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COMMUNITY RESOURCING, INC. et al. v. BERKSHIRE HATHAWAY SPECIALTY INSURANCE et al.

2026 OK 53

Case Number: 123808

Decided: 06/30/2026

SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2026 OK 53, __ P.3d __

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REVISION OR WITHDRAWAL.

COMMUNITY RESOURCING INCORPORATED d/b/a OUR DAILY BREAD FOOD AND RESOURCE CENTER,
Plaintiff/Respondent,

v.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE, MESSER-BOWERS COMPANY, Defendants,
and,

CHRIS HICKMAN, and
HAAG ENGINEERING COMPANY, Defendants/Petitioners.

REVIEW OF CERTIFIED INTERLOCUTORY ORDER ENTERED IN THE DISTRICT COURT OF PAYNE COUNTY;

Honorable Michael Kulling, Associate District Judge

¶0 This matter is before the Court on a certified interlocutory order denying the engineering company's motion to dismiss. The underlying action involves allegations of tortious interference with a contract and civil conspiracy against an engineering company hired by a property insurer to inspect an insured's property. The district court denied the motion but certified its order for interlocutory review. We granted the engineering company's petition for certiorari certified interlocutory order. We hold that the insured's claims against the engineering company fail as a matter of law because the company was acting as a representative for the insurer when conducting the inspection.

PETITION FOR CERTIORARI PREVIOUSLY GRANTED; DISTRICT COURT'S JUDGMENT REVERSED AND REMANDED.

James K. Secrest, II and Edward J. Main, Secrest, Hill & Secrest, Tulsa, Oklahoma, for Petitioners Chris Hickman and Haag Engineering Company.

J. Revell Parrish, Glass & Tabor, LLP, Norman, Oklahoma, for Respondent Community Resourcing Incorporated d/b/a Our Daily Bread Food and Resource Center.

Kenneth N. Jean, Martin Jean & Jackson, Ponca City, Oklahoma, for Respondent Community Resourcing Incorporated d/b/a Our Daily Bread Food and Resource Center.

Winchester, J.

¶1 This matter comes before the Court on a certified interlocutory order denying a motion to dismiss. Petitioners Chris Hickman and Haag Engineering Company (collectively, "Haag") seek review of the district court's ruling, which left intact claims of tortious interference with contract and civil conspiracy filed by Respondent Community Resourcing Incorporated d/b/a Our Daily Bread Food and Resource Center ("Community").

¶2 Community obtained property insurance through its agent, Defendant Messer-Bowers Company ("Agent"), from Defendant Berkshire Hathaway Specialty Insurance ("Insurer"). On May 5, 2022, a hailstorm damaged Community's property, and it filed a claim for coverage based on its policy with Insurer. Following months of communication, Insurer hired Haag to conduct an additional inspection of Community's property. Haag performed its inspections on March 8, 2024, and April 12, 2024.

¶3 On March 31, 2025, Community filed suit against Insurer, alleging breach of contract and bad faith, and against Agent, contending misrepresentation. On May 25, 2025, Community amended its petition, adding claims against Haag for tortious interference with the insurance contract and civil conspiracy.

¶4 Haag moved to dismiss the claims against it, arguing it owed no duty to Community and that the tortious interference claim failed as Haag acted pursuant to a contract with Insurer, a party to the underlying insurance agreement. Community responded, contending that Haag's lack of duty argument was not applicable as it did not assert a bad faith claim against Haag and that the representative-capacity argument pursuant to Haag's contract with Insurer was misplaced. The district court denied Haag's motion, and Haag filed a petition for certiorari certified interlocutory order. The Court granted certiorari.

STANDARD OF REVIEW

¶5 Proceedings to review certified interlocutory orders are governed by 12 O.S.2021, § 952(b)(3) and Oklahoma Supreme Court Rules 1.50-1.56, 12 O.S.2021, ch.15, app. 1. To be reviewable, Rule 1.50 requires: 1) the order must not be one overruling a motion for summary judgment; 2) the order must not be appealable by right; 3) the order must affect a substantial part of the merits of the controversy; and 4) the district court must certify that an immediate appeal may materially advance the ultimate termination of the litigation. This Court has previously determined that "merits of the controversy" signifies the real or substantial grounds of the action or defense. *Roach v. Jimmy D. Enters., Ltd.*, 1996 OK 26, ¶ 6, 912 P.2d 852, 854; *Pierson v. Canupp*, 1988 OK 47, ¶ 11 n.8, 754 P.2d 548, 552 n.8.

