

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

State Farm Mutual Automobile Insurance
Company,

Plaintiff,

vs.

Myra M. Windham,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No. 2016-CP-32-815

RECEIVED

OCT 26 2016

SC Court of Appeals

**ORDER GRANTING SUMMARY JUDGMENT
MOTION OF STATE FARM AND DENYING
SUMMARY JUDGMENT MOTION OF
WINDHAM**

This matter comes before me upon cross Motions for Summary Judgment by the Plaintiff and Defendant. A hearing was held on June 23, 2016 at the Lexington County Courthouse. A. Johnston Cox appeared for State Farm and Steve Cook appeared for Windham. After consideration of the pleadings, stipulation of facts, the policies at issue, legal authority and arguments of the parties, State Farm's Motion for Summary Judgment is granted and Windham's Motion for Summary Judgment is denied.

State Farm brought this action seeking a determination from this Court that Windham is not permitted to stack UIM coverage under the terms of automobile policies issued to her by State Farm or South Carolina law because none of her vehicles were involved in an automobile accident that occurred on October 5, 2012. Windham counterclaimed seeking a determination from this Court that she is entitled to stack the UIM limits from policies issued by State Farm because the rental car she was driving at the time qualifies as a temporary substitute vehicle as defined in the policy.

FILED
AUG - 8 11: 59
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

SR # 1

The parties stipulated to all material facts and asked the Court to determine the issue presented as a matter of law. The stipulated facts are as follows:

On September 29, 2012, Myra Windham ("Windham") was involved in an automobile accident with Stephen H. Keever ("Keever") while operating her 2007 Toyota Camry, which was repaired sometime after the October 5, 2012 accident. On October 5, 2012, six days after the first wreck, Ms. Windham was involved in an automobile accident with Jennifer Mary McArdle ("McArdle") while operating a 2013 Dodge rental car owned by Enterprise Leasing Corporation as a replacement for her automobile which was damaged and out of service from the September 29, 2012 accident. Windham was using the rental car on October 5, 2012, as a temporary substitute vehicle because her vehicle had been rendered inoperable following the accident on September 29, 2012. None of the Windhams' vehicles were involved in the accident on October 5, 2012.

Windham was injured as a result of the October 5, 2012, accident and claims that her injuries exceed the amount of McArdle's liability insurance, which has already been paid in full.

State Farm issued five automobile policies, policy numbers: 162-8590-D19-40C; 234-0370-A08-40M; 203-0684-F04-40C; 186-4629-A16-40Q; and 457-1883-B10-40A ("the Policy or Policies"), to Myra M. Windham and/or Paul A. Windham that were in effect at the time of the accidents. All of the Policies contain identical language.

Myra M. Windham was an insured under all of the aforementioned Policies issued by State Farm. State Farm has paid a single limit of UIM from one of the Windhams' policies in the amount of \$100,000.00 to Windham as a result of the October 5, 2012 accident. Windham claims that she is entitled to stack UIM from the other State Farm policies up to an additional \$400,000. State Farm disputes the ability to stack.

GR #2

The Policy contains several defined terms that are issue in this case. The parties stipulated that the Dodge owned by Enterprise Leasing and rented to Windham at the time of the accident is not a vehicle shown under "YOUR CAR" on the Declarations Page of any of the Policies issued to Myra. M. Windham and/or Paul A. Windham. In addition, the Dodge rental car being driven by Windham at the time of the October 5, 2012 accident does not meet the definition of "owned by" in the policy. However, the Dodge rental car meets the definition of a "temporary substitute car" as defined by each of the Policies.

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Gabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"Stacking is generally permitted *unless limited by statute or by a valid policy provision.*" *Jackson v. State Farm Mut. Auto Ins. Co.*, 288 S.C. 335, 336, 342 S.E.2d 603, 604 (1986) (emphasis added). I find that the ability to stack UIM coverages is controlled by S.C. Code Ann. § 38-77-160 and unambiguous policy language contained within the Underinsured Motorist Coverage portion of the Policies. Based upon South Carolina law and the State Farm's policies at issue in this case, Windham is not permitted to stack UIM coverages when driving a car that meets the policy definition of a "temporary substitute car."

Section 38-77-160 of the South Carolina Code states, in pertinent part:

Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits

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of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. *If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.*

S.C. Code Ann. § 38-77-160 (emphasis added).

To ascertain whether an insured may stack under section 38-77-160 the court must determine whether the insured qualifies as a Class I or Class II insured. A Class I insured is an insured or named insured that has a vehicle involved in the accident. *South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 442 n.1, 405 S.E.2d 396, 397 n.1 (1991); *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (2012). In *Rhoden*, the Supreme Court analyzed section 38-77-160 and reasoned that “[h]aving’ a vehicle involved in the accident reasonably implies ownership of the vehicle.” *Rhoden*, 728 S.E.2d at 481. A Class II insured is an insured whose vehicle was not involved in an accident. *Id.* Although Class I insureds may stack coverage, Class II insureds may not. *Fireman's Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 295 S.C. 538, 370 S.E.2d 85 (1988) (stating “where the insured is a member of the second class (none of the insureds vehicles is involved in the accident), UIM recover is limited to the extent of coverage on one vehicle with UIM coverage”).

At the time of the October 5, 2012 accident, Windham occupied a vehicle that was owned by Enterprise and was temporarily rented to her. It is stipulated that Windham had no ownership interest in this vehicle and that none of her vehicles were involved in the accident. South Carolina law is clear that, pursuant to S.C. Code § 38-77-160, in order to be a Class I insured, the insured must “have” a vehicle involved in the accident and “having” a vehicle involved in the



accident reasonably implies ownership of the vehicle. *James*, 522 S.E. 2d at 868; *Rhoden*, 728 S.E.2d at 481. Because there is no dispute that Windham did not own the vehicle involved in the accident and none of her vehicles were involved in the accident, she did not "have" a vehicle in the accident as is required by the statute. Thus, pursuant to section 38-77-160 and *Rhoden*, Windham "ha[d]" no vehicle in the accident and is a necessarily Class II insured, thereby prohibiting Windham from stacking UIM coverage.

State Farm's policy does not conflict with 38-77-160 and does not voluntarily allow stacking of UIM coverages to a greater extent provided for in 38-77-160. The UIM portions of the Policies contain the following anti-stacking provision:

3. If:
 - a. *you* or any *resident relative* sustains *bodily injury* or *property damage*:
 - (1) while *occupying* a motor vehicle not *owned by you* or any *resident relative*; or
 - (2) while not *occupying* a motor vehicle; and
 - b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the State Farm Companies apply to the same *bodily injury* or *property damage*, then
the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citation omitted). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977) (citation omitted). "[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy

language to extend or defeat coverage that was never intended by the parties. *MGC Mgmt., Inc. v. Kinghorn Ins. Agency*, 336 S.C. 542, 549, 520 S.E.2d 820, 823 (Ct. App. 1999). There is no basis in law or the Policy to alter the express definition of "owned by" to include "temporary substitute car" for purposes of stacking.

Under the clear and unambiguous language of the anti-stacking provision, if an insured sustains bodily injury while occupying a motor vehicle not "owned by" an insured, then the insured is prohibited from stacking and may only recover the single highest limit by any one of the policies. Conversely, it is clear that an insured must be driving a vehicle meeting the policy definition of "owned by" in order to stack UIM coverages from other State Farm policies.

The term "owned by" is defined in the Policy as:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

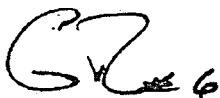
It is undisputed that the Dodge rental car Windham was driving at the time of the accident does not meet the definition of "owned by" contained in the policy. Windham has stipulated that the rental car involved in the accident does not meet the definition of "owned by." Her stipulation on this issue of fact is dispositive of the issue presented.

Windham's argument that because the Dodge rental car meets the definition of a "temporary substitute car" she should be entitled to stack UIM coverages is unavailing.

The term "Temporary Substitute Car" is defined in the Policy as:

[A] *car* that is in the lawful possession of the person operating it and that:

1. Replaces *your car* for a short time while *your car* is out of use due to its:
 - a. Breakdown;



- b. Repair;
- c. Servicing;
- d. Damage; or
- e. Theft; and


2. Neither *you* nor the *person* operating it own or have registered.

If a *car* qualifies as both a *non-owned car* and a *temporary substitute car*, then it is considered a *temporary substitute car* only.

Windham argues that because a temporary substitute car cannot be considered a "non-owned car" as defined by the policy, it is therefore converted into a car that the insured owns for purposes of stacking UIM coverage. However, a "temporary substitute car," by its very definition, cannot be owned by the insured. It is clear that a car that is classified as "temporary substitute car" serves a different purpose under the policy than a car that is classified as a "non-owned car," yet it is clear that both classifications involve cars that the insured does not own.

When the Policy is read as a whole, it is clear that the "Non-owned car" and "temporary substitute car" definitions do not and were not intended to apply to UIM coverage. In order to stack, the UIM policy unequivocally states that the vehicle being operated at the time of the accident must be "owned by" the insured and provides a definition for that term. The definition of "owned by" clearly does not include cars that are classified as either "temporary substitute cars" or "non-owned cars." If State Farm had intended that insureds could stack UIM coverages from other policies while the insured was using a "temporary substitute car" it would have included temporary substitute cars in the definition of "owned by."


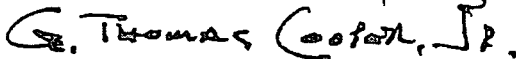
In order for stacking to be allowed under the Policies, Windham must be operating a car that is "owned by" an insured. She has stipulated that she did not own it, it was not registered to her and she was not leasing it for a period of more than 31 days. Therefore, the rental car does


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not meet the definition of "owned by", and Windham is not permitted to stack under the terms of the UIM coverage. State Farm's policy is consistent with S.C. Code Ann. § 38-77-160, and Windham is not entitled to stack UIM coverages from her other policies as a matter of law.

THEREFORE, IT IS ORDERED THAT: stacking of UIM coverages while Windham is operating a temporary substitute car is not permitted under South Carolina law or the State Farm policies at issue in this case. State Farm's Motion for Summary Judgment is GRANTED and Windham's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.


Judge Thomas Cooper
Presiding Judge, Eleventh Judicial Circuit


August ¹⁰ 2016
Columbia, South Carolina

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BETH A. CARRIGG
CLERK OF COURT
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