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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JUDY RANDLE, Plaintiff and Appellant, v. FARMERS NEW WORLD LIFE INSURANCE COMPANY et al., Defendants and Respondents.	B276579 (Los Angeles County Super. Ct. No. BC579987)

APPEAL from a judgment of the Superior Court of Los Angeles County. Deirdre Hill, Judge. Affirmed.

Shernoff Bidart Echeverria, William M. Shernoff, Travis M. Corby; Shernoff.Law and Howard S. Shernoff for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Thomas G. Oesterreich and Dustin E. Woods for Defendant and Respondent Hebson Insurance Agency, Inc.

SUMMARY

Plaintiff Judy Randle sued her insurance broker, defendant Hebson Insurance Agency, Inc., for professional negligence in connection with a policy insuring the life of her ex-husband. Plaintiff's negligence claim is based on the broker's alleged failure to advise her, after her divorce, that it was necessary to change the ownership of the policy to ensure that she would remain the sole beneficiary of the policy. Under the undisputed material facts here, we see no legal basis on which to find the broker owed plaintiff a duty to provide such advice. We affirm the trial court's grant of summary judgment in favor of the broker.

FACTS

In 1992, plaintiff and her then-husband, Alan McConnell, asked Mark Hebson, defendant's owner, to procure a policy insuring Mr. McConnell's life. Mr. Hebson did so, obtaining a policy from Farmers New World Life Insurance Company (Farmers) that would pay a death benefit of $250,000 and named plaintiff as the sole beneficiary. Plaintiff and Mr. McConnell "developed a longstanding relationship with Hebson, who placed and serviced a variety of other policies" for them.

In 2004, plaintiff and Mr. McConnell divorced and entered into a stipulated divorce judgment (the divorce decree). Neither of them provided defendant with a copy of the divorce decree.

In 2006, Mr. McConnell submitted a form to Farmers, requesting a change in beneficiary. The form was signed by Mr. McConnell on May 4, 2006, and included with it were partial pages of the divorce decree. The requested change added the couple's three sons, so that plaintiff and their sons would each be 25 percent beneficiaries of the policy.

Farmers stamped the request "Update Only" and "Not Registered." No one ever told defendant or plaintiff that Mr. McConnell had submitted the beneficiary change request to Farmers.

In 2008, plaintiff began paying all the premiums on the policy. (She did so through a company of which she was the sole owner.)[1] According to plaintiff, "[a]round this time, I discussed with Mark Hebson and Alice Brooks the agreement I had with Alan McConnell and that the agreement was stated in the divorce decree." (Ms. Brooks was defendant's office manager and a licensed property and casualty broker/agent.)

The agreement in the divorce decree (which was not provided to defendant or Farmers until after Mr. McConnell's death) gave plaintiff "[a] beneficial interest of one-quarter (1/4) of" the Farmers policy. Mr. McConnell was required to maintain the policy for plaintiff's benefit "to the extent of her one-quarter beneficial interest," and was free to name any beneficiaries "as to his remaining 3/4ths interest." If either party decided to discontinue paying premiums, he or she would "forfeit [her or his] ownership" as to his or her interest in the policy. If Mr. McConnell decided to discontinue paying premiums (as he did in 2008), he was required to "notify [plaintiff] in writing and assign the policy to [plaintiff] if she chooses to pay the premiums." If plaintiff chose to accept the three-quarter interest

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[1] We consider it immaterial whether plaintiff or her wholly owned company paid the premiums on the policy; we assume defendant knew that plaintiff was paying the premiums.

and pay the premiums, then she was "free to name any beneficiaries she chooses."[2]

In her discussions with defendant in 2008, plaintiff says, she "also told Mark Hebson and Alice Brooks that I would only make the premium payments if I remained the only beneficiary on the Policy." (A postdispute letter from Ms. Brooks to plaintiff on May 20, 2014, confirms that plaintiff "informed me that you had an agreement with [Mr. McConnell] and that you would make the premium payments provided you remained the only primary beneficiary on his policy.") Mr. Hebson "advised [plaintiff] that it was possible to ensure that she would remain the policy beneficiary even if she's not the listed owner of the policy." According to plaintiff, Mr. Hebson "advised me that the only action I needed to take to ensure that I remain the 100% beneficiary was to pay the premiums and keep the Policy in force."

