

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-519

RICKEY PATE AND ASHLEY BERGERON

versus

GULF STATES INSURANCE SERVICES, L.L.C., GMFS L.L.C. D/B/A GMFS MORTGAGE,
INSURANCECLAIMCHECK.COM, LARRY ALLEN, DMS GENERAL CONSTRUCTION, LLC
AND DARRELL SHELDON

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 88,636, DIVISION "D"
HONORABLE ROCHELLE C. FAHRIG, JUDGE PRESIDING

March 25, 2026

SUSAN M. CHEHARDY

CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Stephen J. Windhorst

AFFIRMED

SMC
MEJ
SJW

TRUE COPY



JALISA WALKER
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,
RICKEY PATE AND ASHLEY BERGERON

David S. Moyer

COUNSEL FOR DEFENDANT/APPELLEE,
GMFS L.L.C. D/B/A GMFS MORTGAGE

Leah C. Cook

Robert W. Barton

CHEHARDY, C.J.

Plaintiffs-appellants, Rickey Pate and Ashley Bergeron, appeal the trial court's ruling granting summary judgment in favor of defendant-appellee, GMFS L.L.C. d/b/a GMFS Mortgage, and dismissing all of plaintiffs' claims against it. For the reasons that follow, we affirm the trial court's judgment.

Background and Procedural History

Plaintiff Rickey Pate owns a home in Destrehan, located in St. Charles Parish. Mr. Pate's wife, plaintiff Ashley Bergeron, resides at the same property but holds no ownership interest in the home. In September of 2019, the hot water heater burst while plaintiffs were out of town, causing significant damage. Plaintiffs made a claim against their homeowner's insurer at the time of the incident, Gulf States Insurance Company, to recover the proceeds needed for renovations.¹ Gulf States issued a check payable to the titled homeowners—Mr. Pate; his mother, Cynthia Albrecht; and GMFS, plaintiffs' mortgage holder.

GMFS had a subservicing agreement with Specialized Loan Servicing, LLC (SLS), by which SLS, through their vendor Assurant, was responsible for disbursing the insurance loss settlement on the mortgaged property. SLS's representative, Fred Korb, explained in deposition testimony that the lender has an obligation to place the insurance funds in an escrow account to ensure that the funds are used solely for the repair and preservation of the collateral. Mr. Korb stated, however, that SLS/Assurant does not verify whether a contractor has a valid contractor's license. Moreover, SLS/Assurant does not act as a general contractor. Instead, Mr. Korb explained that the customer is solely responsible for selecting a contractor and submitting a copy of the contractor's license.²

¹ In October of 2023, plaintiffs settled their claims with Gulf States Insurance Company and entered a Joint Motion to Dismiss Gulf States from the litigation.

² Mr. Korb explained that a current contractor's license issued by the jurisdiction in which the claim is made is acceptable; it is assumed that the license is not fraudulent.

Plaintiffs contracted with Daryll or Dennis M. Shelton, a/k/a DMS Construction, L.L.C., to make the necessary repairs to plaintiffs' home.³ Mr. Pate testified in his deposition that he met Shelton even before the hot water heater broke, because someone in Mr. Pate's barber shop recommended Shelton for some light repairs in his house. As a result, Shelton did some painting and installed new flooring in plaintiffs' laundry room before the hot water heater incident. Mr. Pate admits that Shelton got the job because he was already on the scene:

Q: So he's the contractor you picked to do the repairs after the water heater?

A: I mean, I guess that's fair to say. I just didn't know where else to turn in the moment. Everything was flooded and he was there. And, like I said, assured us that he was knowledgeable and he knew how to handle things.

Q: And Gulf States never told you to hire Shelton or Allen?

A: I mean, no ma'am. They didn't come out and tell me you have to hire him.

Shelton began working on the residence to repair the water damage in January of 2020. In April or May of 2020, plaintiffs were frustrated by a lack of progress on their home due to construction delays. Soon thereafter they discovered that Shelton was not a licensed contractor in the State of Louisiana. According to plaintiffs' petition, Shelton uses a contractor license number belonging to Larry Allen to obtain jobs.⁴ In June of 2020, Shelton told plaintiffs that although there was no more insurance money remaining, approximately \$80,000 worth of

³ After it became clear that Mr. Shelton was unlicensed, that he had failed to perform the renovations in a workmanship manner, and that he did so without a permit, Mr. Shelton disappeared, and the parties have been unable to locate him. It is not clear from the record whether his first name is Daryll or Dennis.

