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IN THE
COURT OF APPEALS OF INDIANA

Nuell, Inc.,
Appellant-Plaintiff,

v.

Timothy D. Marsillett and Property-Owners Insurance Company,
Appellees-Defendants.

February 16, 2021

Court of Appeals Case No. 20A-PL-1427

Appeal from the Kosciusko Circuit Court

The Honorable Michael W. Reed, Judge

Trial Court Cause No. 43C01-1602-PL-21

Najam, Judge.

Statement of the Case

[1] In 2015, Nuell, Inc. ("Nuell") purportedly entered into a lease agreement as a tenant on a commercial property. Nuell obtained an insurance policy from Property-Owners Insurance Company ("Property-Owners"), and coverage under the policy required that Nuell have a financial interest in the property. Shortly thereafter, Timothy Marsillett drove his car through a concrete barrier wall and partially into the building on the property.[1] Nuell filed a claim with Property-Owners. Property-Owners ultimately denied the claim on the ground that Nuell did not have a financial interest in the property as required by the policy. Specifically, Property-Owners concluded that Nuell lacked a financial interest in the property because Nuell had neither a legal or equitable interest nor a valid lease with the trust that owned the property.

[2] Nuell filed a complaint against Property-Owners in which Nuell sought a declaratory judgment and also alleged that Property-Owners had breached its duty of good faith and fair dealing when it denied coverage. Property-Owners moved for summary judgment, which the trial court granted. Nuell now appeals and presents two issues for our review, which we revise and restate as follows:

1. Whether the trial court erred when it concluded that Nuell's lease was invalid and, thus, that Nuell did not have a financial interest in the property.

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[1] Marsillett, a named defendant below, does not participate in this appeal.

2. Whether the trial court erred when it determined that Property-Owners had not breached its duty of good faith and fair dealing.

[3] We affirm.

Facts and Procedural History

[4] In 1996, David and Darlene Holsclaw jointly acquired a property in Leesburg ("the property"). The property included a commercial building, a parking lot, and a concrete barrier wall. In 2007, David created a revocable trust ("the trust") under which he is both the trustee and the beneficiary. In 2013, David and Darlene executed a quitclaim deed to transfer ownership of the property to the trust, which they ultimately recorded on July 8, 2014. *See* Appellant's App. Vol. 7 at 3. Specifically, the deed provided that David C. Holsclaw and Darlene Holsclaw, husband and wife, released and quitclaimed the property "to David C. Holsclaw, Trustee" of the trust. *Id.*

[5] Nuell is a closely held Indiana corporation. David and Darlene are the only shareholders of Nuell and are Nuell's officers. On January 2, 2015, Nuell executed a written lease on the property for the 2015 calendar year. The lease stated that it "pertains to property owned by David C. Holsclaw and Darlene Holsclaw" and that it was made "by and between David C. Holsclaw and Darlene Holsclaw, Husband and Wife, (hereinafter referred to as 'Landlord') and an Indiana corporation (hereinafter referred to as 'Tenant')." Appellant's App. Vol. 4 at 153. The lease was signed by David and Darlene as the

Landlord and by David, in his capacity as Nuell's executive vice president, as the Tenant. *See id*. at 163.

[6] The lease required Nuell to "procure and pay for windstorm, fire and extended coverage insurance, insuring the completed building upon the demised premises of not less tha[n] the full replacement value thereof[.]" *Id*. at 156. Accordingly, Nuell obtained an insurance policy on the property from Property-Owners with a term of March 10, 2015, to March 10, 2016. In pertinent part, the policy indicated that Property-Owners "will not pay you more than your financial interest in the Covered Property." Appellant's App. Vol. 2 at 92.

[7] On April 4, 2015, Marsillett drove his vehicle through the concrete barrier wall and partially into the building on the property. Three days later, Nuell filed a claim with Property-Owners. Property-Owners approved Nuell's claim for the damage to the building and issued two checks to Nuell, one on July 9 and one on October 12. In total, Property-Owners paid Nuell $37,689.99. But Property-Owners denied coverage on the concrete barrier wall.

[8] In December, Nuell sent two letters to Property-Owners in which it contested Property-Owners' partial denial of coverage. However, Property-Owners continued to deny coverage on the concrete barrier wall and, on December 8, informed Nuell that its "review and verification of [Nuell's] loss is complete." *Id*. at 158. Nuell did not cash either of the checks it had received from Property-Owners.