¶6 Here, the journal entry is not one appealable by right nor is it one concerning summary judgment. The district court correctly determined that resolution of the issues raised in Haag's motion to dismiss would affect a substantial part of the merits of the controversy as a determination of the issue in favor of Haag would terminate all claims against it. The Court is left with a purely legal question: Are Community's tortious interference and civil conspiracy claims against Haag viable under Oklahoma law given Haag's contractual engagement with Insurer? We granted certiorari to resolve this exact question.

DISCUSSION

I. Community's claim for tortious interference with contract against Haag fails as a matter of law.

¶7 To recover for a claim of tortious interference with contract, Community must show that (1) it had a contractual right that was interfered with by Haag; (2) the interference was malicious and wrongful, and that such interference was neither justified, privileged, nor excusable; and (3) Community's damage was proximately sustained as a result of the complained-of interference. *Mac Adjustment, Inc. v. Prop. Loss Rsch. Bureau*, 1979 OK 41, ¶ 5, 595 P.2d 427, 428.

¶8 However, under Oklahoma law, a person or entity acting in a representative capacity for a party to a contract cannot be liable for tortious interference with that contract. See *Voiles v. Santa Fe Mins., Inc.*, 1996 OK 13, 911 P.2d 1205. For example, in *Voiles*, a third party obtained "top leases" from landowners that would only become effective if the defendants' underlying oil and gas leases were terminated. The landowners authorized the third party (not a party to the leases between the landowners and defendants) to pursue termination actions in their

names. *Id.* ¶ 1, 911 P.2d at 1207-08. The defendants asserted tortious interference with contract against the third party, and the district court held that the third party interfered with the leases. On appeal, the Court concluded that if the third party acted as an agent or representative for the landowners, the defendants' claim for interference with contract was--as a matter of law--without foundation. *Id.* ¶ 18, 911 P.2d at 1210. The Court rested its decision on *Ray v. American National Bank & Trust Co.*, 1994 OK 100, ¶ 15, 894 P.2d 1056, 1060, wherein it held:

Ray contends that Bank wrongfully interfered with her employment contract with Young, and claims a right to punitive damages as a result. Bank, however, was at all times acting on behalf of Young. *Bank could not wrongfully interfere with a contract concerning which it was acting in a representative capacity for a party.* A cause of action for wrongful interference with contract can arise only when one who is not a party to a contract interferes with that contract by convincing one of the contracting parties to breach its terms. . . . *Bank was a party to the contract, in its representative capacity.* Thus, we hold that the trial court properly granted summary judgment to Bank on this issue.

Voiles, 1996 OK 13, ¶ 18, 911 P.2d at 1210 (emphasis in the original).

¶9 Here, Community alleged in its amended petition:

Haag Engineering and Hickman had an agreement to inspect Plaintiff's Property pursuant to the Policy between Plaintiff and Berkshire Hathaway, and to opine whether (and what) damage observed was caused by a covered peril (e.g., hail) and whether the damage affected the water shedding capabilities or lifespan of the roofs.

R. at 24, Am. Pet. ¶ 64. It further alleged:

Haag Engineering and Hickman, by contracting or agreeing to inspect Plaintiff's Property and reporting findings that supported Berkshire Hathaway's findings rather than conducting a truthful and fair inspection and writing a fair report, personally gained by financial incentive to further their own separate agenda of participating in the minimization or denial of legitimate insurance claims to earn more business and keep the existing relationship with Berkshire Hathaway.