From 2008 until 2014, both plaintiff and defendant believed plaintiff was the sole beneficiary of the policy. The parties agree that plaintiff "repeatedly checked with Mark Hebson from 2008 through [Mr. McConnell's] death in 2014 to confirm [plaintiff] was still listed as the beneficiary." Each time plaintiff called defendant to confirm that she remained the sole beneficiary, defendant in turn contacted Farmers, and each time Farmers

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[2] The parties argue over the interpretation of the divorce decree as it relates to plaintiff's ownership of the policy. As will appear from our discussion *post*, this argument is immaterial, both because plaintiff was in any event defendant's client, to whom defendant owed any duty it had, and because plaintiff never gave defendant a copy of the divorce decree.

confirmed plaintiff was the 100 percent beneficiary under the policy.

On April 11, 2014, Mr. McConnell died. A few days later, plaintiff informed Farmers of his death, and "was told again that she was the only beneficiary under the Policy." On April 16, 2014, plaintiff submitted a claim for 100 percent of the policy benefits.

On April 18, 2014, Farmers told plaintiff for the first time that "there was a dispute that she was the 100% policy beneficiary." Farmers told plaintiff Mr. McConnell had submitted a beneficiary change in 2006, to add the couple's three sons as beneficiaries, "but the request was not accepted or registered, because Farmers requested the full divorce decree and [Mr. McConnell] never sent it."

After Mr. McConnell's death, his sons provided Farmers with a complete copy of the divorce decree.

Farmers paid the policy proceeds to plaintiff and her three sons as designated in the 2006 request for change of beneficiary. (The form states that "[t]his change of beneficiary shall take effect only when recorded by the Company, but when so recorded, whether the Insured be living or not, shall relate back to and take effect as of the date of this designation.")

In April 2015, plaintiff filed a complaint against Farmers and defendant, alleging causes of action for breach of the covenant of good faith and fair dealing and breach of contract (against Farmers), professional negligence against defendant, and promissory estoppel against both. (The parties stipulated to the striking of the promissory estoppel claim against defendant.)

Defendant moved for summary judgment, contending that as a matter of law, plaintiff could not maintain a cause of action

for professional negligence against defendant. Plaintiff opposed the motion, contending defendant "failed to correctly advise [plaintiff] on how to protect her interest in the Policy; negligently misrepresented that she could ensure she remained the 100% beneficiary without becoming the listed owner of the Policy; and failed to deliver her specific Policy request [to Farmers] – that she would only continue making the Policy premiums if she remained the 100% beneficiary." Plaintiff argued that defendant "owed a professional duty of care to [plaintiff] and incurred additional duties by holding himself out as an expert and misrepresenting how the Policy worked in response to [plaintiff's] specific questions about the Policy."

After a hearing, supplemental briefing on the ownership of the policy, and a second hearing, the trial court granted defendant's motion for summary judgment, ultimately concluding that defendant owed plaintiff no duty under the circumstances in this case.

The trial court entered judgment in defendant's favor, and plaintiff filed a timely notice of appeal.

DISCUSSION

1. The Standard of Review

A defendant moving for summary judgment must show "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Summary judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (*Id.,* subd. (c).)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542 (*Perry*); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) It is no longer called a "disfavored" remedy. "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Perry,* at p. 542.) On appeal, "we take the facts from the record that was before the trial court . . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citations omitted.)

"Although the trial court may grant summary judgment on one basis, this court may affirm the judgment under another. On appeal, this court examines the facts and independently determines their effect as a matter of law. [Citations.] It is not bound by the trial court's stated reasons, if any, supporting its ruling; it reviews the ruling, not the rationale." (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.)

2. Contentions and Conclusions

Plaintiff contends in substance that her statements to defendant – about her agreement with Mr. McConnell; that the agreement was stated in the divorce decree; and that she "would only make the premium payments if [she] remained the only beneficiary on the Policy" – generated a duty by defendant to advise her on how to protect her interest in the insurance policy. Specifically, plaintiff tells us that because defendant "knew of the Decree, knew that [plaintiff] assumed full payment of the Policy's

premium and knew that interests in the Policy potentially had changed," defendant had a duty to request a copy of the divorce decree; to "seek to understand the effect of the Decree and advise [plaintiff] accordingly"; to notify Farmers of the divorce decree; to notify Farmers that the policy "was at issue in [the] divorce"; and to notify Farmers that plaintiff would only pay the premiums if she could remain the sole beneficiary. We disagree.

