, Inc v Meadowbrook, Inc*, 279 Mich App 649, 654; 760 NW2d 259 (2008). When an insurance policy is facilitated by an independent insurance agent, the agent is considered to be an agent of the insured and not an agent of the insurer. *Id.*; *Mate*, 233 Mich App at 21; *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 310; 583 NW2d 548 (1998).

Assuming without deciding that the four special-relationship exceptions to the no-duty rule set forth in *Harts* apply in a case involving an independent insurance agent and policy cancellation issues, we find, as a matter of law, that either the exceptions were not implicated or, if implicated, causation was lacking.

With respect to the first special-relationship exception, i.e., coverage misrepresentations, Triangle asserts that Meadowbrook was asked and required by Hartford to notify Triangle of cancellation relative to the 2007 insurance policy, which notice Lewis provided, that Triangle thus expected the same course of action in regard to the 2008 policy, that Meadowbrook failed to provide notice of the cancellation of the 2008 policy, and that Hartford mailed the cancellation to the wrong address, which was copied to Meadowbrook. We admit some difficulty in trying to follow the logic in this disjointed argument that Meadowbrook posits all under the heading of "Misrepresentation of the Coverage." Triangle does additionally maintain that Lewis falsely represented to Triangle that Fidelity would be named as an additional insured on the 2008 policy.

Apart from the matter concerning Fidelity, which we will separately address, it would appear that Triangle is arguing that alleged actions by Meadowbrook in notifying Triangle, and in particular Khidhir, regarding cancellation of the 2007 insurance policy created an illusion or gave rise to an implicit false representation that Meadowbrook would likewise notify Triangle in the future about cancellation notices. Triangle's position is based on emails dated August 16, 2007, involving Lewis. The first email was sent from Janet Llewellyn, identified in the email as an account manager for Meadowbrook (not Hartford), to Lewis, in which Llewellyn wrote, "Attached are two cancellation notices on the *Mortgage Broker Bonds for Homepride Lending*. Can you please contact [Khidhir] and see if he will make the payment." (Emphasis added.) In a second email, Lewis responded, "I will call him today."[5] Khidhir testified that Homepride Lending Corporation was a defunct mortgage company that he started in 2005 that never actually commenced operations. Therefore, contrary to Triangle's argument, the 2007 cancellation notice about which Lewis supposedly informed Khidhir had absolutely nothing to do with the 2007 *fire insurance policy* and the associated cancellation notices sent by Hartford. This is made even more clear considering that the first cancellation notice on the 2007 fire insurance policy was dated April 27, 2007, and the deadline to make a payment on the second cancellation notice in regard to the same 2007 policy was August 3, 2007; both dates falling before the August 16, 2007, email date. There is no evidence that contradicts Lewis's testimony that it was not

[5] Lewis testified that she could not recall contacting Khidhir.

Meadowbrook's practice to contact clients about impending insurance policy cancellations, nor is there evidence that Meadowbrook contacted Triangle in regard to cancellation of the 2007 fire insurance policy. There is no basis whatsoever for finding a "misrepresentation" relative to insurance policy cancellation practices arising out of any cancellation notice that Lewis may have communicated to Khidhir regarding mortgage broker bonds. Furthermore, even if giving Triangle notice on cancellation of the mortgage broker bonds had some analogous application, we still could not conclude that it would support a misrepresentation claim; a one-time event did not create a pattern.

With respect to misrepresentation and the assertion that Lewis falsely represented to Triangle that she would have Fidelity added to the policy, we will address the argument below, given that Triangle renews that argument in regard to the third and fourth special-relationship exceptions to the no-duty rule.

