

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRUDENTIAL GENERAL INSURANCE)
COMPANY, and Its Successor) Civil Action
In Interest,) No. 04-CV-00134
LIBERTY MUTUAL INSURANCE COMPANY,))
)
Plaintiffs)
)
vs.)
)
SAMIA AZAR;)
BAHAA AZAR; and)
DAN B. AZAR,)
)
Defendants)

* * *

APPEARANCES:

KARL R. HILDABRAND, ESQUIRE,
On behalf of Plaintiffs

JOHN C. GULDIN, ESQUIRE
On behalf of Defendants

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Plaintiffs' Motion for Summary Judgment Against Defendants filed September 12, 2004. The case is a declaratory judgment action in which plaintiffs seek declaration as to the rights and responsibilities arising from an automobile insurance policy belonging to defendants Samia Azar and Bahaa Azar.

Plaintiffs argue that there is an actual case and controversy before this court which allows the court to decide this declaratory judgment action, and that, on the merits of the case, the automobile policy in question does not provide coverage to defendant Dan B. Azar. Defendants argue that there is no case or controversy for this court to decide and that any decision made by the court as to the summary judgment motion would be merely advisory.

For the reasons set forth below, we conclude that there is a case and controversy for this court to decide. In deciding the case we grant plaintiffs' motion for summary judgment and issue a declaratory judgment in favor of plaintiffs, declaring that defendant Dan B. Azar is not covered under his parent's automobile policy.

Jurisdiction

Jurisdiction is based on diversity of citizenship. 28 U.S.C. § 1332. Plaintiff Prudential General Insurance Company is a Delaware Corporation with its principal place of business in New Jersey. Its successor in interest, Liberty Mutual Insurance Company, is a Massachusetts company with its principal place of business in Massachusetts. Defendants are each residents of Allentown, Lehigh County, Pennsylvania. Plaintiffs aver that the amount in controversy exceeds the jurisdictional limits.

Declaratory judgment actions are permitted under Chapter 151 of Title 28 of the United States Code:

(a) In a *case of actual controversy* within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. (Emphasis added.)

28 U.S.C. § 2201. The within dispute arises concerning the meaning of the phrase "case of actual controversy" in Section 2201.

Venue

Venue is proper in the United State District Court for the Eastern District of Pennsylvania because the events and omissions giving rise to this claim occurred within this district. See 28 U.S.C. §§ 118, 1391(a).

Standard of Review

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986);
Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564,
568 (3d Cir. 1986).

Only facts that may affect the outcome are material. All reasonable inferences from the record are drawn in favor of the non-movant. Anderson, supra. Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990).

Facts¹

This case arises from a motor vehicle accident which occurred on May 31, 2002 at 11:34 p.m. at the intersection of Union Boulevard and Dauphin Street in Allentown Lehigh County, Pennsylvania. Defendant Dan B. Azar ("Mr. Azar") was driving his 1998 Ford Mustang automobile westbound on Union Boulevard. He was stopped at a traffic signal at the intersection, when his vehicle was struck in the rear by a 1987 Nissan Maxima automobile

¹ The facts of this case are not in dispute. On November 8, 2004, Plaintiffs filed Plaintiff's [sic] Statement of Material Fact in Support of Motion for Summary Judgment. On December 3, 2004, defendants filed Defendants' Reply to Plaintiffs' Statement of Material Facts in Support of its Motion for Summary Judgment. In this reply, defendants admit to each of plaintiffs' proposed statements of material fact. Defendants have not offered any additional proposed statements of material fact. Accordingly, we accept plaintiffs' facts as true and adopt them as the facts of this case.

operated in the same direction on the same street by an uninsured driver. Mr. Azar owned the Mustang involved in the accident as well as one other car, which were both insured with State Farm Insurance Company ("State Farm").

At the time of the accident, Mr. Azar resided with his parents, defendants Samia and Bahaa Azar. Plaintiff Prudential General Insurance Company ("Prudential") had issued an insurance policy ("the policy") to Samia and Bahaa Azar which covered their two Toyota motor vehicles. The policy provided uninsured motor coverage to Samia and Bahaa Azar in the amounts of \$100,000 per person and \$300,000 per accident.

The policy contains several exclusions which provide that uninsured motorist coverage would not be provided for bodily injury by anyone using an automobile not insured under the policy, which is owned by a household member. Specifically, part 4 of the insurance policy addresses uninsured motorist coverage. Subsection E of part 4 discusses losses which are not covered. Paragraph number 2 of subsection E provides that, for owned vehicles, "We will not pay for bodily injury caused by anyone using a motor vehicle or trailer not insured under this Part, owned by you or a household resident."

