STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant/Cross-Appellee,

v

RYDER TRUCK RENTAL and OLD REPUBLIC INSURANCE COMPANY,

Defendants-Appellees/Cross-Appellants.

UNPUBLISHED
February 8, 2002

No. 222114
Bay Circuit Court
LC No. 96-003563-CK

Before: Fitzgerald, P.J., and Bandstra and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting defendant's motion for summary disposition and denying plaintiff's motion for reconsideration. Defendant cross-appeals. We reverse.

I. Basic Facts and Procedural History

On December 28, 1993, plaintiff's insured, Michigan Delivery Service (hereinafter "MDS,") leased a 1990 van from defendant Ryder Truck Rental (hereinafter "Ryder.") MDS, which made deliveries for various businesses, obtained a commercial automobile insurance policy from Auto-Owners through the Independent Insurance Centre of Okemos (now known as Federal Group). The policy covered certain automobiles described by vehicle identification numbers. Ryder also had an insurance policy on the van that it leased to MDS, as well as its other vehicles, through Old Republic Insurance Company. However, the Old Republic policy provided that it did not cover a lessee or renter unless the lease or rental agreement stated that such coverage was to be provided.

MDS employee Russell Wellman signed the Ryder rental agreement for the van and initialed a provision in the agreement by which Wellman elected to provide liability insurance on the vehicle rather than pay a higher rental rate to be covered by Ryder's insurer, Old Republic. The agreement provided that under this election, insurance provided by the driver would be the primary liability insurance for any accident involving the van and that Ryder's insurance policy would provide excess coverage. The agreement required that the driver insure the vehicle with a policy naming Ryder as an additional insured and provide Ryder with a certificate of insurance evidencing that the policy had been issued. Pursuant to this provision, MDS contacted the

Okemos agency, which had issued its commercial automobile policy, and obtained a certificate of insurance indicating that Ryder had been named as an additional insured on the Auto-Owners policy. The certificate of insurance provided coverage for "all vehicles leased, rented, or supplied as a temporary substitute" to MDS.

On December 30, 1993, Wellman was involved in a personal injury accident while driving the leased van. Consequently, two personal injury complaints were filed; these complaints were settled with Auto-Owners paying its policy limit. Thereafter, Auto-Owners filed its complaint seeking a declaratory judgment to determine whether Auto-Owners, as MDS's insurance carrier, or Old Republic, as Ryder's insurance carrier, was primarily responsible for the damages caused by the accident.

Defendants filed a motion for summary disposition in accord with MCR 2.116(C)(8) and (C)(10) and in response to defendants' motion, plaintiff requested summary disposition in its favor. The trial court granted defendants' motion finding the lease agreement clearly excluded Wellman (and consequently MDS) from coverage as a permissive driver of a leased vehicle. The court also held that the Auto-Owners certificate of insurance extended coverage to Ryder as an additional insured and that the Okemos agency had actual or apparent authority to issue language changing the Auto-Owners policy to an "all-vehicle" policy.

Plaintiff filed a motion for reconsideration contending that the court had been misled or confused concerning three issues: (1) the Okemos agency's legal status and its ability to change insurance policy provisions; (2) the effect of the certificate of insurance language on the underlying insurance policy; and (3) the legal effect of an automobile lease that attempts to shift primary insurance coverage from the vehicle owner to the vehicle renter. The trial court denied the motion for reconsideration. Plaintiff appeals as of right and defendants cross-appeal, asserting that the trial court did not err in granting their motion for summary disposition or in denying plaintiff's motion for reconsideration. We reverse.

II. Standard of Review

This Court reviews de novo a trial court's grant of a motion for summary disposition. *Silver Creek Tp v Corso*, 246 Mich App 94, 97; 631 NW2d 346 (2001). When considering a motion brought pursuant to MCR 2.116(C)(10), this Court reviews all documentary evidence to determine whether there exists genuine factual issues or whether a party is entitled to judgment as a matter of law. *Id*. Conversely, a motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Kokx v Bylenga*, 241 Mich App 655, 660; 617 NW2d 368 (2000). Accepting all factual allegations in support as true, including any reasonable inferences or conclusions that may be drawn there from and construing them in a light most favorable to the nonmoving party, a (C)(8) motion may be granted only when the claim is `so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.' *Id*. (Citation omitted.) Because the trial court looked beyond the pleadings to render its decision we consider its decision as granting defendant summary disposition in accord with MCR 2.116(C)(10).

III. Michigan's No-Fault Insurance Act

The no-fault insurance act at MCL 500.3101(1) provides in pertinent part that:

> The *owner or registrant* of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. (Emphasis added.)

In *Citizens Ins Co of America v Federated Mut Ins Co*, 448 Mich 225, 232; 531 NW2d 138 (1995), our Supreme Court recognized that "[t]he no-fault act . . . is the most recent expression of this state's public policy concerning motor vehicle liability insurance." That said, pursuant to the no-fault act, incumbent upon an "owner or registrant" is the obligation to obtain insurance that provides "residual liability insurance" which covers certain enumerated losses resulting from the "use of a motor vehicle." MCL 500.3101(1); *Citizens, supra* at 228-229. Accordingly, the no-fault act unambiguously requires an owner of a motor vehicle to maintain residual liability insurance coverage.

In the case at bar, Ryder, the owner of the vehicle, entered into a rental agreement with MDS which ostensibly permitted MDS, as lessee, to elect whether its insurance policy or Ryder's insurance policy would provide primary insurance coverage for the leased vehicle. By the terms of the rental agreement, if the lessee elected to insure the vehicle and name Ryder as an "additional insured," then the terms of the agreement provided that Ryder's insurance carrier would be responsible for the "excess" over and above that which the lessee's insurance carrier agreed to provide. Because Ryder owned the accident vehicle, the terms of the rental agreement purported to shift the primary responsibility to provide insurance coverage from the owner of the vehicle to the permissive user's insurer. This attempt to shift liability is impermissible under Michigan law.

