STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

Alison R. Lee, Circuit Court Judge

RECEIVED
OCT 15 2014
SC Court of Appeals

Appellate Case No: 2012-212896

Charles Taylor, Appellant

v.

Thomas Davis and State Farm Mutual Automobile Insurance Company, Respondents

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FINAL BRIEF OF RESPONDENT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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STATEMENT OF THE CASE

On September 7, 2007 Appellant was involved in an automobile collision with Respondent Davis (hereinafter Davis) who was driving a vehicle owned by and rented from Budget Rental Company (Budget) which carried minimum limits liability coverage. On December 14, 2007 Appellant filed this negligence action against Davis seeking damages for personal injuries. Budget hired defense counsel (Matthew Tyler) to defend Davis. Davis' personal insurance carrier also hired defense counsel (Robert C. Brown) since the personal insurer had potential excess liability coverage. Respondent State Farm (hereinafter State Farm) is Appellant's insurance carrier and had underinsured (UIM) motorist coverage which would be applicable if Appellant's provable damages exceeded all available liability coverage.

On November 8, 2008 Budget paid its minimum limits coverage to Appellant in exchange for a Covenant Not to Execute protecting Davis from any further personal financial exposure for damages yet allowing Appellant to proceed with his claim against other applicable coverage. [1] Both defense attorneys who had appeared for Davis filed motions to be relieved as counsel. In March 2009 orders relieving attorneys Tyler and Brown were issued. After defense counsel withdrew from the case and while there was no counsel of record for Davis, Appellant sought and was awarded an uncontested judgment against Davis for $1,500,000.00 on June 19, 2009 based upon a Rule 68 SCRCP Offer of Judgment which had been accepted by Davis. [2]

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[1] After the initial Covenant Not to Execute was signed on November 8, 2008, an Amended Covenant Not to Execute was executed on November 12-13, 2008. Apparently the Amended Covenant was not prepared or approved by Davis' counsel. The Amended Covenant substantially modified the terms and conditions contained in the initial Covenant.

[2] This judgment was later set aside by Order of Judge Lee on January 20, 2010 on motion by State Farm (which was then involved in the defense as UIM carrier) on the basis that State Farm had not been served as UIM carrier at the time the judgment was entered and thus could not be bound by the judgment.

Appellant eventually served State Farm with copies of the Summons and Complaint on October 13, 2009. A timely Answer was filed by State Farm in accordance with §38-77-160. Subsequently, State Farm attempted to negotiate a settlement of Appellant's UIM claims and eventually paid Appellant $25,000.00 in UIM benefits; however, the case remained unresolved.

On May 16, 2011 a jury trial was commenced before Judge Alison Lee in the Richland County Court of Common Pleas with Appellant representing himself. On May 17, 2011, the jury returned a verdict in favor of Appellant in the amount of $615.00 actual damages. All of Appellant's post-trial motions were denied by Judge Lee. Because Appellant had previously been paid $25,000 of liability coverage by Budget on behalf of Davis, State Farm received an offset for this payment which resulted in no UIM money being owed to Appellant from State Farm. Judge Lee ordered that the jury verdict/judgment had been fully paid and satisfied. (3rd Amended R., p.21)

Appellant filed a Notice of Intent to Appeal on or about June 8, 2011. While the appeal was pending and unbeknownst to State Farm, communications took place between Appellant and Davis which resulted in a purported "settlement agreement" being entered into by which Davis consented to the $615.00 judgment being vacated and a new "consent judgment" of $1,735,000.00 being entered in place of the jury verdict. Appellant and Davis then advised the Court of Appeals that the case was settled and an agreement to dismiss the appeal was filed on June 15, 2011. On June 27, 2011, the South Carolina Court of Appeals issued an Order dismissing the appeal under Rule 260(b) SCACR and the case was remitted to Richland County Court of Common Pleas.

