STATE OF MICHIGAN

COURT OF APPEALS

NATIONWIDE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

NATIONAL CAR RENTAL, INC.,

Defendant-Appellee.

September 15, 1993

No. 150614
LC No. 91-117459-CK

Before: Reilly, P.J., and Sawyer and P.J. Clulo,* JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting defendant's motion for summary disposition and denying plaintiff's motion for summary disposition. We reverse.

The parties have stipulated to the facts with respect to this appeal. Plaintiff issued an automobile liability insurance policy to Nabil Hachem with bodily injury limits in the amount of $100,000 per person and $300,000 per occurrence. Defendant is a car rental company which is self insured. Under its rental agreement, it provides bodily injury liability insurance in the amount of $25,000 per person and $50,000 per accident "unless higher minimum limits are required by applicable law for each accident arising from use of the Vehicle as permitted by this Agreement." Defendant leased a car to Nabil Hachem and, at the time of the accident involved in this case, the vehicle was being driven by Assaad Hachem, Nabil Hachem's father, who was an authorized driver under the terms of the rental agreement. The vehicle was being operated in the province of Ontario, Canada, when an accident occurred causing the death of a passenger, Souheila Hachem. Operation of the vehicle in Ontario was permitted by the rental agreement.

The estate of Souheila Hachem brought suit against Nabil Hachem, Assaad Hachem, and National Car Rental. The dispute was mediated in the amount of $225,000. A dispute arose between plaintiff, Hachem's carrier, and defendant. Both plaintiff and defendant agreed that the mediation award should be accepted and the underlying claim settled. Accordingly, the parties agreed that defendant would pay the estate of Souheila Hachem $125,000 and that plaintiff would pay the estate its $100,000 limit. This agreement was without prejudice to the parties to litigate the issue of their respective obligations for the payment of these sums.

The parties further stipulate that § 219 of chapter 218 of the Revised Statutes of Ontario, 1980, requires minimum policy limits of at least $200,000 against liability for bodily injury or death.[1] The instant litigation involves the question of the amount of coverage provided under defendant's rental agreement, which provides that the liability coverage under the agreement shall be $25,000 per person unless higher minimum limits are required by "applicable law." The essence of the parties' dispute is what constitutes "applicable law." Plaintiff argues that the applicable law is the Ontario law which requires minimum liability coverage in the amount of $200,000, while defendant maintains that the applicable law is Michigan law, which only requires liability coverage in the amount of $20,000 per person.[2] The trial court concluded that the "applicable law" referred to in the rental agreement is Michigan law and, therefore, concluded that defendant was only obligated to provide $25,000 per person coverage under the rental agreement and granted summary disposition in favor of defendant accordingly. We disagree with the trial court's interpretation of the contract.

*Circuit judge, sitting on the Court of Appeals by assignment.

The provision in the rental agreement concerning liability coverage provides in part as follows:

> An automobile liability insurance or qualified self-insurance arrangement protects the Authorized Driver on a primary basis in respect to other insurance, for bodily injury or death of another (limits $25,000 each person, $50,000 each accident) and for property damage other than to the Rental Vehicle (limit $25,000) unless higher minimum limits are required by applicable law for each accident arising from use of the Vehicle as permitted by this Agreement.

Defendant's position, in essence, is that interpretation of the term "applicable law" in the rental agreement must be made as a choice of law problem. Defendant further points to the fact that the Supreme Court has abandoned the lex loci delicti rule in favor of the lex fori rule. Sexton v Ryder Truck Rental, Inc, 413 Mich 406; 320 NW2d 843 (1982); see also Olmstead v Anderson, 428 Mich 1; 400 NW2d 292 (1982). Thus, defendant argues, the "applicable law" under the rental agreement is the lex fori, that is to say, Michigan law, which requires minimum liability coverage of $20,000 per person. Therefore, defendant argues, the minimum coverage of $25,000 per person applies.

