IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

PROGRESSIVE CLASSIC INSURANCE COMPANY	:	February Term 2005
Plaintiff,	:	No. 0507
v.	:	Commerce Program
AVIS RENT A CAR SYSTEMS, INC.	:	Control No. 120039
Defendant.	:	

O R D E R

AND NOW, this 13TH day of February 2006, upon consideration of the Motion for Summary Judgment of defendant, Avis Rent A Car Systems, Inc. ("Avis"), the response in opposition, all matters of record and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that the Motion is **GRANTED**.

Judgment is entered in favor of Avis and against plaintiff, Progressive Classic Insurance Company, as to all Counts of the Complaint.

BY THE COURT:

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ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

Albert W. Sheppard, Jr., J. ……..... February 13, 2006

Currently before the court is the Motion for Summary Judgment of defendant, Avis Rent A Car Systems, Inc. ("Avis"). For the reasons discussed, the Motion is granted.

I. Background

Progressive Classic Insurance Company ("Progressive") brought the instant declaratory judgment action against Avis to determine which party is primarily responsible for damages resulting from a motor vehicle accident which took place on or about February 20, 2003 (the "Accident"). At the time of the accident, Progressive's insured, Theodore McCarthy ("McCarthy"), was covered by a Progressive automobile policy which provided coverage for bodily injury, property damage, uninsured and underinsured motorists, medical payments, comprehensive and collision damage (the "Progressive Policy"). Pl. Exh. 1. At the time of the accident, McCarthy was operating a motor vehicle which he had rented from Avis pursuant to a Rental Agreement. The Rental Agreement provided McCarthy with the option to elect liability coverage for an additional fee, which McCarthy declined. The other individual involved in the

accident made a property damage claim against McCarthy, which was paid by Progressive (the "Claim").[1]

Progressive filed the instant action seeking a declaration that Avis is primarily responsible for payment of the Claim.

II. Discussion

"Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Pa.R.C.P. 1035.2; Horne v. Haladay, 1999 Pa. Super. 64, 728 A.2d 954 (1999). This burden rests with the moving party and the court is required to examine the entire record in a light most favorable to the non-moving party. First Wisconsin Trust Co. v. Strausser, 439 Pa. Super. 192, 198, 653 A.2d 688, 691 (1995). Once the moving party has met its burden, the adverse party may not rest upon the mere allegations or denials of his pleading, but his response must set forth specific facts showing that there is a genuine issue for trial. Pa.R.C.P. 1035.2(2); s*ee also* Fennell v. Nationwide Mut. Fire Ins. Co., 412 Pa. Super. 534, 540, 603 A.2d 1064, 1067 (1992).

Here, there are no factual issues in dispute, only contract interpretation. Thus, this matter may appropriately be decided by summary judgment.

Interpretation of an insurance contract is a matter of law and is the province of the court. ***See*** Hutchinson v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385 (1986); Osial v. Cook, 2002 Pa. Super. 214, 803 A.2d 209, (2002). It is settled that "the intent of the parties to a written contract is contained in the writing itself." Tuthill v. Tuthill, 763 A.2d 417, 2000 Pa. Super. 35, 420 (2000). As a threshold inquiry, the court must determine whether the language of the

1 No bodily injury claim has been made as of this date.

contract is ambiguous. Hutchison, 513 Pa. at 200-01, 519 A.2d at 390. A contract is ambiguous when the contract language is indefinite and reasonably susceptible to more than one meaning. Commonwealth v. Brozzetti, 684 A.2d 658, 663, 1996 Pa. Commw. LEXIS 444 (1996).

Based upon the undisputed facts of record and the clear and unambiguous language of the agreements at issue, this court finds that Progressive, not Avis, is primarily responsible for damages resulting from the Accident. First, the Rental Agreement is not a policy of insurance. Moreover, it is undisputed that when McCarthy rented the vehicle from Avis, he declined all of the insurance options available under that agreement. At the time of the accident, McCarthy was covered by a policy of insurance with Progressive that clearly provided coverage for the Claim. The Policy, by its terms, covered "property damage for which an insured person becomes legally responsible because of an accident arising out of the use of a…temporary substitute vehicle." Def. Exh. B. at 5-6. Because the Progressive Policy provided primary insurance coverage to McCarthy for the Claim, Avis is under no obligation to provide coverage to McCarthy under the Rental Agreement (or the Motor Vehicle Responsibility Law, for that matter).[2] Accordingly, Avis is entitled to summary judgment.

2 The court finds Progressive's reliance on ¶ 18 of the Rental Agreement to be misplaced. This section provides: "ANYONE DRIVING THE CAR AS PERMITTED BY THIS AGREEMENT WILL BE PROTECTED AGAINST LIABILITY FOR CAUSING BODILY INJURY OR DEATH TO OTHERS OR DAMAGING THE PROPERTY OF SOMEONE OTHER THAN THE DRIVER AND/OR THE RENTER UP TO THE MINIMUM FINANCIAL RESPONSIBILITY LIMITS REQUIRED BY APPLICABLE LAW." Def. Exh C. at ¶ 18. This provision only provides coverage to Avis customers who fall below the minimum requirements of the MVFRL. Clearly, McCarthy does not fall into this category, as he was insured under the Progressive Policy at the time of the Accident.

III. Conclusion

For the reasons discussed, judgment is entered in favor of defendant, Avis Rent A Car Systems, Inc. and against plaintiff, Progressive Classic Insurance Company.

The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.