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Stake's Auto Sales, Inc. v. Nationwide Insurance

STAKE'S AUTO SALES, INC.,
a Pennsylvania Corporation, Plaintiff,
v. NATIONWIDE INSURANCE COMPANIES
and BRIAN SHIVES, an individual, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 1999-20541

Summary Judgment; Insurance; No Assignment Clauses; Fraud, Motor Vehicle Installment Loans; Contract; Lien Holders

1. Summary judgment is proper whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or if after the completion of discovery relevant to the motion, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action.

2. When considering a motion for summary judgment, the court must view all inferences in a light most favorable to the non-moving party.

3. The non-moving party cannot rely merely upon bare assertions, conclusory allegations, or suspicions to support its claim.

4. The non-moving party must put forth evidence sufficient for a jury to find in that party's favor.

5. In the absence of such evidence, the moving party is entitled to judgment as a matter of law.

6. When the plaintiff fails to offer any evidence other than mere suspicion that the body repair shop fraudulently converted the repair check and released the vehicle without making the repairs, summary judgment against the plaintiff must be granted.

7. When an insurance contract states that the insurer may make a loss check payable to the policy holder, the lien holder, or both, the insurer is not in breach of the insurance contract by not including the lien holder on the loss payable check even if it does create the opportunity for the lien holder to perpetuate a fraud.

8. Even if a body shop failed to perform the repairs to a damaged vehicle, when the policy holder accepts delivery of the vehicle from the body shop without complaint, the insurer may be protected against liability to the lien holder if the insurance policy says that the lien holder's interests are protected except in cases of fraud or omission by the policy holder.

9. An unambiguous "no assignment" clause in an insurance contract is enforceable where the assignment is between owners of a motor vehicle installment sales contract.

Appearances:

Joseph A. Macaluso, Esq., *Attorney for Plaintiff*

JoAnne E. Kinzel, Esq., *Attorney for Defendants*

OPINION

Walker, P.J., September 16, 2005

Procedural History and Factual Summary

In May 1996, the defendant Brian Shives purchased a 1993 GMC truck from the plaintiff, Stake's Auto Sales, and entered into a motor vehicle installment contract. Soon thereafter, the plaintiff assigned the contract to Orrstown Bank. The assignment was full recourse, so the plaintiff was obligated to satisfy the loan if Shives defaulted. Nationwide Insurance Company (hereinafter "Nationwide") insured the truck and named Orrstown Bank as an additional insured. In March 1997, the truck was involved in an accident, which required approximately $3,000.00 worth of repairs to the left rear area and bed of the truck. The repairs were performed by Best in Show, an auto body shop in Texas. On April 3, 1997, Nationwide issued a repair check in the amount of $3,077.77 to Best in Show. In April 1999, Shives defaulted on the loan, so Orrstown Bank repossessed the truck. Shortly thereafter, the plaintiff paid Orrstown Bank the balance due of $8,641.12 on the loan and the loan was re-assigned to the plaintiff. When the truck was repossessed, Orrstown Bank and the plaintiff discovered that the truck had substantial damage which had occurred in an accident in November 1997.[1] The repairs were estimated to be $6,047.47. Mr. Vandrew, the owner of a body shop in Pennsylvania, purchased the truck from the plaintiff for $5,000.00 in its damaged condition. As the truck was a near total loss, this was more than the plaintiff could have gotten for the truck at auction but still resulted in a $3,600.00 loss to the plaintiff.

The plaintiff is now suing Nationwide alleging that the company was negligent in how it handled the repairs following the March 1997 accident and that this negligence has caused the plaintiff's loss. The plaintiff alleges that Nationwide did not take steps sufficient to protect the lien holder's interest in the truck and to ensure that the repairs were performed. Nationwide has now filed a motion for summary judgment.

Discussion

Summary judgment is proper "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action" or "if after the completion of discovery relevant to the motion . an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action." Pa.R.C.P. 1035.2. When considering a motion for summary judgment, the court must view all inferences in a light most favorable to the non-moving party. Ferguson v. King, 524 A.2d 1372 (Pa.Super. 1987). The non-moving party cannot rely merely upon bare assertions, conclusory allegations, or suspicions to support its claim. Ertel v. Patriot-News Co., 674 A.2d 1038 (Pa. 1996). The non-moving party must put forth evidence sufficient for a jury to find in that party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L.Ed. 2d 202, 106 S.Ct. 2505 (1986). In the absence of such evidence, the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035.2.

In its motion for summary judgment, the defendant alleges that 1) the plaintiff has failed to offer any evidence that the body shop fraudulently converted the repair check and released the truck without making the repairs, 2) the plaintiff has failed to prove that his loss is attributable to the March 1997 accident, 3) if the body shop did fraudulently convert the repair check, then the body shop must have conspired with Shives which releases the defendant from liability, and 4) any assignment of interest in the insurance policy is invalid because there is a "no assignment" clause in the insurance contract.