[9] On May 20, 2016, Nuell filed an amended complaint against Property-Owners in which Nuell sought a declaratory judgment that coverage under the policy extended to the concrete barrier wall in addition to the building. During discovery, Property-Owners served interrogatories and a request for production of documents on Nuell. Nuell responded on January 24, 2017, and stated that the "entire subject property was leased to [Nuell] pursuant to" a lease. Appellant's App. Vol. 6 at 233. Nuell also provided a copy of the lease agreement to Property-Owners.

[10] On December 18, Property-Owners sent Nuell a letter in which Property-Owners stated that it "has no obligation to pay property damage proceeds to Plaintiff Nuell, Inc. because Plaintiff did not own the damaged building or the concrete barrier." Appellant's App. Vol. 2 at 173. In support of that position, Property-Owners cited the clause of the insurance policy that provided that Nuell "can only recover up to its financial interest in the property[.]" *Id*.

[11] Thereafter, Nuell filed a "supplemental complaint" in which it sought a declaratory judgment that Property-Owners was required to cover the damage to the building and the concrete barrier wall or, in the alternative, that Property-Owners "has waived or is estopped from" asserting any defense to coverage. *Id*. at 149, 153 (emphasis removed). Nuell also contended that Property-Owners had breached its duty of good faith and fair dealing and requested punitive damages.

[12] Property-Owners then filed a motion for summary judgment. In its supporting memorandum of law, Property-Owners asserted that Nuell had leased the property from David and Darlene but that the property was in fact owned by the trust. Thus, Property-Owners claimed that Nuell did not have a financial interest in the property and, as such, that Property-Owners was "entitled to summary judgment as to coverage because it has no obligation under the policy to pay Nuell's claim for damage to the building or concrete barrier[.]" Appellant's App. Vol. 3 at 71. Property-Owners also asserted that it had not waived and was not estopped from denying coverage and that it had not breached its duty of good faith and fair dealing because it had a "rational and reasoned basis to deny coverage[.]" *Id*. at 86.

[13] In support of its motion for summary judgment, Property-Owners designated as evidence the insurance policy it had issued to Nuell, the quitclaim deed showing that David and Darlene had conveyed ownership of the property to the trust, and the lease that named David and Darlene as the owners of the property. In addition, Property-Owners designated David's deposition. In his deposition, David stated that the lease agreement for the property was signed by David and Darlene "personally and then signed by me as executive vice president" and that the property had been "switched into a trust." Appellant's App. Vol. 4 at 130, 133.

[14] Nuell filed a memorandum in opposition to Property-Owners' motion for summary judgment. In its memorandum, Nuell maintained that it had a financial interest in the property because "it possessed the [property] under the

terms of the Lease Agreement." Appellant's App. Vol. 7 at 194. It also asserted that it had a financial interest because the lease "specifically obligated Nuell to purchase and maintain insurance for the benefit of the lessor[.]" *Id.* at 198.

[15] Nuell further claimed that, even if it did not have a financial interest in the property, Property-Owners "waived any right to rely on such provision or is estopped from relying on such provision" because it had initially approved the claim in part only to deny it two years later. *Id.* at 200. And Nuell asserted that Property-Owners' "drastic change in position after more than a two-year delay" amounted to a breach of its duty of good faith and fair dealing and entitled Nuell to punitive damages. *Id.* at 206.

[16] Nuell designated David's affidavit in support of its opposition to summary judgment. In his affidavit, David stated that he "intended in executing the Real Estate Lease on behalf of Nuell for Nuell to be legally bound and obligated to all terms" of the lease. Appellant's App. Vol. 8 at 7. Nuell also designated as evidence the trust document, the Property-Owners claim payments, and letters that Nuell had sent to Property-Owners.

[17] Following a hearing at which the parties presented oral argument, the trial court entered the following findings of fact and conclusions thereon:

Findings of Fact

* * *

g. On January 2, 2015, Nuell entered into a written Lease Agreement with David Holsclaw and Darlene Holsclaw regarding the Property ("Lease").

h. Nuell did not own the Property on April 4, 2015 or at any other time.

i. David Holsclaw did not own the Property on January 2, 2015 nor on April 4, 2015 nor at any other time after April 15, 2013.

j. Darlene Holsclaw did not own the Property on January 2, 2015 nor on April 4, 2015 nor at any other time after April 15, 2013.

k. The Property was owned by a Revocable Trust from and after April 15, 2013.

l. Nuell did not have a written lease with the owner of the Property, the Revocable Trust, at the time the property was damaged on April 4, 2015.

m. The Revocable Trust is not a named insured nor listed as a loss payee under the Policy.

n. On April 7, 2015, Nuell submitted a claim to Property-Owners.

