MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

SPRINT LUMBER, INC., SCOTT LADEROUTE, JERRY DOWNEY, SHEILA HIGDON, JESS REYNOLDS, AND RAY MENG,

Appellant-Respondents

v.

UNION INSURANCE COMPANY, CONTINENTAL WESTERN GROUP, LLC.

Respondent-Appellants

DOCKET NUMBER WD82930 Consolidated with WD82939

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: April 6, 2021

Appeal From:

Circuit Court of Jackson County, MO
The Honorable James F. Kanatzar, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, and Thomas N. Chapman, JJ.

Attorneys:

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SPRINT LUMBER, INC., SCOTT LADEROUTE, JERRY DOWNEY, SHEILA HIGDON, JESS REYNOLDS, AND RAY MENG, Appellant-Respondents,
v.
UNION INSURANCE COMPANY, CONTINENTAL WESTERN GROUP, LLC., Respondent-Appellants

WD82930 (Consolidated with WD82939) **Jackson County**

Before Division One Judges: Ahuja, P.J., Newton, and Chapman, JJ.

This appeal and cross-appeal arise from the judgment of the Circuit Court of Jackson County on Sprint Lumber, Inc., its owner and president, and certain employees' (collectively "Sprint Lumber Parties") claims against Union Insurance Company and Continental Western Group LLC (collectively "Union") for declaratory judgment, breach of contract, and breach of fiduciary duty involving Union's duty to defend and indemnify them under a commercial general liability policy in a federal lawsuit brought by a competitor, Porters Building Centers, Inc. ("Porters"). The Sprint Lumber Parties raise three points on appeal challenging the trial court's partial summary judgment in favor of Union on their claim for breach of fiduciary duty and the trial court's calculation of damages. In its cross-appeal, Union raises five points challenging the trial court's partial summary judgment in favor of the Sprint Lumber Parties finding Union had a duty to defend and its judgment against Union to indemnify the Sprint Lumber Parties.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEDINGS.

Division One holds:

(1) Where Porters's allegations in the lawsuit against the Sprint Lumber Parties supported the possibility that the Sprint Lumber Parties caused customers to leave Porters through disparaging statements and conduct, there was a possibility of coverage under the "personal and advertising injury" coverage of the policy and, thus, Union had a duty to defend.

(2) Where Porters's allegations of wrongful solicitation of its customers through the disparagement of Porters did not arise out of the infringement of Porters's trade secrets or other intellectual property or any access to or disclosure of Porters's confidential or personal information, those exclusions in the policy did not eliminate the possibility of coverage.

(3) Where the evidence demonstrated that the Sprint Lumber Parties conspired to breach their duty of loyalty and to tortiously interfere with Porters's customer relationships by disparaging Porters and that Porters's damages from that conduct was independently sufficient of the Sprint Lumber Parties' unlawful misappropriation and access and disclosure of confidential

information, which were excluded from coverage, sufficient evidence established Union's duty to indemnify.

(4) Where the Sprint Lumber Parties' second amended petition supported claims for bad faith failure to defend and failure to settle, and Union failed to show that there were no genuine issues of material fact and that it was entitled to judgment as a matter of law on those viable theories, the trial court erred in granting summary judgment in favor of Union on Count III of the Sprint Lumber Parties' second amended petition.

(5) The trial court did not erroneously declare or apply the law in determining that the "amount of loss" from which the statutory penalty was calculated for vexatious refusal to pay under sections 375.296 and 375.420, RSMo, included only the settlement amount of $775,000 (for Porters's losses) and not the attorney fees and expenses paid to defend the Sprint Lumber Parties in the underlying lawsuit.

(6) Where the Sprint Lumber Parties gave Union notice of its claim on May 17, 2016, they were entitled to reasonable attorney fees and expenses incurred to defend in the underlying lawsuit from that date, and the trial court erred in limiting its award for damages for attorney fees and expenses incurred to legal work done after June 13, 2016, the date of Union's first disclaimer letter.

(7) Because we affirm the trial court's judgment ruling in favor of the Sprint Lumber Parties on their action against Union to recover the amount of their loss under the Policy (the $775,000 settlement with Porters) under section 375.420, RSMo, for vexatious refusal to pay, the Sprint Lumber Parties' request for attorney fees on appeal under section 375.420, RSMo, is granted.

Opinion by: Thomas N. Chapman, Judge Date: April 6, 2021

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.