R. at 24, Am. Pet. ¶ 65.

¶10 By Community's own allegations, Insurer contracted with Haag for the sole purpose of inspecting the property--a service integral to Insurer's evaluation of Community's claim. Haag reported the inspection findings back to Insurer; it was Insurer, not Haag, that ultimately made the coverage determination. Because Haag was acting strictly as a representative for Insurer when it conducted the inspection, it cannot be held liable for tortious interference with a contract under Oklahoma law.

¶11 Moreover, this contractual relationship between Haag and Insurer defeats a threshold requirement for tortious interference under Oklahoma law: a showing that the interference was "neither justified, privileged nor excusable." *Mac Adjustment*, 1979 OK 41, ¶ 5, 595 P.2d at 428. Haag was contractually obligated to perform the inspection, and as such, its actions were inherently justified and privileged. Haag cannot be said to have acted without justification merely because Community disagreed with the inspection's substantive findings. See, e.g., *Council Tower Ass'n v. Axis Specialty Ins. Co.*, 630 F.3d 725, 731 (8th Cir. 2011) (affirming the dismissal of the tortious interference claim as the plaintiff "cannot show lack of justification for any of the statements" in the report since the adjuster's job was to investigate and report to the insurer on the cause of the loss).

¶12 Finally, an insurer's core duties are non-delegable under Oklahoma law. *Trinity Baptist Church v. Brotherhood Mut. Ins. Servs.*, 2014 OK 106, ¶ 29, 341 P.3d 75, 86; see also *Timmons v. Royal Globe Ins. Co.*, 1982 OK 97, ¶ 22, 653 P.2d 907, 914 (insurer's duty cannot be delegated to a third party). Applying this principle in *Trinity*, the Court held that an independent adjuster owed no duty to the insured to conduct a fair and reasonable investigation. The rationale behind this rule was that an insurer contractually controlled its adjuster's responsibilities and retained the ultimate authority to deny coverage or pay a claim. 2014 OK 106, ¶¶ 26-28, 341 P.3d at 84-85. Since an insurer's non-delegable obligations inherently include the duty to investigate, the insurer remained liable if an independent

adjuster performed an inadequate investigation. *Wathor v. Mut. Assurance Adm'rs, Inc.*, 2004 OK 2, ¶ 16 n.6, 87 P.3d 559, 563 n.6. Imposing a separate legal duty upon the adjuster in this scenario would improperly allow for a double recovery by:

[P]ermitting the insured to recover in tort both for breach of contract or breach of the duty of good faith and fair dealing by the insurer--caused by an adjuster[']s negligent conduct--and from the adjuster for the same conduct.

Trinity, 2014 OK 106, ¶ 31, 341 P.3d at 86.

¶13 Courts have extended the ruling in *Trinity* to bar negligence claims regardless of whether the individual was specifically identified as an "adjuster." See *Faith Temple, Inc. v. Church Mut. Ins. Co.*, CIV-20-13-G, 2020 WL 4274582, at *1 (W.D. Okla. July 24, 2020); *Jonnada v. Liberty Ins. Corp.*, No. CIV-19-456-D, 2019 WL 6119233, at *3 (W.D. Okla. Nov. 18, 2019). For example, in *Faith Temple*, an insurer retained a licensed professional engineer to investigate a policyholder's storm damage claim. 2020 WL 4274582, at *1. Seeking to circumvent *Trinity*, the plaintiff argued that the engineer owed it a separate duty of care because the engineer was not a traditional "insurance adjuster." *Id.* at *3. The court rejected this argument, clarifying that *Trinity* bars negligence claims against contractually retained third parties regardless of their specific nomenclature. *Id.* The court in *Faith Temple* reaffirmed that an independent investigator's role is simply to evaluate claims under a contract to which it is not a party and report back to the insurer. An insured's disagreement with those findings does not create an actionable tort claim. *Id.*

