IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

AMICA MUTUAL INSURANCE	:	
COMPANY, a/s/o BEVERLY	:	
LATTIMER-JACKSON,	:	
	:	C.A. No: K12C-09-039 RBY
Plaintiff,	:	
	:	
v.	:	
	:	
ENTERPRISE RAC COMPANY of	:	
BALTIMORE, d/b/a NATIONAL	:	
CAR RENTAL,	:	
	:	
Defendant.	:	

Submitted: January 27, 2014 Decided: April 11, 2014

Upon Consideration of Plaintiff's and Defendant's Motions for Summary Judgment DENIED

ORDER

Christina M. Gafford, Esquire, Tybout Redfearn & Pell, Wilmington, Delaware for Plaintiff.

R. Stokes Nolte, Esquire, Reilly, Janiczek & McDevitt, P.C., Wilmington, Delaware for Defendant.

Young, J.

Defendant.

SUMMARY

Amica Mutual Insurance Company ("Plaintiff") moves for summary judgment pursuant to Superior Court Rule 56. This matter arises from a subrogation claim filed by Plaintiff, seeking a determination that Enterprise RAC Company of Baltimore d/b/a National Car Rental ("Defendant") owed insurance coverage to Mrs. Beverly Lattimer-Jackson ("Mrs. Jackson"), pursuant to the rental policy. Defendant also moves for summary judgment in this action. The instant action stems from an accident that occurred in Maryland on September 5, 2010, involving a rental motor vehicle ("the Rental Vehicle"), rented by Roland DeLardge, but driven by Mrs. Jackson at the time of the accident. The Rental Vehicle was owned and insured by Defendant, which denied coverage for this accident, citing *Md. Code. Trans. Section 18-102(b)*. Consequently, Plaintiff paid \$27,282.58 on behalf of Mrs. Jackson to cover expenses

First, under a choice of law analysis, Maryland substantive law applies to this action. Therefore, *Md. Code. Trans. Section 18-102(b)* applies to the Master Rental Agreement executed between Defendant and the lessee, Roland DeLardge.

for the motor vehicle accident, for which Plaintiff seeks reimbursement from

Second, at this stage, it is factually undetermined whether Roland DeLardge's wife received implicit permission from Roland DeLardge to operate the Rental Vehicle or to permit another to operate it. Therefore, whether Mrs. Jackson was an unauthorized permittee of Mrs. Delardge, covered by *Md. Code. Trans. Section 18-102(b)*, is a genuine issue of material fact for a jury to decide. Accordingly, Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff's Motion for

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Summary Judgment is **DENIED**.

FACTS AND PROCEDURE

On September 4, 2010, Roland DeLardge rented the Rental Vehicle from Defendant in Maryland. On September 5, 2010, Kimberly DeLardge ("Mrs. DeLardge"), wife of Roland DeLardge decided to take a shopping trip with her infant child and her stepmother, Mrs. Jackson. Mrs. DeLardge opted to take the Rental Vehicle on the shopping trip to accommodate the infant's car seat. Mrs. DeLardge also asked Mrs. Jackson to drive the Rental Vehicle, so that Mrs. DeLardge could sit in the back seat with her infant. Later, Mrs. Jackson was involved in a collision, while driving the Rental Vehicle. On September 10, 2010, Defendant denied coverage for the collision. As a result, Mrs. Jackson's insurer, Plaintiff, paid \$27,282.58 on behalf of Mrs. Jackson for the accident. Both Roland DeLardge and Mrs. DeLardge executed affidavits to those effects in this matter. On September 25, 2012, Plaintiff filed a Complaint in this matter, seeking reimbursement of the \$27,282.58 paid on behalf of Mrs. Jackson. On December 5, 2012, Defendant filed its Answer. Paragraph 4 of the Master Rental Agreement between Roland DeLardge and Defendant defines who is authorized to drive the vehicle:

Unless applicable law requires otherwise, the [Rental] Vehicle may NOT be driven by anyone except any Additional Authorized Driver and you. An "Additional Authorized Driver" is an individual who (i) is a capable and validly licensed driver, (ii) is at least 21 years of age...(iii) has your prior permission to drive the [Rental] Vehicle, and (iv) is either a member of your immediate family who permanently resides with you, or your

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business partner, employer, or fellow employee who drives the [Rental] Vehicle for business purposes. Your immediate family members means your mother, father, son, daughter and a spouse, regardless of whether he/she has the same last name, a common law spouse or a same sex domestic partner.

Some discovery has been conducted in this matter. On May 21, 2013, Mrs. Jackson was deposed.

On October 29, 2013, Plaintiff filed its Motion for Summary Judgment. On November 13, 2013, Defendant filed its Response to Plaintiff's Motion for Summary Judgment. On December 6, 2013, Plaintiff filed its Opening Brief. On January 8, 2014, Defendant filed its Answering Brief. On January 23, 2014, Plaintiff filed a Reply Brief.

On October 31, 2013, Defendant filed its Motion for Summary Judgment. On November 13, 2013, Plaintiff filed its Response to Defendant's Motion for Summary Judgment. On December 9, 2013, Defendant filed its Opening Brief. On January 8, 2014, Plaintiff filed its Answering Brief. On January 20, 2014, Defendant filed a Reply Brief.

STANDARD OF REVIEW

Summary judgment is granted upon a showing that there is no genuine issue of material fact, where the moving party is entitled to judgment as a matter of law.¹ The Court views the evidence in the light most favorable to the non-moving

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¹ Super. Ct. Civ. R. 65(c).

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party.² The moving party bears the burden of showing that no material issues of fact are present, but once a motion is supported by such a showing, the burden shifts to the non-moving party to demonstrate that there is a genuine dispute as to material issues of fact.³

DISCUSSION

I. Applicable Substantive Law.

In its Opening Brief, Plaintiff argues that Maryland substantive law should apply. Plaintiff asserts that both Delaware and Maryland have similar statutes regarding security for rented automobiles.⁴ Both parties have conceded that Maryland law, rather than Delaware law, applies in this matter. Where an action is based in contract, like the Master Rental Agreement at hand, a choice of law analysis should be done under the most significant relationship test.⁵ The Court should consider five factors: the place of contracting; the place of the negotiation of the contract; the place of performance; the location of the subject matter of the contract; and the domicile, residence, nationality, place of incorporation and place of business of the parties.⁶

In this matter, Roland DeLardge rented the Rental Vehicle in Maryland; the

² Windom v. Ungerer, 903 A.2d 276, 280 (Del. 2006).

³ *Moore v. Sizemoore*, 405 A.2d 679, 680-81 (Del. 1979).

⁴ See Md. Code. Trans. Section 18-102 and 21 Del. C. Section 6101 (Exhibit H).

⁵ *Keating v. Goldick*, 2004 WL 772077, *4 (Del. Super.).

⁶ *Id.* At *5.

contract was agreed to and executed in Maryland; the car was turned over to Roland DeLardge in Maryland as the place of performance; and the rental facility's place of business was in Maryland. In addition, Defendant denied coverage in this matter based on Maryland law. Thus, under a choice of law analysis, Maryland substantive law applies, as the parties agree.

II. Permittee Analysis.

Next, Plaintiff contends that Defendant wrongfully denied coverage for the accident, because Mrs. Jackson was allegedly an authorized user of the Rental Vehicle. Therefore, according to Plaintiff, Defendant should be required to compensate Plaintiff for the \$27,282.58 paid on the claim that arose from the accident. Defendant denied coverage to Mrs. Jackson on the basis that insurance does not extend to Mrs. Jackson's use of the Rental Vehicle. It is undisputed that Roland DeLardge was the lessee of the subject Rental Vehicle. However, factual issues exist as to: 1) whether Roland DeLardge's wife, Mrs. DeLardge, became an additional authorized user, such that Mrs. DeLardge had permission to use the vehicle under the Master Rental Agreement or *Md. Code. Trans. Section 18-102(b)*, and 2) whether Mrs. DeLardge had the authority to permit Mrs. Jackson to use the Rental Vehicle.

In support of both issues, Plaintiff relies on the *Maryland Indem. Ins. Co. v. Kornke*⁷ two part test for whether an accident in which a second permittee was driving would be covered under the policy covering the vehicle. Under this test,

⁷ 319 A.2d 603 (Md. App. 1974).

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the first permittee must be in the vehicle, with the second permittee serving a purpose or an advantage for the first permittee when the accident occurred.⁸ Plaintiff argues that, since Mrs. DeLardge, the original permittee, was in the vehicle at the time of the collision, and Mrs. Jackson, the second permittee was driving to let Mrs. DeLardge tend to her infant in the back seat, Mrs. Jackson was, therefore, a permitted user of the vehicle. Plaintiff asserts that, even if Mrs. Jackson did not have express permission to drive the vehicle, a lessor is not authorized to exclude an "unauthorized permittee" from coverage.⁹ An unauthorized permittee is one who has permission from the lessee to operate the vehicle in violation of the rental agreement.¹⁰

In response, Defendant contends that Mrs. Jackson did not have permission from either Defendant, the lessor, or Roland DeLardge, the lessee, to operate the vehicle at the time of the accident. The parties agree that this action is controlled by Maryland law, more specifically *Section 18-102(b)* of the Maryland Code, which provides that the security required for rental vehicles covers the owner of the vehicle and each person using the vehicle with the permission of the owner or the lessee. Further, the Maryland Court of Appeals has found that this statute extends coverage under the required security to all permittees of either the lessee

⁸ *Id*.

⁹ Enterprise Leasing Co. v. Allstate Ins. Co., 341 Md. 541, 552 (Md. App. 1996).

¹⁰ *Id.* at 552.

¹¹ Md. Code. Trans. Section 18-102(b); Enterprise Leasing Co v. Allstate Ins. Co. at 511.

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or the lessor, but it does not extend to anyone else. 12

Roland DeLardge's affidavit indicates that he did not request permission from Defendant for Mrs. Jackson to use the Rental Vehicle, nor did he give either Mrs. Jackson or his wife, Mrs. DeLardge, explicit permission to operate the Rental Vehicle. Mrs. Jackson did not operate the Rental Vehicle directly on Roland DeLardge's behalf, although, of course, the interest of his child was at issue. There is no evidence suggesting that Roland DeLardge was aware that either his wife or Mrs. Jackson was using the Rental Vehicle, as Mrs. Jackson recalls Roland DeLardge's being inside of her house at the time she began using the Rental Vehicle.

Plaintiff's reliance on *Kornke* may be misplaced. *Kornke* involved the question of whether the omnibus clause of an automobile liability insurance policy covered a second permittee, who was in an accident while operating a vehicle, to carry out a purpose for which the owner entrusted the vehicle to the first permittee. *Kornke* deals with an insurance policy, whereas the instant matter involves security required for a rental agreement. The latter invokes *Md. Code. Trans.*Section 18-102(b), while the former does not.

With regard to the second issue of whether Mrs. DeLardge had permission to operate the Rental Vehicle, Mrs. DeLardge could qualify as an additional authorized driver, since she is an immediate family member of Roland DeLardge in accordance with the Master Rental Agreement. It remains a question of fact, whether Mrs. DeLardge also received implied consent from Mr. DeLardge.

¹² Enterprise Leasing Co. v. Allstate Ins. Co. at 513.

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Hence, factual issues remain as to whether Mrs. DeLardge was an additional authorized user of the Rental Vehicle. If Mrs. DeLardge were an additional authorized driver, the factual issue remains as to whether her authority could have extended to granting Mrs. Jackson permission to operate the Rental Vehicle.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young	
I	

RBY/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

File