⁴ Plaintiff did not meet Larry Allen until after the incident, when he was working with Shelton. Mr. Pate thought that Larry Allen was the plumber and that Shelton was the licensed contractor. Mr. Pate remembers that Shelton himself submitted certain documents to GMFS or SLS to get the insurance money released.

additional repair work remained. Mr. Pate explained that there was no money for this work. Shelton subsequently disappeared.

On December 4, 2020, Mr. Pate and Ms. Bergeron filed suit against Gulf States, GMFS, InsuranceClaimCheck.com, Larry Allen, DMS General Construction, L.L.C., and “Darrell Shelton” or “Dennis Shelton.” They asserted claims against GMFS for “negligent hiring” and “negligent entrustment by hiring unlicensed contractors DMS and Shelton to perform repairs on the Plaintiffs’ home.”

After discovery, GMFS filed a motion for summary judgment arguing that it cannot be held liable for either negligent hiring or negligent entrustment of the property to an unlicensed contractor, as GMFS owed no special duty to plaintiffs. GMFS argued that it does not act as a general contractor, and although the mortgage documents grant GMFS the right to conduct an inspection before releasing the funds, GMFS is not required to do so. Finally, under La. R.S. 6:1124, GMFS owes no fiduciary duty to a mortgagee vis-à-vis the mortgaged property.

In opposition, plaintiffs argue that GMFS owed a fiduciary duty to plaintiffs to discover that the contractor was unlicensed, and a duty to inspect the work before releasing the funds.

At the conclusion of the summary judgment hearing, the trial court granted GMFS’s motion and dismissed plaintiffs’ claims against it, stating that GMFS did not own the property and thus could not “entrust” the property, as required for a negligent-entrustment claim. Furthermore, the court found that GMFS did not hire the contractor and thus could not be held liable on a theory of negligent hiring. The trial court also stated that GMFS had no duty to ensure that the contractor was licensed, and no duty to inspect the work.

On appeal, plaintiffs again argue that GMFS owed a duty of care or a fiduciary duty to them; thus, the trial court erred in granting summary judgment.

Plaintiffs contend that GMFS should have discovered Shelton was not a licensed contractor, and GMFS should have conducted an inspection to determine whether to release the insurance funds to Shelton.

Discussion

A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.* A fact is "material" when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery. *Alexander v. Parish of St. John the Baptist*, 12-173 (La. App. 5 Cir. 10/16/12), 102 So.3d 904, 909, *writ denied*, 12-2448 (La. 1/11/13), 107 So.3d 617. Facts are material if they potentially insure or preclude recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute. *Id.*

We review the denial of a motion for summary judgment *de novo*. *Robinson v. Otis Condominium Ass'n, Inc.*, 20-359 (La. App. 5 Cir. 2/3/21), 315 So.3d 356, 361, *writ denied*, 21-343 (La. 4/27/21), 314 So.3d 837. Under this standard, we use the same criteria as the trial court in determining if summary judgment is

appropriate: whether there is a genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. *Id.*

The party moving for summary judgment must meet a strict standard of showing that the facts are clear and that any real doubt as to the existence of a genuine issue of material fact has been excluded. *Robinson*, 315 So.3d at 361. If the mover meets this burden, the burden shifts to the non-mover to present evidence demonstrating that material issues of fact remain. *Id.* “Once the motion for summary judgment has been properly supported by the moving party, the failure of the nonmoving party [who has the burden of proof at trial] to produce evidence of a material factual dispute mandates the granting of the motion.” *Portillo v. Progressive Paloverde Ins. Co.*, 13-815 (La. App. 5 Cir. 3/26/14), 138 So.3d 696, 698.

GMFS points out that plaintiffs do not dispute any of the trial court’s factual findings. GMFS further contends that plaintiffs’ sole argument on appeal is that GMFS owed plaintiffs a duty to protect them from their own hiring decision, but that this is an incorrect statement of the law.

A threshold issue in any negligence action is whether the defendant owed the plaintiff a duty. *Bailey v. Pinnacle Polymers, LLC*, 24-490 (La. App. 5 Cir. 4/2/25), 412 So.3d 1063, 1074. Whether a duty exists is generally a question of law. *Id.* Here, plaintiffs argue that due to the lender-borrower relationship between themselves and GMFS, GMFS had a fiduciary responsibility to ensure that the repairs on the home, which is GMFS’s collateral for the mortgage loan, are performed appropriately and by a licensed contractor.

