STATE OF MICHIGAN

COURT OF APPEALS

HARTFORD ACCIDENT & INDEMNITY COMPANY and TOTAL PETROLEUM, INC.,

Plaintiffs-Appellants/ Cross-Appellees,

v

THE USED CAR FACTORY, INC.,

Defendant-Appellee/ Cross-Appellant.

UNPUBLISHED
December 9, 1997

No. 198104
Macomb Circuit
LC No. 92-000399-NZ

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant summary disposition pursuant to MCR 2.116(I)(2). Defendant cross-appeals from several orders of the lower court. We affirm the lower court's orders.

The decedent agreed to purchase a used car from defendant, and defendant delivered the vehicle to the decedent on January 29, 1990. Upon delivery, defendant and the decedent completed a form RD-108 application for title and registration. The decedent did not present a certificate of insurance but informed defendant that his wife's insurance policy covered him and promised to return with proof of this insurance. Defendant issued the decedent a temporary registration permit. On February 13, 1990, fifteen days after he purchased the vehicle, the decedent was driving the vehicle and collided with an empty tanker truck owned by plaintiff Total Petroleum, Inc. The driver of the tanker truck was seriously injured in the accident, and the decedent was killed. The decedent had not presented defendant a certificate of insurance, nor had he purchased insurance for the vehicle. Upon learning of the accident, defendant altered the RD-108 application to read "title only" then submitted the application to the Secretary of State with a late fee payment. The Secretary of State processed the application on February 16, 1990, and issued a certificate of title in the decedent's name on February 20, 1990.

A provision of the insurance agreement between the plaintiffs stated that plaintiff Hartford would pay all sums the insured was legally entitled to recover as compensatory damages for bodily injury caused by an accident from the owner or driver of an uninsured motor vehicle. Pursuant to this provision, the tanker truck driver filed an uninsured motorist claim against plaintiff Hartford, and an arbitration award was entered in the driver's favor. Plaintiffs filed this suit seeking to hold defendant liable for the sums it paid to the tanker truck driver. After several motions for summary disposition were filed by each party, the lower court eventually granted defendant summary disposition on the basis that plaintiffs were not entitled to seek reimbursement for uninsured motorist benefits under MCL 500.3116(2); MSA 24.13116(2) because the accident involved an insured motor vehicle. This Court reviews summary disposition decisions de novo, to determine whether the prevailing party was entitled to judgment as a matter of law. *Marx v Dep't of Commerce*, 220 Mich App 66, 70; 558 NW2d 460 (1996).

Because defendant's liability turns on whether it was the owner of the vehicle at the time of the accident, we first address the ownership issue that defendant raised on cross-appeal. The lower court found that defendant was the owner of the vehicle when the accident occurred on February 13, 1990, because it failed to comply with the statutory requirement to transfer title within fifteen days of the delivery of the vehicle. See MCL 257.217(2); MSA 9.1917(2), MCL 257.235(1); MSA 9.1935(1). Defendant argues that it was not the owner of the vehicle when the accident occurred because title had transferred to the decedent when defendant and the decedent signed the application for transfer of title on January 29, 1990.

MCL 257.233(5); MSA 9.1933(5) states that the effective date of the transfer of title is the "date of execution of either the application for title or the certificate of title." Execution occurs when the application is sent with the necessary forms to the Secretary of State. *Ladd v Ford Consumer Finance Co, Inc,* 217 Mich App 119, 129; 550 NW2d 826 (1996) (citing *Goins v Greenfield Jeep Eagle, Inc,* 449 Mich 1, 14; 534 NW2d 467 (1995)). Therefore, defendant remained the owner of the vehicle when the accident occurred on February 13, 1990, because execution did not transpire until defendant sent the application to the Secretary of State. There is no dispute that if defendant was the owner of the vehicle, then the vehicle was insured under defendant's commercial auto policy.

Defendant argues that our Supreme Court's holding in *Goins, supra,* should alter this conclusion because our Supreme Court found that the failure to comply with the statutory requirements for transferring title will not void a transfer of ownership; however, defendant's argument is without merit because the holding in *Goins* was not so broadly stated. In *Goins, supra,* the act of the car dealer that our Supreme Court rejected as a basis for voiding the transfer of title was the dealer's failure to verify that the insurance that the transferee represented on the application was indeed his insurance, a requirement that is not statutory but is imposed by a rule contained in the informational manual promulgated by the Secretary of State. In contrast, defendant here failed to comply with the statutory time requirements for transferring title. This Court has consistently held that a dealer retains ownership of a vehicle it sells until the dealer complies with the statutory provisions for transferring title to the purchaser. See, e.g., *Whitcraft v Wolfe,* 148 Mich App 40, 50-51; 384 NW2d 400 (1985); *Security*

Ins Co of Hartford v Daniels, 70 Mich App 100, 106; 245 NW2d 418 (1976); *Messer v Averill*, 28 Mich App 62, 66; 183 NW2d 802 (1970).

Next, we address plaintiffs' arguments in light of our holding that defendant owned the vehicle at the time of the accident. Plaintiffs argue that the lower court should not have applied MCL 500.3116(2); MSA 24.13116(2) in granting defendant summary disposition because the statute applies only to reimbursement for personal protection insurance benefits, whereas plaintiffs are seeking reimbursement for the uninsured motorist benefits paid to the tanker truck driver. Plaintiffs argue that their claim to reimbursement is instead supported by this Court's holding in *Citizens Ins Co of America v Buck*, 216 Mich App 217, 224-228; 548 NW2d 680 (1996), in which this Court permitted the plaintiff to seek reimbursement of uninsured motorist benefits from the uninsured motorist under the theory of equitable subrogation.

Even assuming arguendo that MCL 500.3116(2); MSA 24.13116(2) is limited to reimbursement for personal protection insurance benefits, the lower court nonetheless properly dismissed plaintiffs' claim because our decision in *Buck* is inapplicable here. Plaintiffs are not seeking reimbursement from an uninsured motorist (the decedent or his estate); instead, plaintiffs are seeking to hold defendant civilly liable under the owner's liability statute, MCL 257.401(1); MSA 9.2101. This Court stated in *Buck, supra* at 227 n 2, that if the defendant in that case had been properly insured, then the plaintiff would not have been able to recover uninsured motorist benefits. Because defendant in this case was properly insured at the time of the accident, plaintiffs may not seek reimbursement of uninsured motorist benefits from defendant.

Additionally, our decision in *Buck* is inapplicable here because equitable subrogation is unavailable to plaintiff Hartford. Equitable subrogation is a legal fiction through which a person who pays a debt, for which another is primarily responsible, is substituted or subrogated to all the rights and remedies of the responsible party. *Neal v Neal*, 219 Mich App 490, 495; 557 NW2d 133 (1996). On the theories of recovery advanced by the plaintiffs in the present case, defendant would have been immune from tort liability to the tanker truck driver because defendant was insured at the time of the accident. MCL 500.3135(2); MSA 24.13135(2); *Citizens Ins Co of America v Tuttle*, 411 Mich 536, 548; 309 NW2d 174 (1981). As subrogee to the tanker truck driver, plaintiff Hartford cannot acquire greater rights than those possessed by the subrogor. *Commercial Union Ins Co v Medial Protective Co*, 426 Mich 109, 117; 393 NW2d 479 (1986).

Plaintiffs also rely on case law that provides that if a secondary insurer is obligated to pay or defend a claim that is payable by a primary insurance company, then the secondary insurer becomes subrogated to the rights of the insured against the primary insurer. See *Federal Kemper Ins Co v The Western Ins Cos*, 97 Mich App 204, 208; 293 NW2d 765 (1980); *Farmers Ins Group v Progressive Casualty Ins Co*, 84 Mich App 474, 484; 269 NW2d 647 (1978). However, these cases are inapplicable because plaintiffs are not seeking payment from defendant's insurer.

Next, plaintiffs argue that the lower court erred in granting summary disposition in favor of defendant because the only issue left to be determined in this case was the amount of plaintiffs' damages, and defendant presented no documentary evidence to refute plaintiffs' evidence of damages.

On plaintiffs' claim against defendant under the owner's liability statute, MCL 257.401(1); MSA 9.2101, the lower court granted plaintiffs summary disposition as to liability alone and only if defendant was uninsured. Accordingly, with regard to damages, the court denied plaintiffs summary disposition because no evidence had been offered to prove whether the vehicle was insured at the time of the accident. Because plaintiffs did not dispute the fact that the vehicle was insured at the time of the accident, the burden did not shift to defendant to produce documentary evidence to refute plaintiffs' assertions. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). Therefore, plaintiffs' argument has no merit.

Last, plaintiffs argue that they are entitled to recover damages from defendant under common law indemnification. Common law indemnity is based on the equitable principle that where the wrongful act of one results in another being held liable, the latter party is entitled to restitution from the wrongdoer. *Latimer v William Mueller & Son, Inc*, 149 Mich App 620, 638; 386 NW2d 618 (1986). The lower court dismissed this claim because it could discern no relationship among the parties that warranted defendant being held liable for plaintiffs' losses. We agree. Plaintiff Hartford was liable for the damages resulting from the accident because of plaintiffs' insurance agreement and not because of any wrongful act by defendant. Therefore, the court did not clearly err in dismissing this claim.

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard A. Griffin
/s/ Joel P. Hoekstra