* * *

q. On December 18, 2017, after discovering that Nuell did not own the Property, Property-Owners denied Nuell's claim for damage to the building and concrete barrier wall at the property.

* * *

Conclusions of Law

> a. A financial interest could be less than ownership, mortgage, or equitable ownership under a land contract. A financial interest might include a leasehold interest pursuant to a written lease if the lease contains an obligation to procure insurance or repair the property. In this case it is not necessary to decide the issue because Nuell did not have a lease with the owner of the Property.
>
> b. The Lease was between David Holsclaw/Darlene Holsclaw and Nuell. *There is no valid lease agreement between the owner of the Property, the Revocable Trust, and the tenant, Nuell*.

Appellant's App. Vol. 2 at 16-17 (some emphasis in original; citations omitted). The trial court also concluded that "Nuell's waiver and estoppel claims fail as a matter of law." *Id*. at 17. And the court concluded that "[t]here is no admissible evidence to support a finding of bad faith against Property-Owners." *Id*. at 18. Accordingly, the trial court entered summary judgment in favor of Property-Owners and stated that "[t]here exists no just cause to delay the entry of final judgment." *Id*. at 20. This appeal ensued.

Discussion and Decision

Standard of Review

[18] Nuell appeals the trial court's entry of summary judgment in favor of Property-Owners. Our standard of review is clear. The Indiana Supreme Court has explained that

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id*. (internal citations omitted).
>
> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an issue for the trier of fact. *Id*. at 761-62 (internal quotation marks and substitution omitted). And "[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *McSwane v. Bloomington Hosp. & Healthcare Sys*., 916 N.E.2d 906, 909-10 (Ind. 2009) (internal quotation marks omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*).

[19] Here, the trial court entered findings of fact and conclusions thereon in its summary judgment order. While such findings and conclusions are not required in a summary judgment and do not alter our standard of review, they

are helpful on appeal for us to understand the reasoning of the trial court. *See Knighten v. E. Chicago Hous. Auth.*, 45 N.E.3d 788, 791 (Ind. 2015).

[20] On appeal, the parties dispute whether Nuell had a financial interest in the property as required by the insurance policy and whether Property-Owners breached its duty of good faith and fair dealing. We address each argument in turn.

Issue One: Financial Interest

[21] Nuell first asserts that the trial court erred when it concluded that Nuell did not have a financial interest in the property as required by the insurance policy. Nuell does not dispute the fact that the insurance policy limited the amount Property-Owners would pay to Nuell's "financial interest" in the property. Appellant's App. Vol. 2 at 92. However, Nuell contends that it had a financial interest in the property pursuant to the lease. Property-Owners responds that the lease was invalid and, as such, that Nuell did not have a financial interest in the property.[2] To resolve this issue on appeal, we must determine whether the lease was a valid contract. The question whether a certain or undisputed set of facts establishes a contract is a matter of law. *See Keating v. Burton*, 617 N.E.2d 588, 592 (Ind. Ct. App. 1993).

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[2] The trial court stated that, "A financial interest might include a leasehold interest pursuant to a written lease if the lease contains an obligation to procure insurance or repair the property." Appellant's App. Vol. 2 at 17. But Property-Owners contends that, even if the lease were valid, a leasehold interest would be insufficient to create a financial interest in the property. Like the trial court, we need not reach that issue because we hold that the lease was invalid.

[22] The designated evidence demonstrates that the trust owns the property. Indeed, in support of its motion for summary judgment, Property-Owners designated the quitclaim deed, which states that David and Darlene, husband and wife, released and quitclaimed the property to "David C. Holsclaw, Trustee[.]" Appellant's App. Vol. 7 at 3. Property-Owners also designated David's deposition in which David confirmed that the property had been "switched into a trust." Appellant's App. Vol. 4 at 133.