We begin with our conclusion. Plaintiff fails to identify any case law, statute or other legal basis on which we may premise a duty by defendant to do any of the things plaintiff says defendant should have done. Nor is there any evidence that defendant made any misrepresentation about the terms of the policy or assumed any special duty to plaintiff by holding itself out as an expert in life insurance. Summary judgment was proper because no duty existed as a matter of law.

We note at the outset that we attribute no particular importance, so far as the scope of the broker's duty is concerned, to plaintiff's status as the owner or the beneficiary under the policy, and so we do not embrace the trial court's rationale for finding no duty. Here, the facts permit no reasonable dispute that plaintiff and her former husband were both defendant's clients, whether plaintiff owned the policy or not. Mr. Hebson declares that in 1992, plaintiff and Mr. McConnell requested the policy, specifying the death benefit and the beneficiary, and plaintiff declares that the couple purchased the policy, and developed a longstanding relationship with Mr. Hebson. (See *Pacific Rim Mechanical Contractors, Inc. v. Aon Risk Ins. Services West, Inc.* (2012) 203 Cal.App.4th 1278, 1290 (*Pacific Rim*) ["An insurance broker's client is the person or entity that contracts with the broker, communicates to the broker its

insurance needs, reviews the quotes provided by the broker and decides what policy to purchase."].) It is equally clear that plaintiff had a beneficial interest in the policy, known to defendant. Under these circumstances, any duty the broker owed would be owed to plaintiff as well as to Mr. McConnell.

But a broker's ordinary duty of care to its clients does not encompass the actions plaintiff posits were required under the facts in this case. The authorities plaintiff cites do not suggest otherwise.

a. Background legal principles

We begin with principles that have been stated many times on the duty owed by an insurance broker to the persons for whom he or she procures insurance.

" 'Insurance brokers owe a limited duty to their clients, which is only "to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." ' " (*Travelers Property Casualty Co. of America v. Superior Court* (2013) 215 Cal.App.4th 561, 578, italics omitted (*Travelers*), quoting *Pacific Rim, supra,* 203 Cal.App.4th at p. 1283.)

The cases further tell us that "an insurance broker does not breach its duty to clients to procure the requested insurance policy unless '(a) the [broker] misrepresents the nature, extent or scope of the coverage being offered or provided . . . , (b) there is a request or inquiry by the insured for a particular type or extent of coverage . . . , or (c) the [broker] assumes an additional duty by either express agreement or by "holding himself out" as having expertise in a given field of insurance being sought by the insured.' " (*Pacific Rim, supra,* 203 Cal.App.4th at p. 1283.)

" 'California law is well settled as to this limited duty on the part of insurance brokers.' " (*Travelers, supra,* 215 Cal.App.4th at p. 579.)

b. Application in this case

This case, of course, does not involve the procurement of an insurance policy. The question is the existence and scope of a broker's duty with respect to a policy that was properly procured more than 15 years earlier. In other words, where a client has a continuing relationship with the broker, "who placed and serviced a variety of other policies" for the client, does the broker have a duty of care *beyond* the " 'limited duty . . . only "to use reasonable care . . . in *procuring*" ' " the policy? (*Travelers, supra,* 215 Cal.App.4th at p. 578.)

None of the authorities the parties cite addresses the question at issue here, where the posited duty is to advise a client how to protect her beneficial interest in a life insurance policy. But the authorities are clear that a broker's duty is limited, even in the procurement context, absent special circumstances. And plaintiff offers no evidence of any special circumstances in this case. That is, there is no evidence the broker misrepresented the terms of the policy, or expressly agreed to assume an additional duty to plaintiff, or held himself out to plaintiff as an expert in life insurance. A client cannot, merely by telling her broker about changed circumstances after her divorce, impose on the broker a duty to give what amounts to legal advice about how best to protect her interests, unless the broker has held himself out as a life insurance expert. There is no evidence that happened here. We note several points.

First, we are aware that plaintiff's declaration states that Mr. Hebson "held himself out as an expert, and always gave

advice on our specific questions and concerns regarding our policies." Plaintiff's averment on this point does not suffice to raise an issue of fact. (*Jones v. Grewe* (1987) 189 Cal.App.3d 950, 956 (*Jones*) ["The mere allegation . . . that an insured has purchased insurance from an insurance agent for several years and followed his advice on certain insurance matters is insufficient to imply the existence of a greater duty. Such reliance is not at all uncommon when an insured has done business with an insurance agency over a period of time"; the plaintiff's complaint failed to allege "facts from which a special or greater duty could reasonably be inferred"].)