Appellant subsequently filed motions in the lower court in August and November 2011 seeking to vacate the $615.00 judgment, to enter a new judgment for $1,735,000.00 (per Appellant's agreement with Davis) and to require State Farm to pay the higher judgment. A hearing was held

on Appellant's post-appeal motions by Judge Lee on May7, 2012. Judge Lee issued her Order of July 17, 2012 allowing the new judgment to be entered against Davis personally but denying Appellant's motion seeking to require State Farm to pay the higher judgment. (3rd Amended R., pp.6-10). It is from this Order which Appellant filed his Notice of Intent to Appeal on September 1, 2012.

ARGUMENT

I. THE TRIAL JUDGE DID NOT ERR IN DENYING APPELLANT'S MOTION WHICH SOUGHT TO OBLIGATE RESPONDENT STATE FARM TO PAY AN "AMENDED JUDGMENT" ENTERED INTO BETWEEN APPELLANT AND RESPONDENT DAVIS

The crux of Appellant's argument is that State Farm, as UIM carrier, is obligated and bound by private agreements to which State Farm was never a party. It is well-settled in South Carolina that if a plaintiff chooses to settle with the at-fault party's insurer (here Budget), the UIM carrier has the right to assume control of the defense of the action for its benefit. Williams v Selective Insurance Co., 315 S.C. 532, 446 S.E.2d 402 (1994) State Farm was not the insurer for Davis and never purported to represent him in any way in this action (3rd Amended R., pp. 22-25; pp. 26-27) State Farm defended this action pursuant to statutory rights afforded UIM carriers under §38-77-160, S.C. Code Ann which in pertinent part provides as follows:

> *"The* [UIM] *insurer has the right to appear and defend in the name of the underinsured motorist* ***in any action which may affect its liability*** *and has 30 days after service of process on it in which to appear. . . . . In the event the automobile insurer for the putative at-fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured,* ***the underinsured motorist carrier may assume control of the defense of action for its own benefit."***

In a letter to the Richland County Clerk of Court dated August 10, 2011, Davis advised that he had been "*. . . representing myself in this case from the beginning and have not authorized anyone else to represent, act nor speak for me in this case*" (3rd Amended R., p. 77) In that same communication Davis asserted his intent to "*. . . look out for and protect my own best interest as the defendant in this case. . . . .*" Clearly Davis acknowledged that he had been and continued to represent himself and that no other party or entity was authorized to represent or speak on his behalf. Davis rejected any notion that State Farm was or could act on his behalf. Correspondingly, it is obvious that Davis could not speak for nor legally bind State Farm to any settlement agreement he negotiated with Appellant.

At no time before or after Appellant filed this action was State Farm ever privy to or involved in any discussions or settlement negotiations occurring between Appellant and Davis. One can only speculate but it appears extremely odd (and certainly against his financial best interest) for Davis to agree to relinquish favorable financial terms in the initial Covenant Not to Execute which limited his liability to $25,000.00 and to later agree to a consent judgment for $1,735,000.00 especially after Davis had been found liable to Appellant by a jury for a mere $615.00. [3] However, this is precisely what occurred according to a reading of the Covenants.

As UIM carrier State Farm cannot be bound by a purported settlement agreement or amended judgment entered into between Appellant and Davis either before or after the jury trial since such agreements obviously "affect its liability" as contemplated by §38-77-160. Any such private agreement or settlement between Appellant and Davis are unenforceable against State Farm. The jury

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[3] See language contained in the Amended Covenant Not to Execute which Davis later signed after the initial Covenant was executed along with Davis' affidavit and Settlement Agreement. (3rd Amended R., p. 4, 31, pp. 66-67; 71-79)

verdict (not a private settlement agreement) determined what obligation, if any, State Farm owed Appellant after the setoff was applied by the trial judge. See, Broome v Watts, 319 S.C. 337, 461 S.E.2d 46 (1995) Nowhere in the "Binding Agreement" or in the affidavit of Davis (which purports to represent the "settlement") is State Farm mentioned.

In Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003) this Court discussed the legal relationship between a UIM carrier, its attorney and an at-fault defendant. Crawford noted the following:

> "*Significantly, our Supreme Court has held that the rights of the UIM carrier* [State Farm] *and the named Respondent are not synonymous, and, in fact, may be conflicting . . . [A]lthough the UIM carrier "steps into the shoes" of the underinsured motorist, it has rights separate and distinct to those of the underinsured motorist.*"

Although no attorney-client relationship exists between the UIM attorney and an at-fault defendant, this in no way restricted or prevented State Farm from defending this action to any extent which may affect its liability to Appellant. Crawford points out that the UIM carrier *"steps into the shoes"* of the underinsured motorist (Davis) but has "*. . . rights separate and distinct from those of the underinsured motorist.*" Appellant has never grasped or accepted this concept nor the statutory rights afforded State Farm but instead has attempted to engage in a series of communications, agreements and settlements directly with Davis with the intent to seek to bind or enforce these agreements against State Farm.

II. THE LOWER COURT DID HAVE JURISDICTION TO ISSUE ITS ORDER OF JULY 17, 2012 FOLLOWING REMITTUR OF THE ACTION BY THE SOUTH CAROLINA COURT OF APPEALS

Appellant challenges the lower court's jurisdiction to rule upon Appellant's post-appeal motions filed in August and November 2011. At the time of the lower court hearing on May 7, 2012,

this matter was no longer within the jurisdiction of the Court of Appeals which had dismissed the appeal and remitted the case to Richland County by Order dated June 27, 2011 (3rd Amended R., p. 2) As noted in Judge Lee's Order of July 17, 2012 the matter came before her upon motion by Appellant seeking, among other things, to have the lower court rule that State Farm was legally liable for payment of a "consent judgment" dated June 10, 2011 entered into between Appellant and Davis without the knowledge of or participation by State Farm. By filing his motions seeking relief in the lower court, Appellant acknowledged that the lower court did in fact have jurisdiction to rule on the relief he sought. It was not until after receiving an unfavorable decision did Appellant challenge the jurisdiction (as well as the ruling) of the very court from which he sought the relief. Appellant asserts that the lower court erred when it "went beyond" its authority in ruling that State Farm was not obligated to pay the new judgment. Appellant urges this position notwithstanding the express relief sought his motion in which he asked for "... a **(RULING)** as to the liability of state farm TO PAY THE WHOLE AMOUNT, PER THE SETTLEMENT AGREEMENT ATTACHED ...." (3rd Amended R.,p.4; pp.33-36)

State Farm concedes that its consent is not required to approve or validate any settlement agreement entered into privately and exclusively between Appellant and Davis; however, State Farm in its capacity as UIM carrier, cannot be bound by such settlement agreement to which it was not a party and which purports to hold State Farm liable for an amount which vastly exceeded the jury verdict. The lower court clearly had jurisdiction to rule on Appellant's motions and nothing in Rule 58(b) SCRCP nor substantive law supports Appellant's argument.

CONCLUSION

For the foregoing reasons State Farm respectfully submits that the Order of Judge Lee of July 17, 2012 be affirmed to the extent that it holds that State Farm is neither bound by nor legally obligated to pay the amended/altered consent judgment of $1,735,000.00 negotiated solely between Appellant and Davis. State Farm did not participate in such agreement and in accordance with §38-77-160, Appellant and Davis cannot enter into agreements which affect the rights or financial obligations of State Farm as the UIM carrier in this action.

Respectfully submitted,

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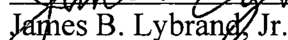
CERTIFICATE OF COMPLIANCE BY RESPONDENT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Respondent State Farm certifies that its Final Brief complies with Rule 211 (b) SCACR.



Columbia, South Carolina
October 15, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent State Farm's Final Brief was served upon the following by depositing said papers in the United States Mail, Columbia, South Carolina, on the 15th day of October, 2014, with the first class postage duly affixed and a return address clearly indicated on the envelope, addressed as follows:

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