[23] Property-Owners also designated the purported lease. The lease states that it "pertains to property owned by David C. Holsclaw and Darlene Holsclaw." *Id.* at 153. It further indicates that it was made "by and between David C. Holsclaw and Darlene Holsclaw, Husband and Wife, (hereinafter referred to as 'Landlord'), and an Indiana corporation (hereinafter referred to as 'Tenant.')." *Id.* (emphasis removed). Further, as David acknowledged in his deposition, he and Darlene had signed the lease "personally[.]" *Id.* at 130. The lease did not mention the trust or otherwise indicate that the trust owned the property.

[24] The designated evidence demonstrates that, while the trust owns the property, the trust did not enter into the lease agreement. Rather, David and Darlene, who no longer have an interest in the property, signed the lease. A lease is a contract, and a contract begins with the parties. The parties to a lease must be correctly identified and must have authority to make an agreement that defines their rights and responsibilities to assure accountability, enforceability, and liability in the event of a dispute. In that David and Darlene do not own the property, they do not have lawful authority to enter into a lease on the property.

Because the owner of the property was not a party to the lease, the lease was invalid.

Signature of David

[25] Still, Nuell contends that, despite the fact that the trust was not mentioned in the lease, the lease was still valid because it was signed by David, who holds both legal title to the property as trustee and equitable title as beneficiary. And Nuell maintains that David's status as trustee and beneficiary makes him an "owner" of the property and, thus, that his signature on the lease with Nuell made the lease valid. *See* Appellant's Br. at 26-28.

[26] Nuell is correct that a trustee is the legal title holder and that a beneficiary is the equitable title holder of trust property. *See Doll v. Post*, 132 N.E.3d 34, 39 (Ind. Ct. App. 2019), *trans. denied*. However, once David and Darlene transferred the property to the trust, it was the trustee who had the power to enter into a lease agreement. *See* Ind. Code § 30-4-3-3(a)(6) (2020). That is further supported by the trust document itself, which provides that "the Trustee *shall* receive, hold and manage the trust property." Appellant's App. Vol. 8 at 30 (emphasis added). Accordingly, it was only David acting as trustee—not David as an individual or David as trust beneficiary—who had the authority to lease the property to Nuell.[3] But David did not sign the lease as trustee. Rather, as

[3] In addition, David, as trustee, had a duty to keep the trust property separate from his individual property. *See* I.C. § 30-4-3-6(b)(5).

David acknowledged in his deposition, he signed the lease "personally." Appellant's App. Vol. 4 at 130.

[27] Nuell has equated and conflated David the individual and trust beneficiary with David the trustee. Contrary to Nuell's argument on appeal, these capacities are not fungible. The designated evidence demonstrates that David and Darlene, who do not own the property, signed the lease when it was only David as trustee who had authority to enter into the lease agreement. As the owner of title to the property, the trust was a necessary party to the lease. David was a not a surrogate for the trust, either as an individual or as a beneficiary. We hold that David's signature whether in his individual capacity or in his capacity as trust beneficiary does not create a valid lease on property that is owned by the trust.

Signature of One Party

[28] Nuell next contends that, even if the trust did not sign the lease, the lease agreement was valid because it was signed by Nuell as the party to be charged. Nuell's argument on this issue consists only of the following: "Nuell's signature alone on the Lease Agreement sufficed to render the Lease Agreement valid and enforceable against Nuell as the party to be charged." Appellant's Br. at 29. To support its position, Nuell cites to Indiana Code Section 32-21-1-1 and *Grabill Cabinet Co., Inc. v. Sullivan*, 919 N.E.2d 1162, 1166 (Ind. Ct. App. 2010), for the general proposition that, for the purpose of the statute of frauds, only the party against whom the action is brought is required to sign the writing.

[29] However, as discussed above, the owner of the property—the trust—was neither named as a party in the lease nor mentioned in the lease. Nuell has not directed us to any case law, and we find none, to support its contention that a lease is valid when it is only signed by the tenant and where the purported landlord did not in fact own the property or otherwise have authority to enter into an agreement to lease the property. David's signature on behalf of Nuell is not sufficient to create a valid lease between Nuell and the trust.

Oral Lease

[30] Nuell also contends that, even if the written lease was not valid, there was still an oral lease between Nuell and the trust such that Nuell had a financial interest in the property. Nuell is correct that, in general, an oral agreement can be a binding contract. *See Epperly v. Johnson*, 734 N.E.2d 1066, 1071 (Ind. Ct. App. 2000). And for a valid contract to exist, there must be an offer, acceptance, consideration, and a manifestation of mutual assent. *See Ind. Bureau of Motor Vehicles v. Ash, Inc.*, 895 N.E.2d 359, 365 (Ind. Ct. App. 2008).

[31] Nuell contends the designated evidence shows "mutual assent, including in part the parties' course of conduct as to Nuell's possession and use" of the property. Appellant's Br. at 29. Nuell maintains that the fact Nuell occupied the property owned by the trust is evidence of an oral lease. In support, Nuell designated David's affidavit. In that affidavit, David stated that he "intended in executing the Real Estate Lease on behalf of Nuell for Nuell to be legally bound and obligated to all terms of the Real Estate Lease," including the requirement to

obtain insurance. Appellant's App. Vol. 8 at 7. But, even considering David's affidavit in the light most favorable to Nuell, the affidavit would show only that Nuell intended to enter into a contract to lease the property. There was no designated evidence that David was acting on behalf of the trust, the owner, when he executed the lease, with Darlene, as an individual.

[32] Nuell has not demonstrated there was an oral lease between Nuell and the trust.[4] For there to have been an enforceable oral lease, the parties must have agreed to all the essential terms of the lease, regardless of whether they anticipated a written lease. *See Keating*, 617 N.E.2d at 592 (a completed oral contract must include all terms). And, of course, only the proper parties could make such an agreement. Here, there is insufficient evidence of an oral lease as a matter of law.

[33] In sum, David and Darlene had no authority to lease the property to Nuell, and David's signature in his individual capacity was not sufficient to create a valid lease between Nuell and the property owned by the trust. Further, a signature on behalf of Nuell alone was not adequate when the other party to the lease did not have authority to execute the lease. And there was no evidence to demonstrate the existence of an oral lease between the correct parties.

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[4] Even if we were to assume for the sake of argument that there were a valid oral lease, there is no evidence that any such oral lease would have contained the provisions of the purported written lease.

Accordingly, we hold that Nuell did not have a valid lease and, as such, that it lacked a financial interest in the property as required by the insurance policy.[5]

Waiver/Estoppel

[34] Nuell next contends that, even if it did not have a financial interest in the property, "under the particular facts of this case," Property-Owners "waived any right" or "should be estopped from" asserting that Nuell lacked a financial interest in the property. Appellant's Br. at 35. Our Supreme Court has previously provided:

> Technically, there is a distinction between "waiver" and "estoppel." A waiver is an intentional relinquishment of a known right and is a voluntary act, while the elements of estoppel are the misleading of a party entitled to rely on the acts or statements in question and a consequent change of position to his detriment.

Ashby v. Bar Plan Mut. Ins. Co., 949 N.E.2d 307, 312-13 (Ind. 2011) (quoting *Tate v. Secura Ins.*, 587 N.E.2d 665, 671 (Ind. 1992)).

[35] On appeal, Nuell contends that Property-Owners has waived or should be estopped from denying coverage because Property-Owners initially approved the claim but then ultimately denied it. Nuell contends that Property-Owners

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[5] Because we hold that Nuell did not have a valid lease, we do not need to consider Nuell's arguments that the lease was sufficient to create a financial interest in the property. Nor do we need to consider Property-Owners' assertion that any misrepresentations of fact by Nuell negated any coverage under the insurance policy.

knew by at least December 4, 2015, that Nuell was a commercial tenant at the property but that it "inexplicably delayed for over two years to mid-December 2017 before first notifying Nuell" that it would not cover any damage to the property. Appellant's Br. at 36 (emphasis removed). Accordingly, Nuell maintains that Property-Owners "engaged in 'the playing of games' with Nuell" to avoid its obligation to cover the damage. *Id*. We cannot agree.

[36] First, Property-Owners did not waive any right to deny coverage. Waiver is the intentional relinquishment of a known right. *Gerdon Auto Sales, Inc. v. John Jones Chrysler Dodge Jeep Ram*, 98 N.E.3d 73, 81. (Ind. Ct. App. 2018). At the time Property-Owners first approved Nuell's claim in part and issued the checks, Property-Owners was not aware that Nuell did not have a valid lease on the property and, thus, that Nuell did not have a financial interest as required by the insurance policy. It was not until almost two years later, when Nuell responded to Property-Owners' discovery request in January 2017, that Property-Owners first obtained a copy of Nuell's purported lease and learned that the lease was invalid. Because Property-Owners did not have all of the relevant facts when it initially approved the claim in part, we cannot say that Property-Owners intentionally waived its right to deny coverage two years later after it had learned that Nuell did not have a financial interest in the property.