Following the accident, Mr. Azar submitted an uninsured motorist claim to State Farm. Subsequently, on July 29, 2003 Mr. Azar, through counsel, submitted a claim for uninsured motorist

coverage to Prudential under his parent's policy. Mr. Azar filed subsequent duplicative claims with Prudential on September 20, 2003 and October 8, 2003. In all three claims, Mr. Azar requested arbitration.

Plaintiffs filed a Complaint for Declaratory Judgment on January 13, 2004. In the complaint, plaintiffs ask the court to "[A]djudicate the rights, status and legal relations of the parties herein with respect to the Prudential policy."

(Complaint for Declaratory Judgment, Relief Clause at page 5). Specifically, plaintiffs seek a declaration that they have no duty to provide uninsured motorist coverage to Mr. Azar under his parent's policy for the May 31, 2002 accident.

In the complaint plaintiffs note that Mr. Azar had submitted a claim to Prudential. The complaint also indicates that plaintiffs

anticipated that [Mr. Azar] may file an action against [Prudential] seeking uninsured motorist coverage on the alleged basis that he was a resident relative insured under the uninsured motorist provisions of the Prudential General policy at the time of the accident.

(Complaint for Declaratory Judgment, paragraph 19 at page 5.)

On April 30, 2004 defendants filed Defendants' Answer to Plaintiffs' Complaint. In their answer, defendants raise three affirmative defenses: first, that there is no case or controversy for the court to decide; second, that no lawsuit has

been instituted against the policy; and third, that any Opinion rendered by the court in this matter would be advisory because plaintiffs only anticipate that an action may be brought, and no action has already been brought.

After plaintiffs commenced this lawsuit, counsel for Mr. Azar sent a letter to plaintiffs' counsel on July 19, 2004 withdrawing, without prejudice, the arbitration request. The body of the letter, in its entirety reads, "Please be advised that on behalf of my client, Dan Azar, I am hereby withdrawing, without prejudice, my request for Arbitration at this time."²

Contentions of the Parties

Plaintiffs argue that an actual controversy exists in a declaratory judgment action when the parties are situated to have adverse legal interests. Shelby Casualty Insurance Company v. Statham, 158 F. Supp.2d 610, 618 (E.D. Pa. 2001)(Van Antwerpen, J.). Under Shelby, adverse legal interests can arise when one party seeks to be paid under an insurance policy and the other claims it has no obligation to pay.

Although defendant Dan B. Azar has withdrawn his arbitration demand, that action was not effective to eliminate a case or controversy because he did so without prejudice. Additionally, he did not withdraw his claim for benefits. There

² Letter from John C. Guldin, Esquire to Karl R. Hildabrand, Esquire, dated July 19, 2004.

is nothing to prevent Mr. Azar from resubmitting his demand for arbitration if this matter is dismissed for lack of a case or controversy.

Concerning the merits of the case, plaintiffs also argue that defendants have not objected to any of plaintiffs' proposed statements of material fact. Therefore, there are no facts in dispute. The Mustang was not included nor described in the policy. No premiums were paid on the policy for the Mustang.

In addition, part 4 of the policy clearly excluded recovery for "bodily injury caused by anyone using a motor vehicle or trailer not insured under this Part, owned by you or a household resident". This exclusion language, typically referred to as the "other household vehicle exclusion", is not contrary to public policy and should be enforced. See Prudential Property and Casualty Insurance Company v. Colbert, 572 Pa. 82, 813 A.2d 747 (2002).

In their reply to plaintiffs' motion for summary judgment, defendants argue that this case presents no case or controversy for the court to decide. Mr. Azar was not in a contractual relationship with Prudential; his parents were. His only relationship with Prudential was that he submitted a notice of a potential claim.

Defendants also argue that Mr. Azar withdrew the claim in his letter of July 19, 2004. Once the claim was withdrawn,

plaintiffs and Mr. Azar ceased having adverse legal interests. The statute of limitations has not yet run for bringing an uninsured motorist claim, and will not run until May 30, 2006. It is premature to terminate defendants' rights two years prior to end of the statute-of-limitations period.

Discussion

We agree with plaintiffs that there is a case and controversy before the court. We find Shelby, supra, persuasive and applicable to this case. In Shelby defendant policyholders made a claim against their motor vehicle insurance carrier. Plaintiff insurance carrier initiated a declaratory judgment action to determine the scope of its obligation under its policy with defendants. Defendants argued, among other things, that there was no case or controversy for the court to decide. In concluding that there was an actual controversy, the court in Shelby reasoned:

Initially, it must be noted that it is the Defendants who have made a claim for benefits under the Shelby policy, thus creating a dispute as to the legal relationship between the parties. Clearly, the fact that one party seeks to be paid under an insurance contract and another claims that it is under no obligation to do so creates "adverse legal interests." (Citations omitted.)

