IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BRUCE BERMEL AND PAMELA JURGA,	:	C.A. No: K10C-06-011(RBY)
Plaintiffs,	:	
v.	:	
LIBERTY MUTUAL FIRE INSURANCE CO.,	:	
Defendant.	:	

Submitted: October 7, 2011
Decided: March 29, 2012

Upon Consideration of Defendant's Motion for Summary Judgment
GRANTED

OPINION AND ORDER

Keith E. Donovan, Esq., Morris, James LLP, Dover, Delaware for Plaintiffs.

Nancy Chrissinger Cobb, Esq., Chrissinger & Baumberger, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Bruce Bermel and Pamela Jurga (Plaintiffs) filed this action for under insurance coverage pursuant to a policy between Mr. Bermel's employer and Liberty Mutual Fire Insurance Company (Defendant). Jurga's action is for a claim of lost consortium. Defendant filed the instant motion for summary judgment. Because the Liberty Mutual insured vehicle was not owned by Mr. Bermel, was not occupied by Mr. Bermel, and was not involved in the incident itself, Plaintiffs are not covered under this policy, Defendant's motion for summary judgment is **GRANTED**.

FACTS

Bruce Bermel and Pamela Jurga (Plaintiffs) are a married couple residing in Delaware. Bermel is employed by Siemens Health Care Diagnostics (Siemens). Through his employment, Bermel is provided a company vehicle, a Chrysler 300, for business and personal use. A fee is deducted from Bermel's paychecks in consideration for personal use of the vehicle. Additionally, Bermel owns a motorcycle personally, completely independent of Bermel's employment or employer.

On June 9, 2010, Bermel was in the State of New York in Deer Park, Orange County. While operating his motorcycle, and while the Chrysler 300 was not in use and parked elsewhere, Bermel was involved in an automobile accident with Melissa Kizer. The accident occurred outside the scope of Bermel's employment. The Chrysler 300 was in working condition at the time of the accident.

Ms. Kizer's insurance provided $25,000 liability coverage, which covered the accident. Due to those policy limits, however, Bermel claims that Ms. Kizer's insurance did not adequately cover the value of the claim. Through Bermel's employer, Plaintiffs submitted a claim to Liberty Mutual Fire Insurance Company (Defendant) for $100,000 in Under-Insured Motorist coverage (UIM coverage).

Defendant denied the claim, leading Plaintiffs to file this action to obtain additional coverage.[1]

The policy in question exists between Bermel's employer and Defendant. It provides Siemens with UIM coverage for Delaware and New York for the Chrysler 300. The policy provides specified coverage when the policy is in the name of an individual versus when the policy is in the name of a corporation. In that circumstance, as is the case here, UIM coverage is afforded to "anyone 'occupying' a 'covered auto' or a temporary substitute for a 'covered auto.'" Additionally, coverage is afforded to "anyone for damages he or she is entitled to recover because of 'bodily injury' sustained by another 'insured.'"

STANDARD OF REVIEW

Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.[2] "Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances."[3]

DISCUSSION

Defendant reasons that Plaintiffs do not qualify as insured, and are not entitled to coverage, because Bermel was not operating a covered auto or a temporary replacement for a covered auto at the time of the accident. In opposition, Plaintiffs

---

[1] The briefing of the parties does not mention any UIM coverage relative to the involved motorcycle. Presumably, if it had any such coverage, it was less than $100,000 and was exhausted.

[2] *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

[3] *Id*.

suggest that the policy language attempts to tie UIM coverage to the vehicle, as opposed to the individual, impermissibly. To that effect, Plaintiffs argue that the relevant policy language should be disregarded, entitling them to coverage. Additionally, Plaintiffs argue that the policy is ambiguous as to who qualifies as an insured. Consequently, Plaintiffs contend that summary judgment should be denied, because coverage should follow the reasonable expectations of the insured.

In *Frank v. Horizon Assur. Co.*, the Delaware Supreme Court held that UM/UIM coverage is personal to the insured and not the specific vehicle.[4] The reading by this Court of *Frank* is that an individual who purchases UIM coverage from two different insurance companies each on a different vehicle, but each on a vehicle in which that individual, by vehicle ownership, had an insurable interest, has an expectation of UIM benefits. As a result of Frank's legitimate and enforceable acquisition by purchase of two insurance policies, the Delaware Supreme Court determined that Frank acquired a personal right to UIM benefits through both policies, irrespective of which vehicle was being operated at the time of the incident.

In the instant case, Bermel had an insurable interest by ownership in only one vehicle. It was not the vehicle on which Bermel seeks coverage. It cannot be said that he expected to have acquired UIM benefits from a vehicle which he did not own and in which he was not traveling. In the former situation, he would have had an insurable interest by ownership, and could, based on the reasoning of *Frank*, reasonably anticipate available coverage. In the later, he would, by policy language expressly covering permissible employee users, reasonably anticipate available coverage. Neither exists here.

In the case at bar, Plaintiffs have no basis for anticipating UIM benefits from

---

[4] 553 A.2d 1199, 1202-03 (Del. 1989).

the policy covering a vehicle not owned by Plaintiffs and in which neither was an occupant at the time of incident.

Plaintiffs Are Not Covered Under The Terms Of The Policy

Having found the exclusionary language valid under *Frank*, it must still be determined if the language of the policy provides for coverage. Thus, the arguments present with an issue for contract interpretation. "Clear and unambiguous language in insurance contracts will be given its plain and ordinary meaning."[5] When the language is ambiguous, "it is typically construed against the insurer."[6] "If the Court finds the language at issue to be ambiguous, it will construe the language in accordance with the reasonable expectations of the insured."[7]

Courts have interpreted insurance policies covering "bodily injury" in some circumstances to be ambiguous where the insured is a corporation.[8] Language to that effect can be said to be ambiguous on basis that a corporation cannot sustain "bodily injury."[9]

In *Ruggiero*, a claimant was injured while operating a vehicle she owned personally. She was compensated, to a degree, by the other driver's insurance policy, but submitted a claim for UIM coverage under her employer's policy to make up the difference. The claimant was authorized to operate one of the employer's vehicles

---

[5] *Ruggiero v. Montgomery Mut. Ins. Co.*, 2004 WL 1543234 (Del. Super. June 28, 2004) (citing *Rhone-Poulen Basic Chems. Co. v. American Ins. Co.*, 616 A.2d 1192 (Del. 1992)).

[6] *Id.* (citing *Nationwide Mut. Ins. Co. v. Hockessin Const., Inc.*, 1996 WL 453325 (Del. Super. May 15, 1996)).

[7] *Id.* (citing *Nationwide Mut. Ins. Co.*, 1996 WL 453325 at *3).

[8] *See Derrickson v. American Nat'l Fire Ins. Co.*, 538 A.2d 1113 (Del. 1988) (TABLE); *see also Ruggiero*, 2004 WL 1543234 at *2.

[9] *Id.*

under that policy.[10]

The Court found the policy language to be ambiguous, in part, because of language affording coverage to "anyone for damages he or she is entitled to recover because of 'bodily injury' sustained by another 'insured.'"[11] Thus, in that case, the Court construed the policy language in accordance with the reasonable expectations of the insured.[12] The Court there found it unreasonable for an insured to expect an employer's insurance policy to cover accidents that occur outside the scope of employment while an employee is operating a personally owned vehicle.[13]

The pertinent policy language at bar is the same as that which was deemed ambiguous in *Ruggiero*. Accordingly, even assuming for these purposes ambiguity, the Court will apply the doctrine of reasonable expectation. As previously explained, neither Bermel nor any vehicle owned or operated by him in this accident was named under the policy. Bermel was operating a personally owned vehicle at the time of the accident. He was not acting within the scope of any employment of Siemens, which purchased and owned the policy. The Chrysler 300 was not at the scene of the accident. It was not temporarily out of service. Although Plaintiff paid a fee for the personal use of the Chrysler 300, there is no evidence indicating that the fee was intended to pay for insurance. Rather, the relevant information presented suggests that the fee was intended to serve a purpose more akin to a rental fee.

---

[10] *Ruggiero*, 2004 WL 1543234 at *2.

[11] *Id.*

[12] *Id.*

[13] *Id.* at *3.

CONCLUSION

Plaintiffs' accident is not covered under Siemens' insurance policy with Defendant. Accordingly, there is no genuine issue of material fact. Defendant's motion for summary judgment is **GRANTED**.

SO ORDERED this 29th day of March, 2012.

/s/ Robert B. Young
J.

RBY/sal
cc: Opinion Distribution
File