I. The plaintiff has failed to offer any evidence that the body shop fraudulently converted the repair check and released the truck without making the repairs.

The plaintiff alleges that Best in Show failed to repair the truck following the March 1997 accident. The defendant argues that the plaintiff has failed to offer any evidence to support this allegation. The court agrees with the defendant.

The plaintiff failed to offer any evidence that proves the truck was not repaired after the March 1997 accident. Only two witnesses are familiar with the damage that resulted from this accident.[2] One of the witnesses is the owner of Best in Show who testified that the repairs were performed. The second witness, Mr. Vandrew, is the owner of a body shop in Pennsylvania who saw the truck after the March 1997 accident and then again after the November 1997 accident.[3] Although Mr. Vandrew testified that he cannot be sure that the damage he saw after the March 1997 accident had been repaired, he did testify that the tailgate of the truck had been damaged in the March 1997 accident and that he did not have to replace it when he repaired the November 1997 damage. The court finds that the plaintiff has failed to

offer any evidence other than mere suspicion that Best in Show fraudulently converted the repair check and released the truck without making the repairs.

II. The plaintiff has failed to prove that his loss is attributable to the March 1997 accident.

The plaintiff alleges that Nationwide was negligent in failing to notify the lien holder of the damage to the truck and in failing to include the lien holder on the repair check so it could verify that the damage had been repaired.[4] The defendant argues that since the plaintiff has failed to prove that the damage sustained in the March 1997 accident had not been repaired, he cannot prove that his loss is attributable to any negligence in the way Nationwide handled those repairs.

The court agrees with the defendant. If the damage to the truck was repaired after the March 1997 accident, then the truck's value would not have been negatively affected. Since the plaintiff failed to prove the damage was not repaired, the court finds that the decrease in the truck's value must be attributable to the damage caused in the November 1997 accident.

Furthermore, the plaintiff argues that by making the repair check payable only to Shives and Best in Show, Nationwide created a situation where fraud could be easily perpetrated. The insurance contract states that payments for loss may be made jointly to the lien holder and the policyholder or to either separately. The court finds that Nationwide abided by the insurance contract and did not act improperly in choosing to not include the lien holder on the repair check.

III. If the body shop did fraudulently convert the repair check, then the body shop must have conspired with the policyholder, which releases the defendant from liability.

The defendant argues that even if the plaintiff could prove that Best in Show released the truck without making the repairs and fraudulently converted the repair check, this could only have been done with the knowledge and participation of the policyholder, Shives, because he picked the truck up from the body shop and returned with it to Pennsylvania. The defendant also argues that the insurance policy covenants to protect the interests of the lien holder except in cases of fraud and omission by the policyholder. If Shives picked the truck up from the body shop and left the area knowing it had not been repaired, then he must have been a participant in the fraud, which would relieve Nationwide of liability. The court concurs with the defendant.

IV. The insurance contract prohibits the assignment of interest in the contract without the insurer's written consent.

The court agrees with the defendant that the "no assignment" clause in the insurance contract prohibited Orrstown Bank from assigning its interest in the insurance policy to the plaintiff without Nationwide's written consent. As the plaintiff asserts in his argument, the precedent cases offered by the defendant are distinguishable based upon their facts since they do not address an assignment between lien holders; however, the plaintiff has stated that he has no support for his argument that this distinction is overriding. Because every precedent case holds that an unambiguous "no assignment" clause in an insurance contract is enforceable, this court must find the "no assignment" clause in this insurance contract is enforceable. Therefore, any interest in the insurance contract Orrstown Bank purported to assign to the plaintiff is invalid.

Conclusion

Therefore, this court holds that the defendant's motion for summary judgment is granted and the plaintiff's case is dismissed.

ORDER OF COURT

September 16, 2005, the court having granted the summary judgment of Nationwide Insurance Companies, the Court orders that the claims against Nationwide Insurance Companies and Brian Shives be dismissed.

[1] The accident bent all of the rims, flattened the tires, damaged the right side from the middle of the truck forward, the left front and right side to the extent "it just took the right side right off it." (Vandrew deposition, p. 18, 22).

[2] The defendant Shives was unavailable.

[3] Mr. Vandrew had been offered the opportunity to perform the repairs on the truck following the March 1997 accident, but he declined. Shives hired Mr. Vandrew to perform the repairs following the November 1997 accident. Shives gave Mr. Vandrew the Erie Insurance Group estimate and half of the money to begin the repairs, but he never returned with additional funds or to reclaim the truck. The truck was repossessed from the premises of Mr. Vandrew's shop without all of the repairs completed.

[4] In March 1997, the lien holder was Orrstown Bank.