Wallman v. Suddock (2011) 200 Cal.App.4th 1288 makes the point even more plainly: "The [plaintiffs'] statements that [defendant insurance agent] 'held himself out to us as an expert in insurance matters, and specifically, for the type of risks our family business encountered' and 'offered to act as our insurance consultant, advising us on our insurance needs' are too conclusory to raise a triable issue of fact. Notably missing from these statements are *what* [the defendant] said to give rise to the [plaintiffs'] purported belief that he was an expert in insurance matters. And, under *Jones*, the mere assertion that plaintiffs purchased insurance from [the defendant] for several years and followed his advice on insurance matters is insufficient to create a heightened duty." (*Id.* at p. 1312.)

Second, plaintiff makes a lengthy argument that a duty of care owing from defendant to plaintiff may be found by using the criteria stated in *Biakanja v. Irving* (1958) 49 Cal.2d 647 (*Biakanja*) and applied in *Business to Business Markets, Inc. v. Zurich Specialties London Limited* (2005) 135 Cal.App.4th 165 (*Business to Business*). Neither case is pertinent here.

In *Biakanja*, the Supreme Court described the factors that are used to determine, as a matter of policy, when a defendant may be held liable *for negligent performance of a contractual duty* to a party who is not in privity of contract with the defendant. (*Biakanja, supra,* 49 Cal.2d at pp. 648-650 [notary public who agreed with decedent to prepare a valid will but did so negligently was liable to the plaintiff, who would have received decedent's entire estate but for the defendant's negligence]; see *Adelman v. Associated International Ins. Co.* (2001) 90 Cal.App.4th 352, 363 [*Biakanja* and ensuing Supreme Court cases demonstrate the principle that "where the 'end and aim' of *the contractual transaction between a defendant and the contracting party* is the achievement or delivery of a benefit to a known third party or the protection of that party's interests, then liability will be imposed on the defendant for his or her *negligent failure to carry out the obligations undertaken in the contract* even though the third party is not a party thereto," italics added].)

This case does not involve negligent performance of a contractual duty. *Pacific Rim* makes this very point: "[Cross-complainant's] contention *Biakanja* . . . should control here is unavailing. In *Biakanja,* our Supreme Court established a test to determine when a defendant will be liable for negligent performance of a *contractual duty* to a party not in privity of contract with the defendant. [Citation.] However, as [cross-complainant] concedes, its 'claims against [an insurance broker] are negligence based, not contract based.' [Cross-complainant] contends [the broker] is liable in tort because [the broker] failed to inform [cross-complainant] immediately of [the insurer's] insolvency. Thus, [cross-complainant] does not assert [the

broker] breached any contract, which renders *Biakanja* inapplicable here." (*Pacific Rim, supra,* 203 Cal.App.4th at pp. 1291-1292.)

Here, as in *Pacific Rim*, there is no contract between defendant and anyone else that was made to provide a benefit for plaintiff or protect her interests. There was simply a direct undertaking by defendant to secure life insurance for plaintiff, an undertaking that was completed years ago. The issue here is the failure to advise a client how to protect her beneficial rights in a life insurance policy when its ownership changed years later. *Biakanja* and its progeny simply have no application. *Business to Business* does not suggest otherwise. That case involved an insurance transaction in which a surplus lines insurance broker obtained inadequate insurance coverage for its client, resulting in damage to the plaintiff, who "[came] close enough to being [an intended beneficiary] that imposing duty on [the broker] is within the spirit of *Biakanja*." (*Business to Business, supra,* 135 Cal.App.4th at p. 171.) Again, it was negligent performance of a contractual obligation that gave rise to a *Biakanja* analysis. That is not the case here. *Biakanja* does not permit the creation of a duty untethered to any contractual relationship.

Third, plaintiff relies on legal authorities holding that "once an insurer or its agent elects to respond to an insured's questions about coverage, a special duty arises which requires them to use reasonable care to provide accurate information." (*Paper Savers, Inc. v. Nacsa* (1996) 51 Cal.App.4th 1090, 1097 (*Paper Savers*), citing *Free v. Republic Ins. Co.* (1992) 8 Cal.App.4th 1726, 1729 (*Free*).) Thus, for example, *Paper Savers* held an insurance agent "may also assume a greater duty toward his insured by misrepresenting the policy's terms or extent of coverage." (*Paper*

Savers, at pp. 1096-1097; *id.* at p. 1101 [insurance agent allegedly made statements "which led [the plaintiff] to believe the 'replacement cost coverage' endorsement the agent recommended was adequate to replace all his equipment in the event of a total loss. This allegation . . . triggers a greater and special duty to the insured as a result of the insurance agent's alleged representations."].)[3]

These cases do not assist plaintiff. They involve misrepresentations about the coverage of policies at the time of purchase or renewal that induced the insured to purchase the policy. The cases confirm that ordinarily, the general duty of care does not require an insurer or agent "to advise [the plaintiff] regarding the sufficiency of his liability limits or the replacement value of his residence," but if they undertake to do so, they must use reasonable care. (*Free, supra,* 8 Cal.App.4th at p. 1729.)

Nothing in these cases suggests the existence of a duty, for the duration of a life insurance policy, to advise clients how to protect their interests in those policies. That is the job of a lawyer, not an insurance broker. This is particularly so where divorce decrees are involved. Indeed, plaintiff herself tells us that the insurance company's "own interpretation of the Decree, of course, has no bearing on the Decree's legal effect." And yet

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[3] Similarly, in *Free*, the insurer's agent advised a homeowner, in response to his inquiry, that his coverage limits were adequate to reconstruct his house if it were destroyed. Instead of apprising him of at least two options by which he could have achieved that goal, or declining to offer an opinion, the agent, acting for the insurer, instead assured him his coverage was sufficient. (*Free, supra,* 8 Cal.App.4th at pp. 1729, 1730; *id.* at p. 1730 ["Under the circumstances, defendants must be deemed to have assumed additional duties."].)

plaintiff would have us impose a special duty on the insurance broker to "seek to understand the effect of the Decree and advise [plaintiff] accordingly." We see no legal basis for such a duty. Indeed, it is undisputed that plaintiff did not give defendant a copy of the divorce decree, which was not produced until years later when Mr. McConnell died and Farmers asked for it. Plaintiff's assertion that it was defendant's duty to ask her for a copy and to provide it to Farmers is likewise a duty that finds no support in any legal authority or in public policy.

Fourth, the only legal authority involving life insurance that plaintiff cites is a case from 1940, where the plaintiff (the beneficiary of a policy on the life of her husband) sought to recover the amount of the policy from the insurance company, which had paid the cash surrender value of the policy to her husband before his death. (*Morrison v. Mutual Life Ins. of New York* (1940) 15 Cal.2d 579, 581 (*Morrison*).) The case has nothing to do with the duties of an insurance broker.

The upshot of *Morrison* was that undisputed evidence showed that, "as between plaintiff and her husband, she was not simply the named beneficiary in the policy, but the actual owner thereof," because of an agreement with her husband and her payment of the premiums. (*Morrison, supra,* 15 Cal.2d at pp. 586-587.) If plaintiff had sued the insurance company before it paid the proceeds to her husband, "and plaintiff and the insured were contending between themselves for the proceeds," the evidence would have entitled her to those proceeds. (*Id.* at p. 587.) *Morrison* stated the principle that, "once the true ownership of the policy is brought home to the insurance company, whether that ownership is established by taking out the policy in the name of the owner, or by assignment, or by

contract or gift, the company is bound to recognize the rights of the lawful owner." (*Id.* at p. 587.)

The question in *Morrison* was "whether at the time the company paid the proceeds to the insured, it had such knowledge or notice of plaintiff's ownership of the policy as to require a recognition of plaintiff's rights." (*Morrison, supra,* 15 Cal.2d at p. 587.) The agreement between plaintiff and her husband was not sufficient to establish the insurer's knowledge, because plaintiff might have paid the premiums voluntarily or might have paid them out of the husband's funds; the mere fact of receipt of premiums from plaintiff could not establish knowledge she was the owner of the policy. (*Ibid.*) But, because the trial court improperly excluded testimony on the issue of actual notice to the company of plaintiff's rights, the judgment was reversed so plaintiff could present the rejected evidence. (*Id.* at p. 590.)

In short, *Morrison* tells us nothing to suggest a duty should be imposed on a broker to advise his clients how to protect their rights under a life insurance policy. If *Morrison* suggests anything of pertinence, it is that receipt of premiums from a person does not establish knowledge of ownership of a life insurance policy. It says nothing about duties of a broker arising out of a change in premium payments.