¶14 Although Community did not assert a negligence or bad faith claim against Haag, the same rationale applies with equal force here to its claim for tortious interference with contract. From a policy standpoint, it makes little sense to impose an independent duty on Haag when Insurer remains subject to liability for any mishandling of the inspection through claims for breach of contract and bad faith. *Trinity*, 2014 OK 106, ¶ 30, 341 P.3d at 86; see also *Dear v. Scottsdale Ins. Co.*, 947 S.W.2d 915, 917 (Tex. App. 1997) (stating that an adjuster could not be liable to the plaintiff "for improper investigation and settlement advice, regardless of whether [the plaintiff] phrased his allegations as negligence, bad faith, breach of contract, tortious interference, or DTPA claims"), *overruled on other grounds*, *Apex Towing Co. v. Tolin*, 41 S.W.3d 118, 122-23 (Tex. 2001). To be sure, *Trinity* did not grant third-party investigators blanket immunity for all conduct. Instead, the framework established in *Trinity*--and applicable to Haag here--shields a contractually retained professional from tort liability for actions performed as part of the claim evaluation. See, e.g., *Henderson v. Day Eng'g Consultants*, 2024 OK CIV APP 25, ¶ 17, 560 P.3d 684, 689. Insurers routinely utilize third parties to inspect and evaluate policy claims. Haag did exactly that: Haag inspected the property and reported to Insurer, who then made the final coverage decision.

¶15 Permitting Community to sue third-party professionals, like Haag, retained as a representative to investigate a disputed claim creates needless legal redundancy and risks an improper double recovery for the same injury. Consequently, Community's claim for tortious interference of a contract fails as a matter of law.

II. Community's claim for civil conspiracy against Haag fails as a matter of law.

¶16 Under Oklahoma law, a civil conspiracy requires a combination of two or more persons to perform an unlawful act, or a lawful act by unlawful means. *Brock v. Thompson*, 1997 OK 127, ¶ 39, 948 P.2d 279, 294. Unlike criminal conspiracy, a civil conspiracy is not an independent tort and does not itself create liability. *Id.* Instead, liability attaches only if the conspirators pursue an independently unlawful purpose or utilize independently unlawful means. *Id.* Where the underlying act and the means employed are lawful, a claim for civil conspiracy fails as a matter of law. *Id.*

¶17 Here, Community claimed that Haag, through its purported interference with the insurance contract, participated in a civil conspiracy to minimize damages. In *Trinity*, this Court rejected a nearly identical theory where an insured alleged collusion between an insurer and an independent adjuster to manipulate estimates and

depress repair costs. *Trinity* clarified that such allegations were merely a restatement of the insured's bad faith claim against the insurer, not evidence of a separate "special relationship" creating independent liability for the adjuster. 2014 OK 106, ¶ 17 n.5, 341 P.3d at 81 n.5.

¶18 This reasoning controls the outcome here. Because Community's underlying claim of tortious interference with contract against Haag lacks a legal foundation, its conspiracy claim fails as a matter of law. See *Brock*, 1997 OK 127, ¶ 42, 948 P.2d at 295. As a representative acting on behalf of the insurer, Haag's investigative actions were legally privileged and cannot constitute a conspiracy to interfere with its principal's own contract. Additionally, Haag was a stranger to the insurance contract, and it owed no implied covenant of good faith and fair dealing to the insured. Haag cannot be held liable under a civil conspiracy theory.

CONCLUSION

¶19 The district court erred in denying Haag's motion to dismiss. Since Haag was acting as a representative for Insurer when conducting the inspection, Community's claims against Haag fail as a matter of law. We reverse the district court's ruling and remand the matter for further proceedings consistent with this opinion.

PETITION FOR CERTIORARI PREVIOUSLY GRANTED; DISTRICT COURT'S JUDGMENT REVERSED AND REMANDED.

CONCUR: ROWE, C.J., KUEHN, V.C.J., WINCHESTER, EDMONDSON, DARBY, KANE, and JETT, JJ.

DISSENT: COMBS, J. and GURICH, J. (By Separate Writing).

GURICH, J., with whom COMBS, J. joins, dissenting:

¶1 The majority opinion characterizes the issue before us as whether Community's tortious interference and civil conspiracy claims against Haag are viable given Haag's contract with Insurer. Instead, the issue should be framed as Community characterizes it: whether Oklahoma law permits claims for tortious interference and civil conspiracy against a third-party engineering firm that submits a report to defeat an insured's claim.