Under the misrepresentation heading in its appellate brief, Triangle presents a cursory argument that actually belongs under the second special-relationship exception to the no-duty rule, i.e., clarification of an ambiguous request. Triangle maintains that Lewis, upon discovering that Triangle's address had changed, should have sought clarification whether Triangle wished Lewis to contact Hartford about the change in address. Assuming, as we must for purposes of summary disposition, that Khidhir told Lewis about the move as he claimed in his deposition testimony and that Lewis generally knew about the address change, there is no evidence of any "request," let alone an "ambiguous request." Furthermore, given that Triangle, by its own account, had already notified Hartford of the address change, Triangle presumably would have informed Lewis that further notice to Hartford was unnecessary had Lewis asked for "clarification" regarding whether she should notify Hartford of the change. This argument is wholly lacking in merit.

With respect to the third special-relationship exception, i.e., dispensing inaccurate advice upon an inquiry, Triangle presents multiple arguments. First, Triangle maintains that the failure to give advice is equally as offensive as dispensing inaccurate advice and that Meadowbrook failed to give "advice," where it did not inform Triangle of the 2009 cancellation notice despite being fully aware that it was sent to the wrong address, and where Meadowbrook previously advised Triangle of the 2007 policy cancellation. We reject Triangle's argument to the extent that it is based on the so-called 2007 policy cancellation, where, as indicated above, the cancellation relied on by Triangle for its argument actually dealt with mortgage broker bonds and Khidhir's mortgage company. In regard to the argument that Meadowbrook failed to inform Triangle about the cancellation notice despite knowledge of an inaccurate address, the argument is simply not predicated on any "inquiry." Moreover, as noted earlier, there is no evidence indicating that any person at Meadowbrook actually became aware of a discrepancy and chose to ignore it. Lewis testified that she never saw the cancellation notice, and we are not prepared to find, under the particular facts of this case, that Lewis should have known about the problem, such that a duty arose despite the lack of actual knowledge.

Under the third special-relationship exception, Triangle also raises, once again, the issue concerning Meadowbrook's failure to have Fidelity added to the insurance policy as allegedly promised. As indicated above, Meadowbrook additionally raises this same issue under the fourth special-relationship exception, i.e., assumption of a duty by express agreement or promise.[6] Triangle's theory is that, had Fidelity been listed on the policy as an additional insured, Fidelity would have received a cancellation notice and then Fidelity would have contacted Triangle about the failure to pay the premiums, given that the mortgage required Triangle to maintain insurance on the commercial building, and, even had Triangle still failed to pay, Fidelity would have obtained "force-placed" insurance on the building, thereby protecting Triangle against a loss.

In a letter from Warren Musson, a senior vice-president and head of lending for Fidelity, he expressed that when Fidelity receives a notice of cancellation, Fidelity (1) contacts the "insurance company/agency to verify the status of the cancellation," (2) sends a letter "to the customer advising them that if written proof of insurance is not received by the date of cancellation, insurance [will] be force placed," and (3) if no insurance is obtained by the date of cancellation, Fidelity will "force place and [send] a second letter . . . to the borrower advising them that insurance has been forced placed." Transactional documents pertaining to the loan made by Fidelity to Triangle indicate that Fidelity has the right to implement force-placed insurance if coverage is not maintained and that force-placed insurance, if implemented, will provide limited protection against physical damages to the collateral up to an amount equal to the lesser of either the outstanding balance on the debt or the value of the collateral. The amount owing on Fidelity's note at the time of the fire was approximately $650,000.

Had Fidelity been listed as an additional insured and received a cancellation notice from Hartford, a letter concerning the cancellation, according to Musson's letter, would have been sent to Triangle about the situation. Even though Khidhir testified that he personally spoke with Fidelity's Brady Vibert (VP for commercial lending) about the address change months before the fire, Khidhir acknowledged that Fidelity nonetheless continued to send mail to the old address. Also, Francis did not send a change-of-address letter to Fidelity. Thus, if Fidelity would have simply sent a letter to Triangle upon receiving a cancellation notice, presumably the letter, just like Hartford's notice, would have been mailed to the old address at the commercial building. However, aside from Musson's letter, Vibert testified that if Fidelity receives a notice of cancellation, as would have been the case here had Fidelity been added to the policy, he engages in a "conversation with the borrower" to find out whether insurance will be maintained before imposing, if necessary, a force-placed policy of insurance on the property. This testimony suggests that Vibert would communicate with a borrower in-person or by phone if Fidelity received a notice of cancellation regarding the borrower's insurance on property that served as collateral on a Fidelity promissory note. And it was Vibert, not Musson, who directly dealt with Triangle's Khidhir when it came to the mortgage. Again, Triangle's position is that even though

[6] The only other argument posed by Triangle under the fourth exception is that Meadowbrook expressly assumed a duty to advise Triangle of insurance policy cancellation notices given that Meadowbrook previously did so in 2007. We reject this belabored argument for the reasons already stated by the panel.

