

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	C.A. No. 08C-09-069 RRC
)	
Plaintiff,)	
)	
v.)	
)	
)	
ADAMSON CAR & TRUCK RENTAL)	
d/b/a BUDGET RENT A CAR OF)	
BIRMINGHAM,)	
)	
Defendant.)	

Date Submitted: April 28, 2011
Date Decided: May 31, 2011

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT AND DEFENDANT’S CROSS-
MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED.**

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PARKER, Commissioner

Before the Court are cross-motions for summary judgment filed by Plaintiff, State Farm Mutual Automobile Insurance Company (“State Farm”), and the Defendant, Adamson Car & Truck Rental d/b/a Budget Rent a Car of Birmingham (“Budget of Birmingham”). State Farm obtained an arbitration award against Budget Rent a Car and now seeks to enforce that award against Defendant Budget of Birmingham. The issue before the Court on the cross-motions for summary judgment is whether the arbitration award obtained by State Farm against Budget Rent a Car can be enforced against Defendant Budget of Birmingham.

On February 1, 2011, the Court heard argument on the cross-motions. During the hearing, the Court ordered supplemental documentation and briefing.

After fully and thoroughly reviewing the parties’ respective positions, the Court has determined that the issue presented herein cannot be decided on the record presented. For the reasons that follow, it is hereby recommended that both Plaintiff’s Motion for Summary Judgment and Defendant’s Cross-Motion for Summary Judgment be denied.

I. FACTS

On July 18, 2005, a vehicle operated by Brian W. Robbins was involved in a collision in Sussex County, Delaware, with a vehicle operated by Stephen Yearwood. The vehicle operated by Mr. Robbins, an employee of State Farm, was owned by State Farm.

The vehicle operated by Mr. Yearwood was a rental vehicle. The rental contract between Mr. Yearwood and the rental company listed Budget Rent a Car of Norfolk as the rental company. The accident report prepared by Delaware State Police Troop 6 also

listed the owner of the vehicle Mr. Yearwood was operating as “Budget Rent a Car of Norfolk.”

The parties have stipulated, and it is therefore undisputed, that the accident occurred due to Mr. Yearwood’s negligence. It is also undisputed that, as a result of the accident, State Farm suffered damages in the amount of \$4,010.00.

In order to recover its damages, State Farm instituted an inter-company arbitration through Arbitration Forums, Inc. (“AFI”) against United Services Auto Association and Budget Rent a Car. Mr. Yearwood maintained personal automobile insurance coverage through United Services Auto Association.

On or about March 2, 2007, the arbitrator found in favor of State Farm and against Budget Rent a Car and awarded damages of \$4,010.00. United Services Auto Association was not found liable for the damages.

On September 8, 2008, State Farm filed a Complaint against Avis Budget Car Rental, LLC to enforce its arbitration award. On June 30, 2009, it amended the Complaint to add Budget of Birmingham as a defendant to the lawsuit. On or about September 17, 2009, State Farm dismissed Avis Budget Car Rental, LLC from the action leaving Budget of Birmingham as the sole remaining defendant.

In the subject action, State Farm is seeking to enforce the arbitration award that it obtained against Budget Rent a Car against Budget of Birmingham.

The issue presented by the parties in their cross-motions for summary judgment is whether the arbitration award obtained by State Farm against Budget Rent a Car can be enforced against Budget of Birmingham.

II. STANDARD OF REVIEW

The Court's principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist.¹ Summary judgment will be granted if, after viewing the record in a light most favorable to a non-moving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.² If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record *sub judice*, then summary judgment will not be granted.³

The Court's function is not to weigh the evidence or to accept that which appears to have greater weight.⁴ Summary judgment is not appropriate when the Court determines that it does not have sufficient facts in the record to enable it to apply the law to the facts before it.⁵

Where the parties have filed cross-motions for summary judgment, neither party's motion will be granted unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law.⁶ The mere filing of a cross motion for summary judgment does not serve as a waiver of the movant's right to assert the existence of a factual dispute as to the other party's motion.⁷

¹ Super.Ct.Civ.R. 56(c); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del.Super. 1973).

² *Id.*

³ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁴ *Oliver B. Cannon & Sons, Inc.*, 312 A.2d at 325.

⁵ *Savor, Inc. v. FMR Corp. and Upromise, Inc.*, 2003 WL 21054394 (Del.Super. 2003).

⁶ *Emmons v. Hartford Underwriter Ins. Co.*, 697 A.2d 742, 745 (Del. 1997).

⁷ *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997).

III. ANALYSIS

This case does not present any novel legal issues. It is the application of well-settled law to the facts of this case that is at issue in this case. The issue presented herein is whether the arbitration award obtained by State Farm against Budget Rent a Car can be enforced against Defendant Budget of Birmingham.

At the onset, it is noted that State Farm had an enforceable arbitration award against Budget Rent a Car. It could have sought to enforce that award against Budget Rent a Car but, for whatever reason, chose not to do so. Instead, it is seeking to enforce the arbitration award obtained against Budget Rent a Car from a different entity, Budget of Birmingham.

Defendant Budget of Birmingham first contends that because it is not a signatory member of the AFI, the arbitration award in question cannot be enforced against it. The fact that Budget of Birmingham is not a signatory member of the AFI does not automatically preclude the enforcement of the arbitration award obtained by State Farm against Budget of Birmingham.

Had State Farm sought arbitration before the AFI to arbitrate its claim against Budget of Birmingham, it may have been able to compel Budget of Birmingham to do so. 21 *Del. C.* §2118(g) requires arbitration before the AFI for all subrogation claims.⁸ This statute requires all signatory members of the AFI to submit to arbitration to resolve subrogation claims.

⁸ The statute provides that subrogation claims shall be arbitrated by the Wilmington Auto Accident Reparation Arbitration Committee or its successors (21 *Del.C.* §2118(g)(3)). Arbitration Forums, Inc. is the successor to Wilmington Auto Accident Reparation Arbitration Committee. *See, Zurich Am.Ins.Co. v. St. Paul Surplus Lines, Inc.*, 2009 *Del.Ch. Lexis* 202, at *5, fnt. 2 (*Del.Ch.* 2009).

Self-insured entities that are not signatory members of the AFI are also required to submit to arbitration before the AFI on subrogation claims. 21 *Del. C.* §2904 imposes a duty on self-insured entities to perform all the same obligations of §2118, which includes the submission to arbitration before the AFI. It appears therefore that even though Budget of Birmingham is not a signatory to the AFI, Budget of Birmingham may still have been required to arbitrate this claim before the AFI.

As a practical matter, whether or not State Farm could have compelled Budget of Birmingham to participate in an arbitration before the AFI is merely an academic issue. State Farm never sought to do so. Budget of Birmingham was not a party to the arbitration proceeding, it did not have counsel present, it did not present any evidence nor did it present any witnesses.

Had State Farm sought to compel Budget of Birmingham to submit to the AFI to arbitrate its claim but proved to be unsuccessful in those efforts, it could have instead instituted a civil action against Budget of Birmingham in court to recover its damages. State Farm was not without a means or a forum of seeking to recover its damages from Budget of Birmingham.

The primary issue presented herein is whether the relationship between Budget Rent a Car and Budget of Birmingham is of such a nature that the arbitration award obtained by State Farm against Budget Rent a Car can be enforced against Budget of Birmingham. Specifically, State Farm contends that Budget of Birmingham should be deemed to have the apparent authority to act on behalf of Budget Rent a Car, and that the arbitration award entered against Budget Rent a Car should be properly enforced against Budget of Birmingham due to this agency relationship.

The legal principle is not novel. An agency relationship is created when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent.⁹ The essence of an agency relationship is the delegation of authority from the principal to the agent which permits the agent to act not only for, but in the place of, his principal in dealings with third parties.¹⁰

Apparent authority arises when the principal creates by its words or conduct the reasonable impression in a third party that the agent has authority to act.¹¹ Where a third party relies on the agent's apparent authority in good faith and is justified in doing so by the surrounding circumstances, the principal is bound to the same extent as if actual authority had existed.¹²

It is well settled that questions of agency are not subjected to absolute rules but, rather, turn on the facts of the individual case.¹³ Summary judgment is inappropriate when there are questions of apparent authority of an agent. Such questions are questions of fact and are for the jury to determine.¹⁴

In *Billops v. Magness Construction Co.*,¹⁵ the Delaware Supreme Court reversed the granting of summary judgment in a franchisor/franchisee relationship where the issue of whether a franchisor cloaked a franchisee with apparent authority was presented. The Delaware Supreme Court held that the determination of whether or not a franchisor

⁹ *Fasciana v. Electronic Data Systems Corporation*, 829 A.2d 160, 169-70, fnt. 30 (Del. Ch. 2003)

¹⁰ *Id.*

¹¹ *Guyer v. Haveg Corporation*, 205 A.2d 176, 180 (Del.Super. 1964)

¹² *Id.*

¹³ *Dweck, Success Apparel LLC et. al, v. Nasser et. al*, 959 A.2d 29, 39 (Del.Ch. 2008), *vacated*, 966 A.2d 348 (Del.Super. 2009).

¹⁴ *Billops v. Magness Construction Co.*, 391 A.2d 196, 199 (Del.Super. 1978).

¹⁵ 391 A.2d 196 (Del.Super. 1978).

cloaked a franchisee with apparent authority to act on its behalf is a question of fact that must be determined by the fact-finder at trial after a full development of the facts.¹⁶

Here too, entry of judgment for either party at this time would be premature. The record needs to be more fully developed in order to enable the fact-finder to apply the law to the facts of this case. Moreover, because material issues of fact exist, and it is not the Court's function on cross-motions for summary judgment to weigh the evidence, this matter is not ripe for decision on its merits.

In this case, the rental contract at issue lists Budget Rent a Car *of Norfolk* as the owner of the vehicle. The parties stipulated that at the time of accident, Mr. Yearwood was operating a vehicle rented from Adamson Car & Truck Rental, Inc. d/b/a Budget Rent a Car *of Norfolk*. However, State Farm instituted the subject action against Adamson Car & Truck Rental, Inc. d/b/a Budget Rent a Car *of Birmingham*. The record does not reflect the relationship between Budget Rent a Car of Norfolk and Budget Rent a Car of Birmingham. Nor does the record reflect whether any significance should be placed on the distinction between these business entities.

In addition to the development of the record on the relationship between Budget Rent a Car of Norfolk and Budget Rent a Car of Birmingham, the record also needs to be more fully developed on the relationship between these business entities and Budget Rent a Car.

Defendant Budget of Birmingham contends that no agency relationship exists between itself and Budget Rent a Car. Defendant Budget of Birmingham contends that

¹⁶ *Id.*

its relationship with Budget Rent a Car is that of franchisor/franchisee and that it is a separate and distinct entity from Budget Rent a Car.¹⁷

Budget of Birmingham contends that State Farm made a mistake in not pursuing the proper party at arbitration and that it cannot rectify its mistake by seeking to bind Budget of Birmingham to a proceeding it had no involvement in. Budget of Birmingham contends that State Farm's allegation of the existence of an agency relationship arose only upon the realization that it make a mistake at the arbitration.

Budget of Birmingham points out that State Farm did not allege in its Complaint, or even in its Amended Complaint, the existence of an agency relationship between Budget of Birmingham and Budget Rent a Car. State Farm's Complaint alleges only that Budget of Birmingham was a franchisee of Budget Rent a Car and that Budget of Birmingham was the owner of the vehicle at issue.¹⁸

Budget of Birmingham contends that the rental contract at issue listed Budget Rent a Car of Norfolk as the rental company. The rental contract also provided definitions and the contracting party was defined as "the Budget Rent a Car Independent licensee named on the reverse side of the agreement."¹⁹ Budget of Birmingham argues that this makes it abundantly clear that Budget Rent a Car of Norfolk was the contracting party not Budget Rent a Car.

¹⁷ Defendant Budget of Birmingham contends that its relationship with Budget Rent a Car is defined primarily, if not wholly, by the franchise agreement. The franchise agreement, however, refers to and incorporates an Operating Manual into the agreement. Despite the court's request for a copy of the Operating Manual, Defendant Budget of Birmingham advised that it was unable to provide a copy of the Operating Manual to the court. This Operating Manual is of monumental importance on the issue of apparent authority. See, *Billops v. Magness Construction Co.*, 391 A.2d 196 (Del.Supr. 1978).

The record needs to be more fully developed on the issue of the Operating Manual, its contents, its whereabouts, and of what significance/penalties/sanctions should be imposed for the nonproduction of same.

¹⁸ Amended Complaint at ¶ 3.

¹⁹ See, Rental Contract at issue, pg. 2- Rental Agreement Terms and Conditions.

Budget of Birmingham also points to the accident report which listed the owner of the vehicle that Mr. Yearwood was operating as Budget Rent a Car of Norfolk as support for its position that third parties were on notice that Budget Rent a Car of Norfolk was the owner of the vehicle.

For all of these reasons, Budget of Birmingham contends that State Farm was on notice that Budget Rent a Car of Norfolk, not Budget Rent a Car, was the owner of the vehicle and the party that should have been the target of State Farm's recovery efforts.

On the other hand, State Farm contends that an apparent agency relationship should be found to exist. State Farm alleges that Budget of Birmingham shared the same assets and liabilities with Budget Rent a Car. State Farm alleges that Budget of Birmingham shared the same fleets and trucks that displayed the Budget Rent a Car's company logo. State Farm alleges that Budget of Birmingham shared Budget Rent a Car's online website and that the website does not even reference Budget of Birmingham.

State Farm alleges that an apparent agency relationship should be found to exist because when the website is accessed by a potential customer looking to rent a vehicle, it appears as though the customer is renting a vehicle from Budget Rent a Car, not Budget of Birmingham.

State Farm also points out that Budget of Norfolk used a standardized Budget Rental Agreement when renting to Mr. Yearwood and that it held itself out as a Budget entity. State Farm contends that through these actions, Budget of Birmingham placed third parties in a position where it would be reasonably justifiable to assume that Budget of Birmingham was acting as an apparent agent for Budget Rent a Car.

For all of these reasons, State Farm contends that Budget of Birmingham should be deemed to have the apparent authority to act on behalf of Budget Rent a Car, and that the arbitration award entered against Budget Rent a Car should be properly enforced against Budget of Birmingham.

The proper time and place to determine whether State Farm will ultimately carry its burden to prove that the arbitration award obtained against Budget Rent a Car should be enforced against Budget of Birmingham, is at trial. Upon review of the record, the Court is satisfied that entry of judgment at this time would be premature. Summary judgment is not appropriate when the Court determines that it does not have sufficient facts in the record to enable it to apply the law to the facts before it.²⁰ Such is the case here. Because the record needs to be more fully developed and because material issues of fact exist, and it is not the Court's function to weigh the evidence, this matter is not ripe for decision on the merits.

IV. CONCLUSION

For the reasons set forth herein, the cross-motions for summary judgment should be denied.

IT IS SO ORDERED.

Commissioner Lynne M. Parker

²⁰ *Savor, Inc. v. FMR Corp. and Upromise, Inc.*, 2003 WL 21054394 (Del.Super. 2003).