[Cite as *Cincinnati Ins. Co. v. LOMC, L.L.C.*, 2022-Ohio-2216.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

THE CINCINNATI INSURANCE COMPANY,

Plaintiff-Appellant,

v.

LOMC LLC, et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 21 JE 0012

Motion for Reconsideration

BEFORE:
Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Denied.

Atty. John G. Farnan and *Atty. Joshua M. Miklowski*, Weston Hurd LLP, The AECOM Building, 1300 East 9th Street, Suite 1400, Cleveland, Ohio 44114, for Plaintiff-Appellant

Atty. Kristina S. Dahmann, Ice Miller LLP, 250 West Street, Columbus, Ohio 43215, for Defendants-Appellees.

Dated: June 21, 2022

PER CURIAM.

{¶1} Appellant, the Cincinnati Insurance Company ("CIC"), has filed an application for reconsideration asking this Court to reconsider our decision and judgment entry affirming the judgment of the Jefferson County Common Pleas Court in this matter. See *The Cincinnati Insurance Company v. LOMC LLC,* 7th Dist. Jefferson No. 21 JE 0012, 2022-Ohio-930 ("LOMC Opinion").

{¶2} A motion for reconsideration must be filed within ten days of the judgment pursuant to App.R. 26(A)(1)(a). Judgment was entered in this case on March 21, 2022. As CIC filed its motion on March 31, 2022, the motion is timely.

{¶3} App.R. 26, which provides for the filing of an application for reconsideration, sets forth the standard used on review of the application. *Matthews v. Matthews,* 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981). Basically, an appellate court must determine whether the motion for reconsideration calls to the attention of the court an obvious error in its decision, or raises an issue that was either not considered at all or was not fully considered by the court. *Id.* An application for reconsideration is not proper where a party merely disagrees with the conclusions reached and the logic used by the appellate court. *State v. Owens,* 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). App.R. 26 provides a mechanism by which a party may prevent a miscarriage of justice that could arise when an appellate court makes an obvious error or renders a decision that is not supported by law. *Id.*

{¶4} In our Opinion in this matter, we concluded that the trial court properly dismissed CIC's complaint seeking declaratory judgment against LOMC LLC ("LOMC"),

and Garrett, LLC ("Garrett"). In so doing, this Court found that the trial court lacked personal jurisdiction over Garrett. *LOMC Opinion* at ¶ 34. We also concluded the trial court properly decided that an Indiana trial court was the more appropriate forum under the doctrine of *forum non conveniens. LOMC Opinion* at ¶ 43-47.

{¶5} CIC now raises three issues that it believes warrant this Court's reconsideration.

{¶6} First, CIC disputes our determination regarding the certificate of insurance given to Garrett by Dawson Insurance Agency ("Dawson"), the insurance agent who sold LOMC the CIC policy at issue.

{¶7} According to the record, LOMC informed CIC of the specific insurance requirements contained in its contract with Garrett at the outset of the remediation project. Dawson, responding to LOMC and acting as CIC's agent, told LOMC that Garrett was a named insured under the CIC policy, that the policy provided the requisite amounts of liability coverage, and that the policy included an indemnification provision. LOMC sent this certificate of liability insurance obtained from Dawson to Garrett, listing CIC as the insurer and Garrett as a named insured, to show that it had obtained the insurance required by its contract with Garrett.

{¶8} CIC claims this Court erred in interpreting the certificate of liability as evidence of coverage, arguing that only the policy determines whether coverage exists. CIC cites to the language on the certificate of liability which reads:

> THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND,

> EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

(3/31/22 Motion for Reconsideration, p. 5.)

{¶9} This language is similar to the language codified in R.C. 3938.02, which provides:

> A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend or alter the coverage afforded by the policy to which the certificate refers. A certificate of insurance shall not confer to any person new or additional rights beyond what the referenced policy of insurance expressly provides.

{¶10} It is apparent CIC misunderstands this Court's analysis regarding the certificate of insurance in this case. In our Opinion, we stated,

> It appears CIC's actual claim may be against its own agent, Dawson. This record shows Dawson appears to have acted under apparent authority when it certified to Garrett, that Garrett was a named insured under the relevant CIC policy. In any event, CIC has not met the threshold requirement of establishing that Garrett had minimum contacts in Ohio.

LOMC Opinion at ¶ 34.

{¶11} Contrary to CIC's assertion, this Court did not conclude that the certificate of insurance established that Garrett was actually covered under the insurance policy. The language CIC now complains of simply notes that if CIC's agent provided a certificate of insurance naming Garrett as an insured when he was not, CIC may not have named all relevant parties defendant in this matter. Notwithstanding our discussion regarding the certificate of insurance, we clearly stated that the crucial issue in the matter was whether Garrett could be sued in Ohio. Ultimately, we held that based on the record in this case CIC failed to establish Garrett had even the minimum Ohio contacts necessary to establish jurisdiction over him in Ohio.

{¶12} CIC also attempts to reargue the issue of Garrett's Ohio contacts. In so doing, it is apparent CIC merely dislikes our conclusion in this matter. This Court was clear that simply contacting LOMC (a Pennsylvania business) at its Ohio location once, by mail, and then copying the same letter to a CIC office located in Ohio did not meet the "continuing obligations" and "substantial connection" required by *Burger King v. Rudzewicz,* 471 U.S. 462, 105 S.Ct. 2174 (1985), or the minimum contacts requirement set forth in *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear,* 533 Ohio St.3d 73, 75, N.E.2d 477 (1990).

{¶13} CIC also asserts that we erred in considering the choice of law and pollution exclusion issues because they were not properly before the Court. Additionally, they argue that no discussion of these issues was appropriate without application of the Restatement of the Law, Conflict of Laws (1971), §188 cited in the Ohio Supreme Court's decision in *Gries Sports Ent., Inc. v. Modell,* 15 Ohio St.3d 284, 473 N.E.2d 807 (1984).

{¶14} CIC is mistaken that the issue regarding choice of law was not before this Court. As Garrett has noted, CIC devoted an entire section of their appellate brief on direct appeal to this issue in a section aptly entitled, "Choice of Law." (Appellant's Brief, pp. 21-23). In our Opinion we stated:

> It is also important to note that the policy contains no choice of law provision. Certainly, had CIC intended for the more favorable laws of Ohio regarding the environmental exclusion to apply, it merely had to designate that Ohio law prevailed in a choice of law provision.

LOMC Opinion at ¶ 34.

{¶15} This Court properly noted the policy lacked a choice of law provision, an issue briefed by CIC on appeal. Hence, the matter was decided on the basis that CIC failed to meet the threshold requirement establishing that Garrett had minimum contacts in Ohio utilizing only the two letters mailed by Garrett to inquire about coverage. CIC's insistence that *Gries* applies is equally misguided. *Gries* involved enforcement of a voting agreement between two shareholders of a Delaware corporation in their dispute as to which state's law should apply in deciding their grievances. It was apparent that all parties had sufficient contacts in Ohio for the Ohio courts to have jurisdiction in their suit to enforce the language of their agreement. The dispute in this case is between an insurer based in Ohio and a third party foreign corporation, and involves a determination of whether an Ohio court has jurisdiction at all over one of the parties, and ultimately whether Ohio is the appropriate state to try the matter.

{¶16} Lastly, CIC contends this Court applied a *de novo* review of the public and private factors relative to *forum non conveniens.* However, CIC again mischaracterizes the language of this Court's opinion. This Court stated:

> Regardless, our *de novo* review of the matter reveals the trial court did not abuse its discretion. It appropriately considered both private and public factors in dismissing the matter under the doctrine of *forum non conveniens* and concluded the Indiana court was the more convenient forum.

LOMC Opinion at ¶ 47.

{¶17} Hence, on independent review of the entire matter, we determined that no abuse of discretion occurred by the trial court when it weighed the necessary factors in determining that Ohio was a *forum non conveniens.* It is axiomatic that in such a review, we afford the trial court great discretion in its interpretation of the facts, but undertake a de novo review of the application of the law to those facts. Moreover, this Court specifically noted that it was conducting a review for abuse of discretion of these factors and noted that we do not independently assess and reweigh each public and private factor. This Court addressed each of the arguments made by CIC to the trial court as they were repeated on direct appeal, we reviewed the trial court's reasoning set forth in its judgment entry, and concluded based on the relevant law that the trial court did not abuse its discretion in dismissing the matter under the doctrine of *forum non conveniens. LOMC Opinion* at ¶ 42-45.

{¶18} In sum, CIC has not called to this Court's attention an obvious error nor have they raised an issue for our consideration that was either not considered at all or was not fully considered by this Court. CIC's application for reconsideration is denied.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE DAVID A. D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.