[37] And Property-Owners is not estopped from denying coverage because Nuell did not have the right to rely on Property-Owners' initial coverage decision. At the time Nuell filed its claim in April 2015, Nuell knew that the trust owned the property. In addition, Nuell was in possession of the lease and knew that the

lease did not name the trust as the owner of the property or otherwise identify the trust as a party. And Nuell should have known that David and Darlene did not have authority to execute the lease because they did not own the property. Accordingly, in April 2015, Nuell knew or should have known that its lease was invalid and, thus, that it lacked a financial interest in the property. And that information was in the exclusive possession of Nuell until January 2017. As such, Nuell should have known that it did not have the right to rely on any initial coverage decision Property-Owners made prior to January 2017. We agree with the trial court that Property-Owners neither waived nor was estopped from denying coverage.

Issue Two: Good Faith and Fair Dealing

[38] Finally, Nuell contends that the trial court erred when it entered summary judgment in favor of Property-Owners on Nuell's claim that Property-Owners had breached it duty of good faith and fair dealing. As this Court has previously stated:

> Indiana law recognizes a legal duty, implied in all insurance contracts, for the insurer to deal in good faith with its insured. An insurance company's duty of good faith and fair dealing includes the obligation to refrain from: (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising an unfair advantage to pressure an insured into settlement of his claim. To prove bad faith, the plaintiff must establish by clear and convincing evidence that the insurer had knowledge that there was no legitimate basis for denying liability. Poor judgment or negligence do not amount to bad faith; the additional element of conscious wrongdoing must also be

> present. Thus, a finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will.

Missler v. State Farm Ins. Co., 41 N.E.3d 297, 302 (Ind. Ct. App. 2015) (cleaned up).

[39] On appeal, Nuell claims that Property-Owners "breached its duty of good faith and fair dealing through its course of conduct with Nuell and the handling of Nuell's Claim for the Building Loss leading up to Property-Owners' drastic change in position after more than a two-year delay." Appellant's Br. at 42. Nuell relies on the fact that Property-Owners originally approved Nuell's claim in part when it issued checks in July and October 2015 but then "inexplicably and unreasonably waited" until December 2017 to inform Nuell that it was not going to cover any damage to the property. *Id*. at 45. We again cannot agree that the designated evidence established any genuine of material fact on this issue.

[40] The designated evidence establishes that, when Nuell initially filed its claim in April 2015, Property-Owners approved that claim in part and issued two checks. It was not until Nuell responded to a discovery request on January 24, 2017, that Property-Owners first received a copy of the lease and learned that the purported lease was not with the owner of the property. It was only after Property-Owners learned that Nuell's lease was invalid that it informed Nuell that it would not cover Nuell's claim because Nuell lacked a financial interest in the property. In other words, the designated evidence demonstrates that

Property-Owners had a valid reason to change its position and ultimately to deny Nuell's claim.

[41] It was Property-Owners' burden, as the summary judgment movant, to demonstrate the absence of a genuine issue of material fact with respect to its duty of good faith and fair dealing. Property-Owners designated evidence to demonstrate that it had a legitimate basis for denying coverage two years after it had initially approved the claim. At that point, the burden shifted to Nuell to designate evidence to demonstrate that Property-Owners acted with dishonest purpose, moral obliquity, furtive design, or ill will. *See Missler*, 41 N.E.3d at 302. But Nuell did not designate any such evidence. Accordingly, we hold that the trial court did not err when it entered summary judgment for Property-Owners on Nuell's claim for breach of good faith and fair dealing.[6]

Conclusion

[42] The designated evidence demonstrates that Nuell did not have a valid lease on the property. Because Nuell did not have a lease, it did not have a financial interest in the property. Further, the designated evidence demonstrates that Property-Owners had a legitimate reason for ultimately denying Nuell's claim two years after it had originally approved the claim in part. As such, the trial

[6] As we hold that the trial court properly entered summary judgment for Property-Owners on this claim, we need not address Nuell's argument that it is entitled to punitive damages.

court did not err when it entered summary judgment in favor of Property-Owners. We affirm the trial court.

[43] Affirmed.

Riley, J., and Crone, J., concur.