Francis was aware that a premium payment was due and despite the fact that Triangle was having financial difficulties, Triangle would have paid the outstanding premium had it known about the cancellation notice. While Meadowbrook presented documentary evidence which showed that Triangle was in a financial crisis, it did not submit evidence establishing that it would have been economically impossible for Triangle to make the $878 premium payment.[7]

Although there may be sufficient evidence to survive summary disposition with respect to showing a duty and a breach by Meadowbrook in relationship to the whole issue concerning the failure to add Fidelity to the policy, summary disposition was still properly granted in favor of Meadowbrook where Triangle failed to establish causation. An insured is obligated to read the insurance policy and to raise questions concerning coverage within a reasonable time following the issuance of the policy. *Harts*, 461 Mich at 8 n 4; *House v Billman*, 340 Mich 621, 627; 66 NW2d 213 (1954). "Consistent with this obligation, if the insured has not read the policy, he or she is nevertheless charged with knowledge of the terms and conditions of the insurance policy." *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 395; 729 NW2d 277 (2006). Here, had Francis or Khidhir read the 2008 policy, they would have realized that Fidelity was not listed as an additional insured despite Lewis's alleged promise. It would not have required any expertise to discover the failure. Triangle is charged with knowledge of the policy's terms and conditions, and it could have contacted Fidelity, Hartford, or Meadowbrook about resolving the problem, but it did not do so. Accordingly, Triangle cannot establish the requisite element of causation, as it ultimately failed to take steps that could have entirely avoided the problem regarding Fidelity's interest.

[7] That said, we note our temptation to dispose of this entire case on the basis that Triangle arguably failed to present documentary evidence showing that it would and could have paid the premium had it received the cancellation notice. In other words, there was a possible causation failure. Below, Triangle stated in a summary disposition response brief that "[h]ad Triangle received the cancellation notice they would have paid the $8[7]8.00 premium as there was far more money in Triangle's bank account to cover the payment and Triangle had an income producing asset [building] which required insurance protection. (Khidir [sic], 94; Khidir [sic] Affidavit.)" Later in the brief, Triangle asserted that it had $12,000 in its bank account, citing Khidhir's affidavit. Page 94 of Khidhir's deposition transcript simply reflects his acknowledgement that payment of the premium was necessary in order to avoid cancellation ("Of course, we would have to pay it."). Khidhir's affidavit does not contain a specific averment alleging that Triangle would and could have made the payment; there is also no mention of Triangle's bank account. The affidavit does aver that Khidhir read the summary disposition response brief and that if called to testify, "he would testify as to the truth of all matters contained therein[.]" Thus, there was a circular aspect to Triangle's presentation where the brief cited the affidavit in support and the affidavit simply referred back to the brief as to the causation matter. Given Triangle's history of allowing insurance policies to lapse for nonpayment of premiums, it is easy to question the sincerity of Triangle's claim that payment would have been forthcoming had notice been received.