We disagree, however, that this presents a choice of law problem. Rather, this case presents a contract interpretation issue. That is, the question presented here is not whether Michigan or Ontario law governs this litigation, but what does the contract means when it uses the term "applicable law" in reference to the liability limits.[3] Thus, we are called upon to interpret the meaning of "applicable law" as that term is used in the contract in light of the applicable rules of contract interpretation.

The term "applicable law" as used in the rental agreement could potentially lend itself to one of three interpretations:

1. The agreement unambiguously refers to Michigan law, being the state where the parties reside and in which the rental agreement was executed (defendant's proffered interpretation);

2. The agreement unambiguously refers to Ontario law, that being the jurisdiction in which the vehicle was being operated at the time of the accident (plaintiff's proffered interpretation);

3. The contract is ambiguous as to whether the applicable law is Michigan or Ontario law (plaintiff's alternate interpretation).

Defendant may prevail only if the first of the above possible interpretations is correct. This is true because contracts must be construed against the drafter, in this case defendant, where an ambiguity exists. Petovello v Murray, 139 Mich App 639, 646; 362 NW2d 857 (1984). Accordingly, if the contract is ambiguous, it is to be construed against defendant as the drafter.

In reading the portion of the contract quoted above, we cannot conclude that the term "applicable law" unambiguously refers to Michigan law. The purpose of the provision providing for greater liability limits than $25,000 per person when required by applicable law is to ensure that the vehicle is being operated lawfully wherever it may be found, in the event that it is operated in a state or province which requires liability limits in excess of $25,000 per person or $50,000 per occurrence.

This being the case, the clause operated to provide that the automobile had $200,000 in liability coverage while it was being operated in the province of Ontario in order to meet Ontario's financial responsibility requirements. Thus, at the time of the accident, that provision of the rental agreement provided that the vehicle was operated in compliance with Ontario law by automatically increasing the limits of liability coverage to $200,000. Or, to put the matter another way, the term "applicable law" as used in the rental agreement refers to any law which, at the time of the operation of a vehicle, would require liability coverage in excess of that explicitly provided for in the rental agreement. Thus, since the vehicle was being operated in Ontario at the time of the accident, Ontario law became the applicable law under the contract and the Ontario requirements for minimum liability coverage, $200,000, was in effect at the time of the accident.

In the alternative, although we are persuaded that the term "applicable law" in the contract refers to the law of the jurisdiction in which the vehicle is being operated, even if that interpretation is incorrect, we are at most persuaded that the contract is ambiguous. That is to say, we are not persuaded that the term "applicable law" unambiguously refers to Michigan law, the place of contracting. However, as discussed above, even were we to decide that the contract is ambiguous, rather than unambiguously referring to the jurisdiction in which the vehicle is being operated, we would nevertheless still have to rule in plaintiff's favor since the contract would have to be construed against the drafter, defendant, and in favor of plaintiff. Thus, under either analysis, we must reach the conclusion that the contract provides for coverage up to the liability limits established under Ontario law, being the location of the accident, which the parties have stipulated is $200,000. Accordingly, we conclude that the trial court erred in granting summary disposition in favor of defendant in ruling that defendant was only obligated to provide coverage of $25,000 per person and $50,000 per accident under the rental agreement.

Reversed and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer
/s/ Paul J. Clulo

I concur in the result only.

/s/ Maureen Pulte Reilly

[1] We should note that, since the parties have stipulated to the requirements of Ontario law, we need not and do not engage in an independent determination of the requirements of Ontario law, including the amount of liability limits required under Ontario law or whether the Ontario financial responsibility law applies to foreign nationals operating within Ontario jurisdiction. Rather, we merely accept as true the parties' stipulation that Ontario law requires $200,000 in minimum liability coverage and that that requirement applies to individuals other than Ontario residents.

[2] Since the Michigan minimum coverage requirement is less than $25,000 per person, the $25,000 per person coverage under the rental agreement would be applicable.

[3] To the extent that there is a choice of law issue involved in this case, it is whether to apply Michigan contract law or Ontario contract law. We would agree that, to the extent that this represents an issue, that we are to apply Michigan contract law to this dispute.