

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 95-20901
Summary Calendar

WELLS FARGO REAL ESTATE GROUP
INCORPORATED, formerly known as
Wells Fargo Realty Advisors;
MONTGOMERY ESTATES, INC.,

Plaintiffs-Appellants,

VERSUS

COMMERCE & INDUSTRY INSURANCE COMPANY;
ROYAL INSURANCE COMPANY OF AMERICA,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas

(CA H 94 3129)

April 10, 1996

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

This is a diversity suit based on coverage under four insurance policies. The insured parties are Wells Fargo Real Estate Group, Inc., a California corporation, and Montgomery Estates, Inc., a Texas corporation (collectively referred to as

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

"Wells Fargo"). The insurers are Commerce & Industry Insurance Company ("C & I"), a New York corporation, and Royal Insurance Company of America ("Royal"), an Illinois corporation. The insurance policies in question were comprehensive general liability policies. Wells Fargo filed this action in a state district court in Harris County, Texas, to recover attorneys' fees and other defense costs incurred by it in defending a third-party action brought against it in another state court in Harris County. Royal and C & I removed the case to the United States District Court for the Southern District of Texas. The parties agreed to submit the duty to defend issue for summary judgment on stipulated facts and each side filed motions for summary judgment thereon. The district court found that the third-party petition failed to allege a potential cause of action under the policies, that Royal and C & I had no duty to defend Wells Fargo, and that the motions for summary judgment of Royal and C & I were granted and the cross-motions for summary judgment of Wells Fargo was denied.

We have carefully reviewed the briefs, reply brief and record excerpts and relevant portions of the record itself. For the reasons stated by the district court in its memorandum and order filed under date of September 25, 1995, we affirm the final judgment entered under date of September 25, 1995, granting defendant's motion for summary judgment and dismissing the action with prejudice.

AFFIRMED.