¶2 The cases the majority relies upon to conclude Haag was acting in a representative capacity for Insurer--*Voiles v. Santa Fe Minerals, Incorporated*, 1996 OK 13, 911 P.2d 1205 and *Ray v. American National Bank & Trust Company*, 1994 OK 100, 894 P.2d 1056--are not applicable. These cases do not involve insurance contracts, and the representative immunity recognized in *Ray* was expressly conditioned on the third-party acting as an agent **on behalf of the contracting party**--not for its own interests. See *Ray*, ¶ 6, 894 P.2d at 1060 ("Bank, however, was at all times acting on behalf of Young. Bank could not wrongfully interfere with a contract concerning which it was acting in a representative capacity for a party."). Here, Community alleges that, although Haag did advance Insurer's financial interests by interfering with Community's insurance contract, Haag simultaneously acted **on their own behalf** to minimize a legitimate insurance claim to earn more business and preserve their relationship with Insurer. At this motion to dismiss stage and based on Community's allegations, it is not certain that Haag was acting exclusively in a representative capacity such that Haag cannot be liable for tortiously interfering with the contract between Community and Insurer.

¶3 Moreover, the majority's application of *Trinity Baptist Church v. Brotherhood Mutual Insurance Services*, 2014 OK 106, 341 P.3d 75, to this case is misplaced. *Trinity Baptist* sought to prevent double recovery by holding that a third-party adjuster does not owe a separate legal duty to the insured to conduct a fair and reasonable investigation. Policy holders therefore cannot sue their insurer's independent adjusters for negligence during the claims process. Federal courts have extended this reasoning to other third-party professionals. But, even still, *Trinity Baptist* does not provide blanket immunity for all acts committed by third-party professionals or adjusters retained by an insurer. In a factually analogous case, *Hooper v. American Strategic Insurance Corporation*, No. 24-cv-00612-CDL, 2025 WL 1140228 (N.D. Okla. Apr. 17, 2025), the United States District Court for the Northern District of Oklahoma recently refused to extend *Trinity Baptist* to intentional torts. The court noted that prior applications of *Trinity Baptist* were "limited to claims of negligence, bad faith, and/or breach of contract in the

evaluation of an insurance claim" and cited cases explaining that extending *Trinity Baptist* to intentional torts would result in a "sweeping grant of immunity" that Oklahoma courts have thus far declined to adopt. *Id.* at *3--4. I would not extend *Trinity Baptist* to intentional torts.

¶4 Here, Community has not asserted claims against Haag for negligence, bad faith, or breach of contract in the evaluation of an insurance claim. As such, *Trinity Baptist* should grant Haag no immunity against Community's intentional tort claims.

¶5 For all of these reasons, I would affirm the district court's denial of Haag's Motion to Dismiss Plaintiff's Amended Petition.

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Cite Name	Level	
Oklahoma Court of Civil Appeals Cases		
Cite	Name	Level
<u>2024 OK CIV APP 25, 560 P.3d 684,</u>	<u>HENDERSON v. DAY ENGINEERING CONSULTANTS</u>	Discussed
Oklahoma Supreme Court Cases		
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<u>1988 OK 47, 754 P.2d 548, 59 OBJ</u>	<u>Pierson v. Canupp</u>	Discussed
<u>1228,</u>		
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<u>2503,</u>		
<u>2004 OK 2, 87 P.3d 559,</u>	<u>WATHOR v. MUTUAL ASSURANCE ADMINISTRATORS, INC.</u>	Discussed
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<u>529,</u>		
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<u>803,</u>		
<u>2014 OK 106, 341 P.3d 75,</u>	<u>TRINITY BAPTIST CHURCH v. BROTHERHOOD MUTUAL INSURANCE SERVICES, LLC</u>	Discussed at Length
<u>1979 OK 41, 595 P.2d 427,</u>	<u>MAC ADJUSTMENT, INC. v. PROPERTY LOSS RESEARCH BUREAU</u>	Discussed at Length
<u>1997 OK 127, 948 P.2d 279, 68 OBJ</u>	<u>Brock v. Thompson</u>	Discussed at Length
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