.

IN THE SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSEPH R. SLIGHTS, III
ASSOCIATE JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET
WILMINGTON, DELAWARE 19801
(302) 255-0656

Submitted: October 4, 2005
Decided: October 21, 2005

Kenneth M. Roseman, Esquire
Ciconte, Roseman & Wasserman
1300 King Street
Wilmington, DE 19899

Steven F. Mones, Esquire
Law Offices of Thomas S. Bouchelle
Christiana Executive Campus
131 Continental Drive, Suite 407
Newark, DE 19713

Michael A. Pedicone, Esquire
Michael A. Pedicone, P.A.
109 West 7th Street
P.O. Box 1395
Wilmington, DE 19899

Re: Bjorn Haglid v. Lorenzo Romero Sanchez and Linda Pullman
Bjorn Haglid v. American Independent Insurance Co.
C.A. No. 04C-07-192[1]

Upon Consideration of
Defendants' Lorenzo Romero Sanchez's and Linda Pullman's
Motion for Summary Judgment
GRANTED in part and DENIED in part.

[1] C.A. No. 05C-04-252 was consolidated with this case per the September 14, 2005, Order of Judge Jurden.

Dear Counsel:

Defendants, Lorenzo Romero Sanchez ("Sanchez") and Linda Pullman ("Pullman"), have moved for summary judgment in this motor vehicle negligence case on the ground that Plaintiff, Bjorn Haglid ("Haglid"), has failed to provide sufficient factual support for his allegation that Sanchez was operating Pullman's vehicle at the time of the collision with Haglid's vehicle. The Court finds that the factual record has not been developed adequately enough at this stage of the litigation to justify a summary disposition of the claim against Sanchez. His motion for summary judgment must be denied at this time (without prejudice to his right to renew the motion after discovery). Entry of judgment for Pullman, however, is appropriate given Haglid's concessions at the hearing.[2]

This dispute arises from an automobile accident that occurred on Foulk Road in Wilmington, Delaware between a vehicle owned and operated by Haglid and a vehicle owned by Pullman. According to the arbitration testimony, Pullman authorized Sanchez to operate her vehicle on March 22, 2003, so that Sanchez could attend a party at Ricardo Cuellar's ("Cuellar") apartment located in New Castle, Delaware. Sanchez drove Pullman's vehicle to the party that night and, upon arriving at Cuellar's apartment, placed the keys to the vehicle on a table. Sanchez then remembers falling asleep in the apartment at around midnight and

[2]Counsel conceded that Haglid's agency claims against Pullman were not factually or legally viable.

not waking up until the next morning, even though Pullman had expected Sanchez to return the vehicle that same night. At about 2:30 a.m. on March 23, Pullman's vehicle was involved in a collision with Haglid's vehicle.

Sanchez testified that when he awoke the next morning he could not find the keys to Pullman's vehicle. He remembers Cuellar telling him that a man by the name of Marisio Islis ("Islis") had taken Pullman's vehicle some time during the evening to get cigarettes.[3] Sanchez immediately went to look for Islis and Pullman's vehicle, but his efforts were unsuccessful. Although the vehicle had been taken without Sanchez's permission, he did not report to the police that the vehicle had been stolen, nor did he immediately inform Pullman that her vehicle was missing. In fact, Sanchez did not speak with Pullman until two days after the accident. Pullman, meanwhile, learned of the accident from the police who arrived at her residence approximately one hour after the accident occurred.[4]

Haglid brought suit against Sanchez as the operator of the vehicle and Pullman as the owner of the vehicle. These claims were later consolidated with Haglid's claim for uninsured motorist coverage against his own carrier, American Independent Insurance Company

---

[3]Curiously, based on Sanchez's testimony, it appears that Islis would have driven Pullman's vehicle from New Castle to North Wilmington - where the accident occurred and, coincidentally, where Pullman resides - at two-thirty in the morning just so he could buy cigarettes.

[4] The parties chose not to include the police report in the record and, therefore, the nature of the conversation between the police and Pullman is unknown except for what Pullman has testified to at arbitration.

("American"), premised on the theory that if Sanchez was not operating the Pullman vehicle at the time of the collision, then the vehicle was operated by an unauthorized (and uninsured) phantom driver.

Sanchez and Pullman argue that the record lacks support for Haglid's allegation that Sanchez was operating the Pullman vehicle at the time of the accident. Haglid responds by conceding that he can offer no direct evidence that would place Sanchez behind the wheel at the time of the accident. Nevertheless, Haglid contends that the circumstantial evidence in the record creates an inference that Sanchez was the operator. Specifically, the record indicates that Sanchez was the only person authorized to operate Pullman's vehicle, that Sanchez was expected to return the vehicle at or about the time of the accident, that Pullman's vehicle was never reported stolen, and that both defendants' testimony regarding their initial contact with each other after the accident does not comport with the police report.[5]

It is well settled that after a moving party has met its burden under Rule 56, the party opposing summary judgment has the burden "to establish, with specific facts beyond its allegations and pleadings, that a genuine issue of material fact exists" for trial.[6] This

[5] *See* fn 3. Haglid alleges that Pullman was able to inform the police on the night of the accident that a third-party had taken her vehicle. Both defendants testified that they did not speak with each other until 48 hours after the accident. Haglid, therefore, questions the credibility of that testimony since Pullman could not possibly have known that a third-party had taken her vehicle without first speaking with Sanchez.

[6] *Jones v. Tsoukalas*, No. 88C-AU-26, 1990 WL 105002, at *2 (Del. Super. Ct. July 11, 1990); *see also Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

generally requires a showing of facts in the record that will support its *prima facie* case at trial.[7] The non-movant is not entitled to a trial on the basis of a hope that he can develop some evidence during the trial to support his claim.[8] It follows, then, that an issue raised by the non-moving party as to a witness' "credibility is insufficient to preclude the granting of a motion for summary judgment"[9] because "[i]f the most that can be hoped for is the discrediting of [the] defendants' denials at trial[,] no question of material fact is presented."[10]

Here, Haglid acknowledges that Sanchez has offered sworn testimony that he was not operating Pullman's vehicle at the time of the accident. This unrebutted sworn testimony satisfies Sanchez's initial burden. Haglid also acknowledges that offering evidence in the hope that it might tend to impeach a witness at trial is insufficient to meet his responsive burden. Nevertheless, he contends that the evidence he has proffered is not merely impeachment evidence, but rather it is substantial circumstantial evidence that creates an inference that Sanchez was operating the vehicle at the time of the collision. Haglid submits

---

[7] *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Savor, Inc. v. FMR Corp.*, No. 00C-10-249, 2004 WL 1965869, at *5 (Del. Super. Ct. July 15, 2004).

[8] 10A Wright and Miller, Federal Practice & Procedure § 2727 (3d ed. 2004).

[9] *Harbor Software, Inc. v. Applied Sys., Inc.*, 887 F. Supp. 86, 89 (S.D.N.Y. 1995). *See also Savor*, 2004 WL 1965869, at *8.

[10] *Vantage Point, Inc. v. Parker Bros., Inc.*, 529 F. Supp. 1204, 1213-1214 (E.D.N.Y. 1981) (quoting *Modern Home Inst., Inc. v. Hartford Accident & Indem. Co.,* 513 F.2d 102, 110 (2d Cir. 1975)).

that because circumstantial evidence alone can substantiate a case at trial, such evidence should suffice to satisfy his burden on summary judgment. While Haglid's argument may ultimately prevail, for the reasons set forth below, the Court will defer ruling on the merits of the motion at this time so that further record evidence might be developed.

Although it did not file a formal response, the Court permitted American, at oral argument, to express its concern that it lacked an adequate factual record to offer meaningful resistance to the motion at this time.[11] American contends that if the motion is granted, such a ruling would be premised upon the Court's finding that no evidence exists to establish (by a preponderance of the evidence) that Sanchez was the operator of the vehicle. This dispositive factual finding, according to American, would likely bar American, under the doctrine of collateral estoppel, from attempting later to prove that Sanchez was the driver.[12]

---

[11] American did not file a written response to the motion and has not complied with Del. Super. Ct. Civ. R. 56(f) due to its failure to file an affidavit setting forth the discovery it needs to respond to the motion. At the hearing, American suggested that even though it was not in compliance, it could simply file a motion for reargument pursuant to Del. Super. Ct. Civ. R. 59 in the event the Court granted the motion, and that entertaining its argument now would therefore serve judicial economy. American's expectation of a preserved "second bite at the apple" is grossly misplaced. These cases were consolidated on September 14, 2005 and the hearing was not until October 4, 2005. There was ample time for American to file a response and therefore reargument would not be warranted. *See Desantis v. Chilkotowsky*, No. 02C-12-029, 2004 WL 2914314, at *1 (Del. Super. Ct. Nov. 18, 2004) (Rule 59(e) "affords the trial judge an opportunity to correct errors prior to appeal but is not intended to provide a party with an opportunity to raise new arguments. [O]nly arguments raised prior to the motion for reargument will be considered."). In the interest of expediency, however, the Court in this case will consider American's responses at the hearing as a substantive opposition to the motion.

[12] Collateral estoppel "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). *See also Banther v. State*, No. 45, 2005 WL 2149298, at *3 (Del. Aug. 23, 2005) (quoting *Ashe*); *Chrysler Corp. v. New Castle County*, 464 A.2d 75, 80 (Del. 1983) ("[W]hen an issue of fact which was necessary to the

Therefore, American seeks to take further discovery so that it may have an opportunity to uncover evidence that Sanchez was the operator of the vehicle.

Upon review of the record and given American's well-founded (albeit ill-timed) opposition, the Court is satisfied that entry of judgment for Sanchez at this time would be premature. Summary judgment is not appropriate when the Court determines that it does not have sufficient facts in the record to enable it to apply the law to the facts before it.[13] Such is the case here. The Court is not inclined to rule on a record which is comprised only of Sanchez's and Pullman's testimony from the arbitration hearing. Prudence dictates that further discovery be permitted, to include production of the police report (and a possible deposition of the investigating officer) as well as discovery from Cuellar, Islis and the passenger in Haglid's car. If appropriate, Sanchez may renew his motion for summary judgment in accordance with the Trial Scheduling Order after the close of the fact discovery.

Pullman's motion for summary judgment is **GRANTED**. Sanchez's motion for

---

outcome of a valid prior judgment has been fully litigated, it may not be reargued by a party to that prior proceeding."). Although the Court has not fully considered the issue, it appears likely that a finding in this consolidated proceeding that Haglid, as a matter of undisputed fact and law, had not established that Sanchez was the operator of the vehicle would be binding upon American in connection with its defense of the uninsured motorist claim.

[13] *See Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962). *See also Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995)(citation omitted)("summary judgment may not be granted ... if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances").

summary judgment is **DENIED** with leave to renew after further development of the record.

IT IS SO ORDERED.

_____
Judge Joseph R. Slights, III

Original to Prothonotary