STATE OF MICHIGAN

COURT OF APPEALS

ENTERPRISE LEASING COMPANY, d/b/a
ENTERPRISE RENT-A-CAR and
TRAVELERS INSURANCE COMPANY,

Plaintiffs-Appellees,

v

MAJID SAKO and STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Defendants-Appellants.

FOR PUBLICATION
November 7, 1994
9:40 a.m.

Nos. 160363; 160375
LC No. 91-406634 CK

Before: Reilly, P.J., and Corrigan and R.J. Jason,* JJ.

REILLY, P.J.

Defendants appeal as of right from the trial court's order that granted summary disposition in favor of plaintiffs. Plaintiffs claimed that defendant State Farm, the no-fault insurer of defendant Sako's personal vehicle, was the primary insurer and had a duty to defend in a personal injury lawsuit resulting from defendant Sako's involvement in an accident with a vehicle rented from plaintiff Enterprise Leasing Company (Enterprise) while his own car was being repaired. We affirm in part, reverse in part, and remand for further proceedings.

In this case, Enterprise offered Sako the option of 1) paying an additional amount for no-fault coverage provided by the rental car company, or 2) agreeing that the no-fault coverage for the rental car would be provided by the renter or the renter's existing no-fault insurer. Sako chose the second option, and the choice was incorporated into the rental agreement. State Farm contends that Enterprise, which is self-insured, is the owner of the rental vehicle driven by Sako, and is, therefore, responsible for the primary liability coverage on the vehicle, MCL 257.401; MSA 9.2101, up to $500,000, when plaintiff Travelers Insurance Company becomes responsible for the excess coverage under its policy with Enterprise. State Farm also argues that under its policy with Sako, if there is "other similar vehicle liability coverage" on the temporary substitute car, then State Farm's coverage is excess. State Farm further contends that its coverage does not apply to Sako's rental vehicle because Enterprise is in the business of leasing automobiles, and State Farm's policy excludes coverage "if the vehicle is owned by any person or organization in a car business." We reject all of these arguments.

A similar car rental agreement was challenged in State Farm Mutual Auto Ins Co v Snappy Car Rental, Inc, 196 Mich App 143; 492 NW2d 500 (1992). In that case State Farm argued that the option clause was void because it was not specifically permitted by the no-fault act, and because the provision effectively placed the responsibility of providing primary residual liability insurance upon the permitted user, as opposed to the owner. This Court held that the option was not an attempt to limit the residual liability insurance or first-party benefits, because the renter is obligated to provide coverage consistent with the no-fault act and the financial responsibility act. Rather, the option clause was only an attempt to establish the priority of coverage as contracted for by the renter. Id., at 150. Consequently, this

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

The trial court properly granted summary disposition in favor of plaintiffs as to defendant State Farm and that ruling is affirmed. However, we believe that summary disposition against defendant Sako was inappropriate. Plaintiffs did not move for summary disposition as to defendant Sako. In fact, they specifically argued both below and in this Court that they were not seeking a determination as to any liability defendant Sako might have in this matter. It must therefore be assumed that the inclusion of defendant Sako in the grant of summary disposition was a clerical error. We reverse the grant of summary disposition against defendant Sako and remand for further proceedings on the claim against him. MCR 7.212(A)(1).

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly
/s/ Maura D. Corrigan
/s/ Raymond J. Jason