IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

EDWIN DIAZ DAVILA,)	
)	
)	
Plaintiff,)	
)	
v.)	C.A. No. CPU4-12-003218
)	
TITAN INDEMNITY COMPANY,)	
)	
)	
Defendant.)	

Submitted: June 3, 2013 Decided: July 1, 2013

Mary Jean Boyle, Esquire Longobardi & Boyle, LLC 1303 Delaware Avenue, Suite 105 Wilmington, DE 19806 Attorney for Plaintiff Sean A. Dolan, Esquire Law Office of Cynthia G. Beam 131 Continental Drive, Suite 407 Newark, DE 19713 Attorney for Defendant

MEMORANDUM OPINION AND ORDER

This is a breach of contract action for failure to pay personal injury protection ("PIP") benefits. Trial in the above captioned matter took place on Monday, June 3, 2013 in the Court of Common Pleas, New Castle County, State of Delaware. At the close of each party's presentation, the Court reserved decision. This is the Court's Final Decision and Order.

PROCEDURAL BACKGROUND

On August 15, 2012, Plaintiff Edwin Diaz Davila ("Davila") filed a complaint against Nationwide Insurance Co., ("Nationwide") alleging that Nationwide breached the parties insurance agreement when it failed to provide PIP benefits for the payment of medical expenses

after Davila was involved in an automobile accident with another motorist. On October 5, 2012, Nationwide filed an answer, in which it denied all allegations made by Davila. On December 4, 2012, Davila filed an amended complaint in which Davila named Titan Indemnity Company ("Titan") as the proper party in these proceedings. Additionally, on December 4, 2012, a stipulation and order to amend the caption and parties was filed and subsequently granted, and Titan was named in place of Nationwide as the defendant.

A bench trial was held on June 3, 2013. At trial, the Court heard testimony from Davila, and documentary evidence was submitted by both parties.¹ Davila argues that Titan breached the insurance agreement between the parties when Titan refused to extend PIP benefits after the automobile accident on May 31, 2012. Titan contends that Davila's injuries are not covered by the insurance policy because Jose Vinas ("Vinas"), the original insurer of the vehicle, does not have an insurable interest in the vehicle.

FACTS

Davila testified for his own case-in-chief. According to Davila, he purchased a 1997 Crown Victoria form David Crespa-Rivera, Davila's cousin, for the purpose of selling the vehicle to Vinas, to "make some quick money." On April 13, 2011, the title to the Crown Victoria was transferred from Davila to Vinas; however, Vinas lacked the necessary capital to immediately purchase the vehicle, and did not take possession of the car. The parties agreed that Davila would retain possession of the Crown Victoria until Vinas could raise the capital to purchase the

¹ Joint Exhibits 1 through 8 were stipulated to, and admitted into evidence.

² No documents concerning the date of purchase of the 1997 Crown Victoria were submitted to the court, or stipulated to, and there was no testimony relating to the purchase of the Crown Victoria.

³ The document in question, Joint Exhibit 8, indicates that legal title was transferred to Vinas as a result of a transaction for \$300.00, however, Davila's testimony clarified that the transaction never occurred, and no money ever changed hands.

vehicle, at which point it would be delivered to Vinas. On April 19, 2011, Vinas—who still did not have possession of the Crown Victoria—purchased insurance for the vehicle from Titan. At some point, Vinas changed his mind on purchasing the Crown Victoria when he saw Davila driving a 2001 Mitsubishi Eclipse, which was owned by Crespa-Rivera. Vinas could not afford to purchase the Eclipse outright, so an agreement mirroring the agreement for the Crown Victoria was made. Davila agreed to purchase the Eclipse, and retain possession of the vehicle until Vinas could raise the necessary capital.