In the end, plaintiff acknowledges there is "a dearth of authority dealing with special duties stemming from life insurance policies, which are unlike other insurance contracts in that multiple parties can hold varying, changing and overlapping rights to the proceeds." In fact, plaintiff concedes that it "may be the state of the law currently" that, as defendant contends, there is "no duty requiring an insurance agent to advise a beneficiary of a life insurance policy how to protect her beneficial interest."

We agree with that assessment, and we decline to create a duty in the absence of any articulable legal basis on which to do so. As the court stated in *Travelers*, the plaintiff "identified several acts, or failures to act," that he asserted constituted negligence, "[y]et he has failed to identify any legal basis on which [the broker] owed [the plaintiff] a duty to perform these acts." (*Travelers, supra,* 215 Cal.App.4th at p. 582.) So it is here.

Finally, plaintiff's argument devolves to this: that the existence of a "special duty" by defendant to advise plaintiff how to protect her rights under the policy is a matter for the jury to decide. Plaintiff tells us "it falls on the trier of fact to evaluate the nature of the interaction [between plaintiff and defendant], including the alleged misrepresentations as well as the reasonableness of the reliance they induced, that may indicate a special duty."[4] Plaintiff is mistaken.

The existence of a duty is a question of law for the court where the facts are not in dispute, and here, the material facts are not in dispute. There is no evidence the defendant misrepresented the terms of the policy, or expressly agreed to assume an additional duty to plaintiff, or held himself out as an expert in life insurance. The question here is whether plaintiff's statements to the broker about her agreement with her husband, and the broker's knowledge of the change in payment of the premiums, created duties by the broker to ask her for a copy of

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[4] Plaintiff tells us her "primary point for the sake of this appeal" is that "evaluating the nature of the interaction, including the alleged misrepresentations and the reasonableness of the reliance they induced, that can create a special duty is a matter for the trier of fact."

the divorce decree, and then to "seek to understand the effect of the Decree," and then to advise plaintiff on the best way to protect her interest in the policy. We are offered no legal authority to support a duty by a broker to advise plaintiff on her legal rights under the policy, and we conclude there is none.

Plaintiff again points to *Paper Savers*, where the court said that an insurance agent can assume a special duty toward his insured by misrepresenting policy terms. (*Paper Savers, supra,* 51 Cal.App.4th at p. 1096.) We repeat: that did not happen here. *Paper Savers* involved "a special duty to ensure [adequate] coverage based on alleged affirmative assertions *made to induce the insured to purchase the policy* and additional endorsement." (*Id.* at p. 1101, italics added.) Here, there was no misrepresentation of the terms of the policy, and indeed no representation made in order to induce plaintiff to do anything.[5]

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[5] For the first time at oral argument, plaintiff's counsel mentioned the declaration of plaintiff's expert, Stephen Burgess, in which, according to counsel, Mr. Burgess opined that changing the ownership of a policy is simple and a common practice in the life insurance industry. Also, for the first time at oral argument, plaintiff's counsel said in 2008, Mr. Hebson called plaintiff to tell her that the policy was in danger of lapsing for nonpayment of premiums. Apart from whether the expert's opinion bears in any way on the legal issue of duty, and whether Mr. Hebson alerted plaintiff to the potential lapse of the policy, both points have been forfeited. There was no mention of the expert's declaration, or of Mr. Hebson's 2008 call to plaintiff, anywhere in plaintiff's separate statement of undisputed material facts, and there was no mention of either point in plaintiff's briefs on appeal. "It is axiomatic that arguments not asserted below are waived and will not be considered for the first time on appeal." (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3

And so we return to our conclusion. Plaintiff's assertion is that the broker failed in its duty to advise her how best to protect her interest after she took over payment of policy premiums. But plaintiff fails to identify any legal basis to support a broker's duty to do any of the things she claims defendant should have done. Summary judgment was proper because no duty existed as a matter of law.

DISPOSITION

The judgment is affirmed. Hebson Insurance Agency, Inc., is to recover its costs on appeal.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J. ROGAN, J.*

[affirming grant of summary judgment]; see *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 ["Although our review of a summary judgment is de novo, it is limited to issues which have been adequately raised and supported in plaintiffs' brief"; "[i]ssues not raised in an appellant's brief are deemed waived or abandoned"]; *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30 ["[w]e construe the statutory mandate for a separate statement as requiring a party to *specify within that document* any facts he deems to be disputed facts material to the issue presented"]; see also *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316 ["where evidence is not referenced, is hidden in voluminous papers, and is not called to the attention of the court at all, a summary judgment should not be reversed on grounds the court should have considered such evidence"].)

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.