The "dominant principle" underlying the no-fault act is that the cost of injuries arising from the permissive use or operation of a particular vehicle should be born by the owners and their insurers. *Citizens, supra* at 235. This legislative mandate is not served by permitting drivers to "unilaterally dictate the priority of coverage among insurers in a manner that shifts insurance costs to the nonowner of the vehicle." *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 35; 549 NW2d 345 (1996).

In *State Farm, supra*, our Supreme Court held that a car rental company is not excused from the mandates of the no-fault act and must obtain insurance coverage for its permissive users. *Id*. at 34. In fact, the *State Farm* court stated that even assuming that a driver could elect to allocate the primary responsibility to provide insurance onto its insurer, the agreement to do so would be void considering that "[t]hose obligations are a matter of contract, and cannot be unilaterally reassigned." *Id*. at 35. In light of those governing principles, the *State Farm* court concluded that "car rental companies and their insurers are required to provide primary residual liability coverage for the permissive use of the rental cars, up to their policy limits or the minimum required by statute." *Id*. at 36. Thus, the trial court's decision granting defendants' summary disposition was contrary to existing law. Accordingly, the trial court erred by granting defendants summary disposition. On the contrary, plaintiff was entitled to summary disposition.

IV. Certificate of Insurance

Next, plaintiff argues that the trial court erred by finding that Ryder was an additional insured by virtue of a Certificate of Insurance issued by Independent Insurance Centre of Okemos (hereinafter "Independent Insurance Centre,") an insurance broker, ostensibly on behalf of Auto-Owners. To that end, the trial court stated that Independent Insurance Centre "had the actual or apparent authority of Auto-Owners to issue the Certificate of Insurance naming Ryder as an additional insurance [sic] under [policy number] . . ." We agree with plaintiff that the trial court erred in this regard.

The Certificate of Insurance provides as follows:

> This certificate is issued *as a matter of information only and confers no rights upon the certificate holder*. This certificate does not amend, *extend* or alter the coverage afforded by the policies below. (Emphasis added.)
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> * * *
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> This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain , the insurance provided by the policy described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

It is axiomatic that an insurance policy is a contractual agreement between the insurer and its insured. *West American v Meridian Mutual Ins Co*, 230 Mich App 305, 310; 583 NW2d 548 (1998). And, when an independent broker facilitates that contractual agreement, the broker acts not as an agent of the insurer, but rather, as an agent of the insured. *Id*. Fundamental principles of agency law provide that an agent's apparent authority to bind a principle does not arise by virtue of the agent's actions, but rather, arises by virtue of actions undertaken by the *principle* which lead a third party to reasonably believe that an agency relationship exists. See *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 528; 529 NW2d 318 (1995) (stating "apparent authority must be traceable to the principal and cannot be established only by the acts and conduct of the agent.")

Thus, for Independent Insurance Centre to have the apparent authority to bind Auto-Owners, *Auto-Owners* must have affirmatively undertaken some action which would reasonably lead Ryder to believe that an agency relationship existed between Independent Insurance Centre and Auto-Owners. The trial court held that the Certificate of Insurance issued by Independent Insurance Centre naming Ryder as an additional insured and provided to Ryder by MDS ostensibly on behalf of Auto-Owners, was the conduct that gave rise to Independent Insurance Centre's apparent authority to bind Auto-Owners. This is contrary to established agency law principles.

In this case, Auto-Owners did not do anything to suggest to Ryder that an agency relationship existed between Independent Insurance Centre and Auto-Owners relative to insurance coverage for the Ryder truck at issue herein. On the contrary, MDS, by tendering the Certificate of Insurance issued by Independent Insurance Centre, lead Ryder to believe that such an agency relationship existed. Consequently, Independent Insurance Centre as opposed to Auto-Owners created the apparent authority. Stated another way, Independent Insurance Centre, as MDS's agent, created the apparent authority. Accordingly, Auto-Owners, as the principle, cannot be bound to provide insurance coverage for the Ryder truck at issue solely by virtue of Independent Insurance Centre's conduct.

Moreover, the accident vehicle was not specifically contained under MDS's original Auto-Owners policy because Ryder was not named as an insured and the accident vehicle was not otherwise described in the policy as required. Although the Certificate of Insurance listed the accident vehicle, the certificate did not obligate plaintiff to provide coverage because the certificate in and of itself could not alter the terms and conditions contained in the original policy. Indeed, the Certificate of Insurance did not represent the terms, conditions, or privileges pursuant to the policy; it merely stated that the listed insurance policies were issued. See *West American Ins Co, supra* at 311. In addition, MDS's original insurance policy provided that any changes in coverage must be effected through issuance of an endorsement. Nothing in the record indicates that plaintiff executed such a document.

Even assuming, arguendo, that the Certificate of Insurance could alter the terms contained in the original policy, the certificate still could not bind plaintiff to a contract to which it did not consent. *Auto-Owners Ins Co v Michigan Mut Ins Co*, 223 Mich App 205, 215-216; 565 NW2d 907 (1997). Accordingly, the Certificate of Insurance did not, in and of itself, bind plaintiff to provide coverage for the accident vehicle.

For these reasons and the reasons stated herein, we find that the trial court erred by granting defendants summary disposition. On the record here before us and in accord with established law, plaintiff was entitled to summary disposition.

Reversed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly