IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRELL F. SANDERS,	§	
	§	
Plaintiff Below-Appellant,	§	No. 509, 2003
	§	
	§	Court Below---Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	§	C.A. No. 02C-03-048
	§	
	§	
	§	
Defendant Below-Appellee.	§	
	§	

Submitted: October 18, 2004
Decided: December 16, 2004

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 16th day of December 2004, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Darrell F. Sanders, filed an appeal from the Superior Court's September 12, 2003 order granting the motion of defendant-appellee, State Farm Mutual Automobile Insurance Company, for summary judgment.[1] State Farm has moved to affirm the judgment of the Superior Court on the ground that it is

[1] Super. Ct. Civ. R. 56.

manifest on the face of Sanders' opening brief that the appeal is without merit.[2] We agree and AFFIRM.[3]

(2) Sanders filed an action in the Superior Court for a declaratory judgment that he had comprehensive (including theft), collision and rental car coverage under his State Farm automobile policy for the theft of and resulting damage to his automobile in Detroit, Michigan.[4] State Farm defended, in part, on the grounds that Sanders' policy did not include the necessary types of coverage at the time of the loss and there was no prior written modification of the policy that included such coverage. Sanders subsequently took the position that, several months before the loss of his vehicle, State Farm, through its agent, issued him an oral binder of coverage. Although not pleaded in his complaint, Sanders also sought reformation of his policy to include the oral binder allegedly issued by the State Farm agent.

(3) We have carefully reviewed the record in this case, including the transcript of the Superior Court's June 30, 2003 hearing on State Farm's motion for summary judgment. The transcript reflects that, in support of its motion, State Farm submitted documents, including internal State Farm documents and a police report,

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[2] Supr. Ct. R. 25(a).

[3] In the alternative, State Farm has moved to dismiss Sanders' appeal on the ground that he did not comply with this Court's September 27, 2004 Order requiring him to file his opening brief on or before October 5, 2004. Supr. Ct. R. 29(b). While it appears that Sanders did not comply strictly with this Court's Order, we, nevertheless, hereby deny the motion to dismiss in the interest of justice.

[4] The record indicates that the Detroit police recovered Sanders' stolen and wrecked vehicle on August 31, 2001.

showing that the Detroit police recovered Sanders' wrecked vehicle at 3:00 a.m. on August 31, 2001, several hours before the State Farm agent placed additional coverage on Sanders' policy at 12:41 p.m. on that date.

(4) In response to the motion, Sanders submitted an affidavit in which he stated the following: On or about July 7, 2000, Sanders requested collision and rental car coverage from State Farm for his automobile and, on that same date, a State Farm agent named Shirley Evans inspected the vehicle and documented the mileage. A few months later, he went to a rental car company and was told that he did not have rental car coverage. He called Shirley Evans and she represented that she must have made an error and would correct the problem. In late August 2001, he again attempted to rent a car and, before doing so, checked with another agent at Shirley Evans' office to make sure that he had collision and rental car coverage. The agent he spoke to confirmed that his policy included this coverage.

(5) At the hearing on State Farm's summary judgment motion, the Superior Court judge questioned Sanders and State Farm's counsel concerning the state of the record at that point.[5] Sanders conceded that State Farm had informed him that Shirley Evans was an independent agent and not a State Farm employee and that, therefore, State Farm could not compel her attendance at a deposition. Sanders also conceded that he had no basis upon which to contest the veracity of the documents

[5] At the time of the hearing, discovery in the case was closed and the pretrial conference was scheduled for October 9, 2003.

submitted by State Farm. Sanders did not dispute that the policy language required any modification of the policy to be in writing. The judge noted that the factual record was complete and that, on State Farm's motion for summary judgment, he must view all the statements contained in Sanders' affidavit as truthful. The judge then instructed the parties to submit memoranda solely on the legal issue of whether an oral promise by an independent agent creates a binder of coverage.

(6) Our review of a trial judge's grant of summary judgment is de novo.[6] There must be no dispute of material fact and we view the record in the light most favorable to the non-moving party.[7] We also examine the trial judge's legal rulings to determine whether there was error either in formulating or in applying the relevant legal precepts.[8]

(7) Reviewing de novo the Superior Court's grant of summary judgment in favor of State Farm, we find no reversible error. Even assuming the truthfulness of the facts recited in Sanders' affidavit, State Farm clearly was entitled to judgment as a matter of law. As the Superior Court found, the policy provision that required any modification to the policy to be set forth in writing is clear and unambiguous. In such circumstances, Delaware law does not permit a court to entertain extrinsic evidence of

[6] *Stroud v. Grace*, 606 A.2d 75, 81 (Del. 1992).
[7] Id.
[8] Id.

a contrary agreement.[9] In addition, the Superior Court correctly held that, on the basis of the record before it, Sanders was not entitled to reformation of the insurance contract as a matter of law.[10]

(8) It is manifest on the face of Sanders' opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.[11]

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), State Farm's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[9] *ABB Flakt, Inc.v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 731 A.2d 811, 816 (Del. 1999) (Delaware courts will not consider extrinsic evidence to determine the intent of the parties where the language of an insurance policy is clear and unambiguous).

[10] *Cerberus Intern., Ltd. v. Apollo Mgt., L.P.*, 794 A.2d 1144, 1151-52 (Del. 2002) (in order to be entitled to reformation, the plaintiff must show by clear and convincing evidence that the parties came to a specific prior understanding that differed materially from the written agreement). The Superior Court addressed this argument even though it was beyond the scope of its instructions for the parties' supplemental memoranda.

[11] To the extent Sanders seeks to appeal any of the Superior Court's rulings regarding discovery, we affirm any and all such rulings as a proper exercise of the Superior Court's discretion. *In re Rinehardt*, 575 A.2d 1079, 1082 (Del. 1990). To the extent Sanders raises claims not presented to the Superior Court below, we decline to address those issues. Supr. Ct. R. 8.