Davila testified that he originally intended to close on the sale of the Eclipse within two days after he purchased it from Crespa-Rivera, but the sale was again delayed while Vinas secured financing. Instead of closing the sale on May 16, 2012, the transaction was put on hold indefinitely. However, the insurance policy Vinas purchased for the 1997 Crown Victoria was subsequently transferred to the 2001 Mitsubishi Eclipse shortly before the accident occurred. On May 31, 2012, Davila was driving the Eclipse when it collided with Ms. Hammond, who failed to yield the right of way during a lane change. Davila further testified that after the automobile accident occurred, Vinas no longer wanted to purchase the Eclipse. At that point, Davila purchased his own insurance policy for the Eclipse, and kept it for personal use.

From Davila's testimony, it is clear that the title for the Eclipse was not transferred to Vinas. It is also clear that Vinas did not take physical possession of the Eclipse at any time, and there were no payments made for the Eclipse by Vinas.

LEGAL STANDARD

The Court was the trier of fact at trial, and therefore the Court was "the sole judge of the credibility of witnesses and responsible for resolving conflicts in testimony."

⁴ Knight v. State, 690 A.2d 929, 932 (Del. 1996).

18 Del. C. § 2706 provides, in pertinent part:

- (a) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.
- (b) "Insurable interest" as used in this section means any actual, lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction or pecuniary damage or impairment.
- (c) The measure of an insurable interest in property is the extent to which the insured might be directly or indirectly indemnified by loss, injury or impairment thereof.

"The coverage determination is based on the absence or presence of an insurable interest in the vehicle established through the surrounding circumstances evidencing the intent of the seller to relinquish ownership of her vehicle." The purpose of §2118 is "to allow persons injured in automobile accidents to receive from their own carriers 'the economic benefit of immediate payment without awaiting protracted litigation." "Stated differently, the statutory scheme set forth in 21 *Del. C.* § 2118 reflects a legislative intent to create incentives for the purchase of motor vehicle liability insurance by requiring that injured insured parties are promptly compensated for their injuries by their insurers who may then resolve disputes between insurers." However, "public policy has framed law to prevent one from insuring the property of another for his or her own benefit."

To prevail on a claim for breach of contract, the plaintiff must establish by a preponderance of the evidence that: (1) a contract existed between the parties; (2) breach by

⁵ Liberty Mut. Ins. Co. v. Devlin, 1998 WL 283424, at *4 (Del. Super. Ct. Mar. 26, 1998).

⁶ Choudry v. State Ins. Coverage Office, 2012 WL 3793446, at *3 (Del. Ct. Comm. Pleas Aug. 1, 2012).

^{&#}x27; Id.

⁸ Malloy v. Fidelity & Guar. Co., 1992 WL 179511, at *3 (Del. Super. Ct. Jun. 16, 1992).

defendant of an obligation imposed by the contract, and (3) plaintiff suffered damages as a result of that breach.⁹

DISCUSSION

a. VINAS DOES NOT POSSESS AN OWNERSHIP INTEREST

Davila contends that Vinas had an ownership interest in the Eclipse. As standard above states, in order for a contract to be enforced, especially when the contract involves an insurance dispute, there must be an insurable interest. ¹⁰ 18 Del. C. § 2706 defines an insurable interest as "any actual, lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction or pecuniary damage or impairment." Ownership has been held to establish the existence of an insurable interest. ¹² Where legal ownership cannot be established, ownership can be established in equity based on circumstances surrounding the acquisition or use of a vehicle, even if legal ownership lies elsewhere. ¹³ The presence of a vehicle's title and registration creates a presumption of ownership. ¹⁴ However, such a presumption is rebuttable by "clear and convincing evidence presented by the defendant to repel the presumption." Furthermore, evidence that the insurer never owned or took actual physical possession of the vehicle may rebut a presumption of ownership. ¹⁶

The stipulated-to exhibits, coupled with Davila's testimony, clearly illustrate that Vinas did not have either legal ownership or equitable ownership. Although Davila submitted a title

⁹ Gregory v. Frazer, 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010); VLIW Technology, LLC v. Hewlett-Packard, Co., 840 A.2d 606, 612 (Del. 2003).

¹⁰ Devlin, 1998 WL 283424, at *4 (Del.Super. Ct. Mar. 26, 1998).

¹¹ DEL. CODE ANN. tit. 18, §2706 (West).

¹² Devlin at *4 (Del.Super. Ct. Mar. 26, 1998).

¹³ Malloy, 1992 WL 179511, at *3 (Del.Super. Ct. June 16, 1992)

¹⁴ Devlin at *4 (Del.Super. Ct. Mar. 26, 1998).

¹⁵ West American Ins. Co. v. Bogush, 2006 WL 1064069, at *3 (Del.Super. Ct. Apr. 12, 2006).

¹⁶ Id.

transfer indicating that Vinas was the legal owner of the 1997 Crown Victoria as of April 13, 2011, the transaction was never completed; thus, Vinas was not the legal owner. Moreover, Davila's testimony revealed that Davila had exclusive possession, access to, and use of both the Crown Victoria and the Eclipse, from the date of the vehicle's purchase, up until the date of the accident. At no point did Vinas exercise control, have access to, or take possession of, either vehicle. Therefore, Vinas was not an equitable owner of the vehicle. Accordingly, Vinas did not have an ownership interest, and the circumstances surrounding this case do not lead this court to find otherwise.

b. VINAS DOES NOT HAVE AN INSURABLE INTEREST IN EITHER VEHICLE

Where there is no insurable interest, there is no enforceable contract. ¹⁸ The Delaware Superior Court's decision in *Malloy v. Fidelity & Guar. Co.* provides guidance on whether an insurable interest exists. ¹⁹ In *Malloy*, Judge Ridgely concluded that "because Whittington [3rd Party insurer] did not have access to, use of, or possession of the Datsun, Whittington was not open to the risk of liability occurring from the use or operation of the property, and accordingly, no interest existed which necessitated [Whittington] to insure against." ²⁰ Judge Ridgely further opined that "[s]ince no insurable interest exists, the contract is not enforceable... the automobile insurance policy does not cover this loss."

Here, as in *Malloy*, Vinas was not the legal or equitable owner of the 2001 Mitsubishi Eclipse on the day of the accident. Davila had exclusive possession, access to, and use of the Eclipse from the date of the vehicle's purchase from Crespa, up until the date of the accident. As a

¹⁷ See fn.2, supra.

¹⁸ See fn. 9, supra.

¹⁹ Mallov v. Fidelity & Guar. Co., 1992 WL 179511, at *3 (Del. Super. Ct. Jun. 16, 1992).

²⁰ Malloy, 1992 WL 179511, at *3 (Del. Super. Ct. Jun. 16, 1992).

²¹ *Id.*

Here, as in Malloy, Vinas was not the legal or equitable owner of the 2001 Mitsubishi Eclipse on the day of the accident. Davila had exclusive possession, access to, and use of the Eclipse from the date of the vehicle's purchase from Crespa, up until the date of the accident. As a result, Vinas is not open to liability for the accident that occurred on May 31, 2012. In other words, because he cannot be held liable, his insurance company cannot be held liable either. Accordingly, Vinas had no interest in the Eclipse, and thus had nothing which to insure.

In conclusion, Vinas is not liable in law or equity, thus there is no privity of contract between Davila and Titan. Where a policy holder is not liable in law or equity, his insurance company cannot be held liable in either instance.²²

ORDER

For the foregoing reasons, judgment is hereby entered in favor of Defendant Titan Indemnity Co.

IT IS SO ORDERED this 1st day of July, 2013.

The Honorable Carl C. Danberg,

Judge

cc: Tamu White, Supervisor CCP Civil Division

²² Bogush, 2006 WL 1064069, at *4 (Del.Super. Ct. Apr. 12, 2006) (holding that insurance must only be issued in instances where the insured could be held liable).