Shelby, 158 F. Supp.2d at 618-619. The within case presents a similar situation.

Defendants argue that the actual claim or controversy ceased when Mr. Azar withdrew his claim for benefits in his letter of July 19, 2004. Our review of this letter reveals that the only thing the letter accomplished was to withdraw Mr. Azar's request for arbitration of his claim.

The letter did not indicate that Mr. Azar was withdrawing the claim itself, only that he was no longer seeking arbitration of the claim. Thus, defendants' argument that there is no case or controversy because Mr. Azar withdrew his claim on July 19, 2004 is belied by the contents of the letter itself.

Alternatively, even if this letter did withdraw Mr. Azar's claim without prejudice (as defendants contend), plaintiffs would still be able to bring this declaratory judgment action to determine their responsibilities under the policy.

Defendants created an adverse legal interest when they first made a claim for benefits under the insurance policy. Plaintiffs reviewed the claim, and after doing so disputed that the insurance policy provided benefits under the facts of the claim. In response to defendants' claim and plaintiffs' disputed coverage, plaintiffs filed this action to obtain a legal determination as to scope of their responsibility under the policy. This coverage dispute is an adverse legal interest which creates a case of actual controversy that may be appropriately raised in a declaratory judgment action before this court.

28 U.S.C. § 2201.

Concerning the merits of plaintiffs' case, at oral argument defense counsel acknowledged that under current Pennsylvania law, the household vehicle policy exclusion is consistent with the underlying public policy of the Pennsylvania Motor Vehicle Financial Responsibility Law; and, as such, is enforceable. Colbert, supra. From our review of the applicable precedent, we agree.

Accordingly, Prudential and its successor in interest, Liberty Mutual Insurance Company, are each entitled to a declaratory judgment declaring that under the state of the present law,³ defendant Dan Azar is not an insured under the Prudential General Insurance Company Automobile policy held by his parents, defendants Samia and Bahaa Azar, and that plaintiffs are under no legal obligation to provide Dan Azar with uninsured motorist coverage for this accident.

³ Although defendant Dan B. Azar concedes that under the present state of Pennsylvania law he is not an insured under his parents automobile policy for purposes of his May 31, 2002 accident, under the present state of Pennsylvania law, the policy gives defendant four years, or until May 2, 2006 to file (or reinstate) a claim for uninsured motorist coverage. We agree with defendants that, theoretically, the law could change in the 8 months remaining of the four-year claim period. It is the sense of this Order in entering a declaratory judgment in favor of Prudential "under present law", that in the event that law changes to favor defendant Dan Azar's position, prior to May 2, 2006, Mr. Azar shall not be precluded from reinstating his claim for uninsured motorist benefits on or before that time.

Conclusion

For all the foregoing reasons, we grant plaintiffs' motion for summary judgment and enter declaratory judgment in favor of plaintiffs. Specifically, we declare that plaintiffs are under no legal obligation to provide uninsured motorist coverage to defendant Dan B. Azar under the policy issued by Prudential to defendants Samia Azar and Bahaa Azar for the motor vehicle accident involving Dan B. Azar and his 1998 Ford Mustang vehicle on May 31, 2002 at the intersection of Union Boulevard and Dauphin Street in Allentown, Lehigh County, Pennsylvania.

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COMPANY, and Its Successor) Civil Action
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Plaintiffs)
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vs.)
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SAMIA AZAR;)
BAHAA AZAR; and)
DAN B. AZAR,)
)
Defendants)

O R D E R

NOW this 27th day of September, 2005, upon consideration
of Plaintiff's [sic] Motion for Summary Judgment Against
Defendants filed September 12, 2004; upon consideration of

Defendants' Reply to Plaintiffs' Motion for Summary Judgment and Brief in Support Thereof filed September 27, 2004; after oral argument held January 28, 2005; and for the reasons expressed in the accompanying Memorandum,

IT IS ORDERED that plaintiffs' motion for summary judgment is granted.

IT IS FURTHER ORDERED that judgment is entered in favor of plaintiffs Prudential General Insurance Company and its successor in interest Liberty Mutual Insurance Company, and against defendants Samia Azar, Bahaa Azar, and Don B. Azar.

IT IS FURTHER ORDERED that plaintiffs' request for declaratory relief is granted, and the court declares that plaintiffs are under no legal obligation to provide uninsured motorist coverage to defendant Dan B. Azar under the policy issued to defendants Samia and Bahaa Azar for the motor vehicle accident in which defendant Dan B. Azar was involved on May 31, 2002 at the intersection of Union Boulevard and Dauphin Street in Allentown, Lehigh County, Pennsylvania, while he was operating his 1998 Ford Mustang automobile.

IT IS FURTHER ORDERED that the Clerk of Courts is directed to mark this case closed for statistical purposes.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge