

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2648

NEW PROCESS STEEL CORPORATION,

Plaintiff-Appellant,

versus

SEABOARD SURETY COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-92-912)

(May 4, 1994)

Before REAVLEY and JOLLY, Circuit Judges, and PARKER, District
Judge.*

PER CURIAM:**

In this case, we hold that there is a genuine issue of fact concerning whether Watts had the requisite "manifest intent" to cause NPS a loss. On the one hand, Watts testified that he never subjectively intended to cause NPS a loss. Notwithstanding that he

*Chief Judge of the United States District Court for the Eastern District of Texas, sitting by designation.

**Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

said that he thought that the accounts he manipulated would ultimately be collectible, there was other evidence that would justify a fact finder in rejecting at face value such self-described motives. To be sure, some of Watts's conduct--namely the hiding of returned checks thus making further collection efforts by NPS impossible--was such that it appears almost inevitable that NPS would sustain a loss. The conflicting evidence creates a question of material fact that precludes the entry of summary judgment. This case falls within that part of the continuum described in First National Bank v. Lustig, 961 F.2d 1162, 1165 (5th Cir. 1992), such that we cannot make a determination as a matter of law that Watts did or did not have the "manifest intent" to cause NPS a loss.

The district court also granted summary judgment in favor of Seaboard on the tort claim because where there is no coverage under a policy, there can be no corresponding tort claim for wrongful conduct associated with a claim under that policy. Our review is not limited to the district court's analysis; a grant of summary judgment may be affirmed on a legal basis not ruled upon below. As we have previously held, "we may affirm even in situations in which the district court's ruling was incorrect, as long as the result was proper." Harbor Ins. Co. v. Urban Construction Co., 990 F.2d 195, 199 (5th Cir. 1993). Although the district court's summary judgment on the tort issue was predicated on a finding of no coverage, we affirm the district court's judgment. The evidence in

the summary judgment record demonstrates that Seaboard had a reasonable basis for rejecting the NPS claim. See, e.g., National Union Fire Ins. Co. v. Hudson Energy Co., 780 S.W.2d 417,426 (Tex. App.--Texarkana 1989), aff'd, 811 S.W.2d 552 (Tex. 1991); St. Paul Guardian Ins. Co. v. Luker, 801 S.W.2d 614, 618 (Tex. App.--Texarkana 1990, no writ); Price v. Texas Employers Ins. Ass'n, 782 S.W.2d 938, 940 (Tex. App.--Tyler 1989, no writ).

For the foregoing reasons, the district court's judgment on coverage is REVERSED and REMANDED, and the judgment on the tort claim is AFFIRMED.