

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

THE CINCINNATI INSURANCE COMPANY,	:	APPEAL NO. C-040006 TRIAL NO. A-0104654
	:	
Plaintiff-Appellee,	:	<i>DECISION.</i>
	:	
vs.	:	
	:	
PRESERVING AFFORDABLE HOUSING, INC.,	:	
	:	
and	:	
	:	
MARGO AUG,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
UNIVERSAL CONTRACTING CORPORATION,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 30, 2004

*Rendigs, Fry, Kiely & Dennis, LLP, Thomas S. Shore, Jr., John F. McLaughlin, and Lynne M. Longtin*, for Plaintiff-Appellee,

*Keating, Muething & Klekamp, PLL, Joseph L. Trauth, Jr., E. Todd Wilkowski, and Jason M. Cohen*, for Defendant-Appellant.

We have sua sponte removed this cause from the accelerated calendar.

*Per Curiam.*

{¶1} Defendant-appellant Universal Contracting Corporation (“Universal”) appeals from the trial court’s entry of summary judgment in favor of plaintiff-appellee The Cincinnati Insurance Company (“CIC”) on its petition for declaratory judgment. CIC had sought a declaration of its rights and obligations under a Directors and Officers Liability Policy issued to Preserving Affordable Housing, Inc. (“PAH”), for alleged misrepresentations made by Margo Aug, a PAH officer, to Universal, the general contractor for renovations to PAH’s housing properties. In 2000, following arbitration on a breach-of-contract claim, Universal and its subcontractors had been awarded over \$4 million in damages against PAH. On December 16, 2003, the trial court declared the rights of the parties and held that CIC was entitled to summary judgment, as it had not been timely put on notice of Universal’s claims against PAH and Aug, and as the policy excluded coverage for contract claims against PAH.

{¶2} In *Universal Contracting v. Aug* (Dec. 30, 2004), 1st Dist. No. C-030719,<sup>1</sup> this court held that Universal could not proceed against Aug for negligent misrepresentation where the parties had specifically contracted to protect against potential economic liability resulting from false information about PAH’s economic health. In light of this decision, and because there are no genuine issues of material fact

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<sup>1</sup> *Universal Contracting* was consolidated with the present appeal for purposes of argument only on May 7, 2004.

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remaining in this case as to whether Universal may proceed against Aug for tort damages, the assignment of error is overruled and the judgment of the trial court is affirmed. See Civ.R. 56(C).

Judgment affirmed.

**WINKLER, P.J., HILDEBRANDT and GORMAN, JJ.**

*Please Note:*

The court has placed of record its own entry in this case on the date of the release of this Decision.