In regard to the whole matter concerning force-placed insurance, aside from the causation failure, Triangle fails to explain how its losses would have been less than those actually suffered under the circumstances that transpired had Fidelity obtained force-placed insurance on the commercial building in an amount that covered only the outstanding mortgage debt but not any of Triangle's equity, if any, in the building. Theoretically, if force-placed insurance had been obtained, Triangle would nonetheless have remained subject to potential liability for the outstanding mortgage, while not to Fidelity but to the insurer who provided the force-placed insurance to Fidelity as Fidelity's subrogee. Triangle's failure to even broach the issue results in it being abandoned. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

Triangle next argues that the trial court committed palpable error when it ignored Triangle's unchallenged expert's opinion that Meadowbrook was an independent insurance agent. We have already accepted the fact that Meadowbrook was an independent insurance agent, regardless of the expert's opinion. Triangle also suggests that the trial court erred in not giving any weight to the opinion of its expert concerning whether Meadowbrook owed certain duties to Triangle. "[T]he duty to interpret and apply the law has been allocated to the courts, not to the parties' expert witnesses." *Hottmann v Hottmann*, 226 Mich App 171, 179; 572 NW2d 259 (1997). And, as stated earlier, "[w]hether a duty exists is a question of law that is *solely* for the court to decide." *Harts*, 461 Mich at 6 (emphasis added); see also *Hoffner v Lanctoe*, 492 Mich 450, 476; 821 NW2d 88 (2012). We do note that there are instances in which underlying questions of fact or factual disputes may need to be resolved by a jury for purposes of ultimately determining whether a legal duty exists. *Smith v Allendale Mut Ins Co*, 410 Mich 685, 714-715; 303 NW2d 702 (1981).[8] While perhaps Triangle's expert could give opinions concerning industry standards of care and practice, and even opinions in regard to particular aspects of any duties, whether a legal duty exists in the first place is a question for the court not an expert.

Finally, Triangle argues that Meadowbrook, *as an independent insurance agent*, owed Triangle various duties that went beyond *Harts* and those duties associated with exclusive agents. This Court in *Genesee Co*, 279 Mich App at 656-657, indicated that an independent

[8] In *Smith*, 410 Mich at 714-715, our Supreme Court observed the following regarding the question of duty:

> It is commonplace to say that a particular defendant owes a duty to a particular plaintiff, but such a statement, although not incorrect, merges two distinct analytical steps. It is for the court to determine, as a matter of law, what characteristics must be present for a relationship to give rise to a duty the breach of which may result in tort liability. It is for the jury to determine whether the facts in evidence establish the elements of that relationship. Thus, the jury decides the question of duty only in the sense that it determines whether the proofs establish the elements of a relationship which the court has already concluded give rise to a duty as a matter of law.

insurance agent owes an insured a primary duty of loyalty and expertise, but the panel couched the duty in terms of identifying an appropriate insurer and procuring an adequate policy. Triangle essentially raises the same arguments addressed above – Meadowbrook had a duty to make sure that Fidelity was listed as an additional insured given Triangle's request or instruction to do so; Meadowbrook had a duty to inform Hartford of Triangle's new address considering Lewis's knowledge of the address change; and Meadowbrook had a duty to monitor the status of the account and inform Triangle of the cancellation notice in light of alleged past practices. For the reasons stated earlier, and regardless of the fact that this case involves an independent insurance agent, we again conclude that Triangle's action fails because either no duty arises under the particular facts of this case, even when viewed in a light most favorable to Triangle, or causation cannot be established as a matter of law. We are not holding that in no factual circumstance can a duty arise for an independent insurance agent to notify an insurer of an address change, to notify an insured of a cancellation notice, or to see to it that certain terms are included in a policy.[9] Rather, we are merely holding that no such duties arose in this case under the facts presented.

Affirmed. Having fully prevailed on appeal, taxable costs are awarded to Meadowbrook under MCR 7.219.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

[9] We do note that MCL 500.2833(1)(i) states that a Michigan fire insurance policy must contain language which provides that "the policy may be canceled at any time by the insurer by mailing to each insured named in the policy at the insured's address last known to the insurer or an authorized agent of the insurer, not less than 10 days before the cancellation, with postage fully prepaid, a written notice of cancellation with or without tender of the excess minimum earned premium." Arguably, this provision could be construed as a legislative directive placing the burden solely on insurers to notify insureds of prospective cancellation of a policy, circumventing a claim that an insurance agent has a similar duty. Given our holding, we need not determine MCL 500.2833(1)(i)'s impact on the duty issues.