STATE OF MICHIGAN

COURT OF APPEALS

RYDER TRUCK RENTAL, INC., and OLD REPUBLIC INSURANCE COMPANY,

Plaintiffs-Appellees,

v

AUTO-OWNERS INSURANCE COMPANY, INC.,

Defendant-Appellant.

FOR PUBLICATION
April 30, 1999
9:10 a.m.

No. 202294
Ingham Circuit Court
LC No. 96-083931 CK

Before: Jansen, P.J., and Holbrook, Jr. and MacKenzie, JJ.

PER CURIAM.

In this action involving the no-fault automobile insurance act, MCL 500.3101 *et seq.*, MSA 24.13101 *et seq.*, defendant appeals as of right from a judgment requiring it to cover a five-sixths pro rata share of liability incurred when a tractor rented from plaintiff Ryder by Leon's Homemade Foods collided with another vehicle, whose two occupants were injured. Defendant, who insured a Leon's-owned trailer that the tractor was hauling at the time of the accident, argued that Ryder's automobile liability insurer, plaintiff Old Republic, was required to cover damages up to the limit of its policy with Ryder and that the rental contract between Ryder and Leon's could not provide a lower limit. The trial court disagreed, ruling that Ryder and Leon's, in their contract, could lower Old Republic's liability limit with respect to the rented tractor. We affirm.

For purposes of this appeal, the parties agree that defendant and Old Republic must each pay a prorated share, computed according to their respective policy limits, of the $210,000 in damages that was ascertained in separate litigation, during which the following were held liable: (1) the driver of the tractor, who was an employee of Leon's; (2) Leon's, under the theory of respondeat superior; and (3) Ryder, under the owner's liability statute, MCL 257.401; MSA 9.2101. The parties also agree that defendant's policy limit was $1,000,000. Their disagreement is whether Old Republic's policy limit was $7,000,000 or $200,000. Defendant argues that because the policy between Old Republic and Ryder, the owner of the tractor, contained a $7,000,000 limit, this limit was applicable to all accidents involving the tractor, even those caused by renters who had signed a contract containing a lower limit. Plaintiffs argue that because the contract between Ryder and Leon's provided liability coverage limited to $100,000 per injured

person and $300,000 per accident, the effective policy limit for the accident was $200,000. Under defendant's theory, defendant would be responsible for one-eighth (1,000,000/1,000,000 + 7,000,000) of the $210,000, while under plaintiffs' theory, adopted by the trial court, defendant would be responsible for five-sixths (1,000,000/1,000,000 + 200,000) of the $210,000.

We first note that in June 1995, the Legislature amended the owner's liability statute to provide for a $20,000 per person and $40,000 per accident limit on a lessor's liability for negligent acts of a lessee during a rental period of thirty days or less. See MCL 257.401(3); MSA 9.2101(3). Since the amendment took effect after the accident and the filing date in the instant case, however, it is inapplicable here. Our decision today applies only to those cases unaffected by § 401(3), e.g., cases involving rental periods of more than thirty days or cases like this one, where the cause of action arose before the effective date of the amendment.

There are no published Michigan cases addressing whether a contract between an automobile owner and a renter can lower the policy limit of the owner's no-fault insurance provider with respect to an accident for which the owner is held liable under the owner's liability statute. There are cases, however, addressing whether a rental contract can completely *eliminate* the liability coverage of the owner's insurer. In *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 40-41; 549 NW2d 345 (1996), we held that such contracts violated the no-fault act's requirement that an automobile owner provide insurance coverage for liability arising from the use of the automobile. See MCL 500.3101(1); MSA 24.13101(1), MCL 500.3131; MSA 24.13131, and MCL 500.3135; MSA 24.13135. Defendant argues that the *State Farm* decision, in addition to prohibiting the *elimination* of an owner's insurance coverage by way of a rental contract, also prohibits *lowering the policy limit* in the rental contract. We fail to see, however, how a contract that merely lowers the policy limit would violate the no-fault act. As long as the owner provides the primary insurance coverage with a policy limit equal to or above the minimum amounts required by MCL 500.3009(1); MSA 24.13009(1) and MCL 500.3131(2); MSA 24.13131(2), there is no violation of law and, correspondingly, no reason to invalidate a proper contractual agreement. The policy limit specified in §§ 3009(1) and 3131(2) is $20,000 per person and $40,000 per accident, well below the $100,000 per person and $300,000 per accident specified in the contract between Ryder and Leon's. Thus, the agreement was valid and enforceable.

This conclusion accords with *Agency Rent-A-Car v American Family Mutual Automobile Ins Co*, 519 NW2d 483 (Minn App, 1994), in which the Minnesota Court of Appeals held that as long as an automobile rental agency provides the minimum no-fault benefits required by law, it "may limit its omnibus liability coverage to less than its own personal liability coverage, and it may do so in the rental contract." It also accords with *Paige v Tucker*, 702 So2d 1184, 1187 (La App 1 Cir, 1997), in which the Louisiana Court of Appeals held that applying the higher coverage terms of a rental agency's insurance policy would amount to an "unforeseen windfall" for a renter who had contracted for a lower policy limit.

We note that the United States District Court for the Eastern District of Michigan has recently invalidated a contractual provision similar to the one at issue in the instant case. See *Liberty Mutual Ins Co v Citizens Ins Co*, 990 F Supp 518 (ED Mich, 1997). Citing *State Farm, supra* at 35, as persuasive authority, it held that allowing a rental agency to lower its insurance

company's policy limit by way of a rental agreement would amount to unlawfully "permitting [the agency] to unilaterally dictate the insurance obligations of its insurer . . . without [its] consent." *Liberty Mutual, supra* at 522-523. Mindful that decisions of a federal district court regarding interpretations of Michigan law are not binding precedent in this Court, we do not believe that *State Farm* is controlling in this case. In *State Farm*, the Court was concerned with a scenario in which a rental car driver signed a contract transferring all liability coverage away from the owner's insurer and to the driver's insurer. The Court stated, "the driver cannot bind the insurance company that issued the driver's policy of coverage for a personal automobile to provide coverage for another car." *State Farm, supra* at 35. This situation differs from the instant one, in which there was no attempt to shift the primary insurance obligation to the renter's insurer. Indeed, Old Republic remained the primary insurer of the tractor. Consequently, we find improper the *Liberty Mutual* court's reliance on *State Farm* and remain convinced that the contract between Ryder and Leon's could lawfully lower Old Republic's policy limit.

In sum, we hold that an automobile rental contract may properly lower the liability coverage limit of the owner's insurer, as long as the owner's insurer remains primary and provides coverage up to the minimum amounts required by the no-fault act.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie