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publication in the New York Reports.

4 No. 69
Hoffend & Sons, Inc.,
 Appellant,
 v.
Rose & Kiernan, Inc. et al.,
 Respondents.

Anthony J. Piazza, for appellant.
R. Scott Atwater, for respondents.

ROSENBLATT, J.:

The appeal before us involves a suit by a policyholder against its insurance broker, contending that the broker did not obtain a policy that would have covered the loss involved. We hold that, as a matter of law, the policyholder did not establish that it made a specific request for the coverage in question or

that it had a special relationship with the broker. Accordingly, we affirm the Appellate Division's dismissal of the complaint, although for different reasons.

Plaintiff Hoffend & Sons, Inc. is an Ontario County firm that does design and construction work for theater stages. Defendant Rose & Kiernan, Inc. (R&K) was Hoffend's insurance brokerage firm and defendant Mark Nickel's employer.

On December 11, 1998, R&K gave Hoffend a written proposal for insurance coverage for one year starting December 12, 1998. The proposal included descriptions of two policies relevant to this appeal. One was a "Blanket Installation Floater," or builders' risk policy, provided by Travelers Indemnity Co. of Illinois, to cover property damage to domestic construction projects generally. The second was a Great Northern "Foreign Liability Exporters' Package Policy," to cover general liability, non-owned automobile coverage and workers' compensation for foreign projects. It did not cover property damage incurred during construction abroad.

On December 22, Ruth Abate of R&K sent a letter to Dan DiPofi, Hoffend's chief financial officer, stating that the Travelers builders' risk policy would cover only property damage arising out of domestic projects. Foreign projects, she pointed out, should be discussed on a project-by-project basis.

The loss in question arose out of a foreign project. On February 8, 1999, Hoffend entered into a contract with an Argentine contractor, ORMAS, for a construction project in La

Plata, Argentina. Hoffend was the subcontractor, providing the Argentine firm with materials, engineering and design expertise, as well as supervision. Donald Hoffend, a Hoffend principal, claims that he and R&K's Mark Nickel discussed the project at a December 11, 1998 meeting and that he made it clear to Nickel that the project should be "covered." Under the contract with ORMAS, Hoffend was obligated to acquire insurance for labor-related accidents, which was covered by the Great Northern Exporters' Package Policy. The ORMAS contract, however, made no mention of builders' insurance to cover property damage -- the type of loss involved here.

In December 1999, R&K gave Hoffend a written insurance proposal for the period from December 12, 1999 to December 12, 2000, which included the date of the loss in question. The coverage was to be essentially the same as the previous year, but the proposal did not specifically state that foreign coverage under the Travelers blanket installation floater would still have to be negotiated on a project-by-project basis. Hoffend's Dan DiPofi testified that to simplify the bonding process he wanted to show R&K (who also handled the bonding) that most of Hoffend's La Plata work would take place in the United States. DiPofi did not recall anyone at R&K stating that the project would be covered for the type of loss involved here.

R&K's Ruth Abate also testified that under Hoffend's contract with ORMAS, the latter was to be responsible for the builders' risk insurance. The Travelers builders' risk policy

clearly states that it only covered property in the United States, Puerto Rico and Canada. After the policy was issued, DiPofi and Donald Hoffend read it and did not contact R&K with any questions or changes.

The accident took place on October 5, 2000, when a lighting bridge at the project collapsed, damaging Hoffend's work and causing consequential damage. Hoffend filed claims with both Travelers and Great Northern. With a reservation of rights, Great Northern agreed to defend and indemnify Hoffend against third party liability. Travelers disclaimed, citing the territorial limitation in its policy. As a result, the property damage in Argentina was not covered by either policy.

Hoffend seeks to impose liability on Nickel and R&K for having failed to acquire the coverage that Hoffend claims to have specifically requested, namely coverage for foreign projects under the Travelers builders' risk policy. Hoffend also asserts that it had a special relationship with Nickel, who reviewed Hoffend's operations, provided advice regarding insurance, bonding, banking, contracts and product development, and aided Hoffend in creating its business plan and corporate information statement. That special relationship, Hoffend argues, imposed on R&K a continuing duty to advise and guide Hoffend, obligating R&K to procure the additional coverage that would have included the loss in question.

The Appellate Division found questions of fact as to whether Hoffend had requested the specific coverage at issue, and

whether it had a special relationship with Nickel. The court dismissed the complaint, however, because Hoffend had received the policy and was therefore charged with knowledge of its contents, thus precluding a cause of action for negligence or breach of contract against R&K and Nickel.

We see no question of fact as to either of Hoffend's contentions. The record shows that Donald Hoffend's recollection of events was vague at best, and in light of other proof in the record fails to raise a question of fact as to a request for the specific coverage involved. He admitted that he could not remember asking for additional coverage for any specific project at any of the annual meetings with R&K. Donald Hoffend did not identify specific coverage obtained for any individual project and could not remember any specific conversations on the subject. Moreover, he could provide no details of discussion between the December 1998 meeting regarding the insurance proposal and the February 1999 execution of the ORMAS contract, nor could he say if Nickel had assured him as to specific coverage for any aspect of the Argentine project.

On the other hand, DiPofi recalled telling R&K that Hoffend would only be a supplier for the Argentine firm and not involved in the installation. He could not remember ever asking R&K for full coverage for all losses related to the project. Further, he stated that nobody at R&K had ever represented that the Travelers policy would cover any property losses abroad related to the project.

R&K made it clear to Hoffend that foreign projects would not be covered under the Travelers policy and that coverage of that type would have to be negotiated case by case. In R&K's December 22, 1998 letter to Hoffend, Abate emphasized that the relevant policy would "cover [Hoffend's] U.S. projects only" and that foreign coverage remained open for discussion. In the face of this unambiguous writing, Donald Hoffend's assertions as to what occurred at later meetings are too vague to establish a specific request for coverage of the particular risk involved. His recollection "that we are covered" is insufficient to impose liability on R&K.

Murphy v Kuhn (90 NY2d 266 [1997]) is on point. There, we held that a broker has a common-law duty either to obtain the coverage that a customer specifically requests or to inform the customer of an inability to do so. Although Hoffend contends it made a request sufficiently specific to trigger that duty, the record does not support its assertion. A general request for coverage will not satisfy the requirement of a specific request for a certain type of coverage.

Moreover, the broker in Murphy handled the policyholder's personal insurance needs for 13 years and served as the company's insurance broker for over three decades. We held there was no special relationship in that case and we decline to hold that one exists here. In this case, the services provided by Nickel in his capacity as an R&K employee did not rise to the level of a special relationship. Hoffend, a

sophisticated commercial entity, did not compensate R&K for its insurance advice apart from its payment of premiums, nor did it delegate its insurance decision-making responsibility to R&K. In short, as in any ordinary broker-client relationship, Hoffend told R&K in general what insurance Hoffend had decided to purchase. It did not ask R&K what that insurance should be.

Lastly, in light of our holdings on the specific request and special relationship issues, we need not consider whether, as the Appellate Division held, Hoffend was barred from recovery because, having received and had an opportunity to read the policy, it requested no changes in it.

Accordingly, the order of the Appellate Division should be affirmed, insofar as appealed from, with costs.

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Order, insofar as appealed from, affirmed, with costs. Opinion by Judge Rosenblatt. Chief Judge Kaye and Judges G.B. Smith, Ciparick, Graffeo, Read and R.S. Smith concur.

Decided June 8, 2006