The elements of a cause of action for breach of a fiduciary duty, or a knowing participation of such, are: (1) a breach by a fiduciary of an obligation to another; (2) a knowing collusion or participation in the breach by the fiduciary; and (3) damages suffered by another as a result of the breach. *Brockman v. Salt Lake*

Farm Partnership, 33,938 (La. App. 2 Cir. 10/4/00), 768 So.2d 836, 844, *writ denied*, 00-3012 (La. 12/15/00), 777 So.2d 1234.

Louisiana's statutory law belies plaintiffs' arguments. Specifically, La. R.S. 6:1124 prohibits any *implied* fiduciary obligations against a financial institution like GMFS:

No financial institution or officer or employee thereof shall be deemed or implied to be acting as a fiduciary, or have a fiduciary obligation or responsibility to its customers or to third parties other than shareholders of the institution, *unless there is a written agency or trust agreement under which the financial institution specifically agrees to act and perform in the capacity of a fiduciary*. The fiduciary responsibility and liability of a financial institution or any officer or employee thereof shall be limited solely to performance under such a contract and shall not extend beyond the scope thereof.... This Section is not limited to credit agreements and shall apply to all types of relationships to which a financial institution may be a party.

(Emphasis added). Additionally, Mr. Korb explained that SLS/Assurant, acting as agent on behalf of GMFS, does not verify whether a contractor has a valid contractor's license, nor does it act as a general contractor. Instead, Mr. Korb explained that the customer is solely responsible for selecting a contractor and submitting a copy of the contractor's license. Once a current license is received, the lender does not assume that any fraudulent activity has occurred.

We agree with GMFS that plaintiffs have not offered any legal support for their contention that GMFS owed them a fiduciary duty or that GMFS breached any such duty. Plaintiffs also have not introduced any written agency or trust agreement in which GMFS specifically agreed to perform in the capacity of a fiduciary, as required under La. R.S. 6:1124.⁵ *See also FMB Dev., L.L.C. v. Hibernia Nat'l Bank*, 16-1057 (La. App. 4 Cir. 7/12/17), 224 So.3d 431, 439 (“There is no language in the Mortgage Contracts or in any other written

⁵ Here, if such an agreement existed between GMFS and plaintiffs, we presume plaintiffs would have included a breach-of-contract claim in their amended petition. Yet plaintiffs' claims against GMFS arise in negligence only.

agreement whereby Capital One specifically agreed to act and perform in the capacity as a fiduciary. Accordingly, FMB failed to offer factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial on any alleged breach of fiduciary duty claim.”); *Paternostro v. Wells Fargo Home Mortgage, Inc.*, 09-469 (La. App. 5 Cir. 12/8/09), 30 So.3d 45, 50 (finding that where mortgage contract stated that lender *may* obtain insurance if the borrower fails to do so, the lender had no obligation or duty to obtain insurance).

The language of the mortgage agreement between GMFS and Mr. Pate also does not support plaintiffs’ argument that GMFS owed them a duty. Section 5 of that agreement states:

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed....

This language gives GMFS the *right* to inspect the property before releasing escrowed funds; it does not establish a *duty* requiring it to do so. *See Paternostro, supra*. Similarly, plaintiffs do not dispute that they, not GMFS or its agents, hired Shelton as their contractor. Again, there is no evidence establishing that GMFS was required to ensure that the contractor plaintiffs hired held a valid contractor’s license. As such, we find plaintiffs cannot meet their burden of proof at trial on their claims against GMFS for either negligent hiring or negligent entrustment.

Finally, the record evidence indicates that Ms. Bergeron is not an owner of the home in question, is not named on the mortgage, and has no other relationship

with GMFS. She testified in her deposition that the homeowners are her husband, Rickey Pate, and his mother, Cynthia Albrecht. Thus, even if plaintiffs had stated a viable legal claim against GMFS (they have not), Ms. Bergeron, who is not a party to the mortgage agreement with GMFS, would be foreclosed from pursuing such a claim.

CONCLUSION

Upon *de novo* review, we find no error in the trial court's ruling granting summary judgment in favor of defendant-appellee, GMFS L.L.C. d/b/a GMFS Mortgage, and against plaintiffs-appellants, Rickey Pate and Ashley Bergeron, and dismissing plaintiffs' claims against GMFS. The judgment is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MARCH 25, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-519

E-NOTIFIED

29TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE ROCHELLE C. FAHRIG (DISTRICT JUDGE)
HONORABLE M. LAUREN LEMMON (DISTRICT JUDGE)
DAVID S. MOYER (APPELLANT) LEAH C. COOK (APPELLEE)

MAILED

ROBERT W. BARTON (APPELLEE)
ATTORNEY AT LAW
POST OFFICE BOX 2471
BATON ROUGE, LA 70821