Opinion No. 2015-45
September 17, 2015
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AMCO Insurance Company v. Azim Akhmedov, et al. – No. CI-14-04391 – Madenspacher, J. – September 17, 2015 – Civil Law – Motion for Summary Judgment – AMCO Insurance Company demonstrated that reformation of the liability limits of the automobile insurance policy at issue was appropriate, and summary judgment was granted in its favor.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION- LAW

AMCO INSURANCE COMPANY	:	
	:	
v.	:	No. CI-14-04391
	:	
AZIM AKHMEDOV, et al.	:	

OPINION

BY: MADENSPACHER, J.
Date: September 17, 2015

Before the Court is AMCO Insurance Company's ("Plaintiff") Motion for Summary Judgment ("Motion"). For the reasons that follow, the Motion is granted.

BACKGROUND

On or about July 16, 2013, defendant Khusen Akhmedov ("Khusen") was involved in a motor vehicle accident which occurred on the Roosevelt Boulevard, Philadelphia, Philadelphia County, Pennsylvania. As a result of the motor vehicle accident, Samara S. Banks and three of her minor children suffered fatal injuries. Two other minor individuals sustained personal injuries as a result of the accident. Following the accident, Khusen was arrested and charged with violations of the Motor Vehicle Code including but not limited to charges of aggravated assault, involuntary manslaughter, murder of the third degree, homicide by vehicle, and other related charges. On July 13, 2015, Khusen was found guilty on four counts of third-degree murder in the Philadelphia County Court of Common Pleas.

At the time of the accident, the vehicle that was being driven by Khusen was insured by Plaintiff. The policy in question ("Policy") was issued to Azim Akhmedov ("Azim") and Nazira Akhmedov, Khusen's parents. At all times leading up to and including July 16, 2013, the Policy contained limits for liability for bodily injury arising from automobile accidents. These limits were in the amount of $25,000.00 per person and $50,000.00 per accident. On July 17, 2013, a day after the accident, Azim, and/or his representatives, contacted Plaintiff and requested that the liability limits of coverage under the Policy be increased to a $500,000.00 single limit. Pursuant to this request, Plaintiff increased the limit on the Policy to $500,000.00. Plaintiff also voluntarily backdated the increased coverage to be effective as of July 10, 2013. However, Plaintiff was not apprised of the motor vehicle accident that had occurred prior to voluntarily increasing the coverage. Plaintiff has filed the instant Motion for Summary Judgment, seeking reformation of the liability limits of the Policy.

DISCUSSION

Summary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Stimmler v. Chestnut Hill Hosp.*, 602 Pa. 539, 553, 981 A.2d 145, 153 (2009). Rule 1035.2 of the Pennsylvania Rules of Civil Procedure provides:

> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law:
>
> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, 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 or defense which in a jury trial would require the issues to be submitted to a jury.

See Pa.R.C.P. No. 1035.2.

The reviewing court must view the record in the light most favorable to the nonmoving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party. *Id*. When the facts are so clear that reasonable minds cannot differ, a trial court may properly enter summary judgment. *Id*. at 153-4. Bold unsupported assertions of conclusory accusations cannot create genuine issues of material fact. *McCain v. Pennbank*, 379 Pa. Super. 313, 318-19, 549 A.2d 1311, 1313-14 (1988). A non-moving party may not rely merely upon controverted allegations in the pleadings, but must set forth specific facts by way of affidavit, or in some other way as provided by Pa.R.C.P. 1035(b), demonstrating that a genuine issue exists. *Atkinson v. Haug*, 424 Pa. Super. 406, 411, 622 A.2d 983, 985 (1993). In order to properly raise a genuine issue of fact, the non-moving party has the burden to present facts by counter-affidavits, depositions, admissions, or answers to interrogatories. *New York Guardian Mortgage Corp. v. Dietzel*, 362 Pa. Super. 426, 429, 524 A.2d 951, 952 (1987). A motion for

summary judgment must be granted in favor of a moving party if the other party chooses to rest on its pleadings, unless a genuine issue of fact is made out in the moving party's evidence taken by itself. *Curry v. Estate of Thompson*, 332 Pa. Super. 364, 368, 481 A.2d 658, 660 (1984).

1. The admitted facts establish that reformation of the liability limits of the Policy is appropriate.

Once a default judgment has been entered, the well-pleaded, factual allegations of the complaint, except those relating to the damage amount, are accepted as true and treated as though they were established by proof. *E. Elec. Corp. of New Jersey v. Shoemaker Const. Co.*, 657 F. Supp. 2d 545, 552 (E.D. Pa. 2009). A default judgment, in effect, is an adjudication of the merits. *Gonzales v. Procaccio Bros. Trucking Co.*, 268 Pa. Super. 245, 252, 407 A.2d 1338, 1341 (1979).

On August 13, 2014, default judgment was entered in favor of Plaintiff and against Defendants Nazira Akhmedov and Azim Akhmedov. On October 6, 2014, default judgment was entered in favor of Plaintiff and against Defendant Khusen Akhmedov. On October 20, 2014, default judgment was entered in favor of Plaintiff and against Defendant Craig Griffin (collectively, the "Defaulting Defendants"). Plaintiff bases the instant Motion on the fact that the Defaulting Defendants admitted numerous facts contained within the allegations set forth in the Complaint by virtue of their default. Specifically, Defaulting Defendants have admitted the following facts, among others:

1. Khusen was the operator of a vehicle involved in an accident on July 16, 2013, which was insured by Plaintiff and issued to Azim and Nazira Akhmedov.
2. Azim was made aware of the accident on July 16, 2013.
3. On July 17, 2013, a telephone call was placed to Plaintiff by Izmir Akhmedov with the permission of named insured Azim.
4. During the July 17, 2013 telephone call, despite being aware of the accident that occurred on July 16, 2013, Azim did not inform Plaintiff that the accident occurred.
5. During the July 17, 2013 telephone call, Azim inquired about raising the liability limits applicable to the Policy.

6. Plaintiff increased the Policy limits of the liability coverage from $25,000.00 per person/ $50,000.00 per accident to a single limit $500,000.00 policy at Azim's request.
7. On July 18, 2013, Azim informed Plaintiff that there was a serious motor vehicle accident, and that Khusen was the operator of the vehicle involved.
8. The policy limits in place at the time of the accident on July 16, 2013 was $25,000.00 per person and $50,000.00 per accident.

Accepting the above facts as true, the Court finds that reformation of the liability limits of the Policy is appropriate.

2. Plaintiff's Motion for Summary Judgment is not premature.

In his opposition to Plaintiff's Motion, Sean Williams ("Defendant") argues that the Motion is premature, because he has not had the chance to complete discovery. However, a party may not offer evidence to contradict the judicially admitted facts. *Linefsky v. Redevelopment Auth. of the City of Philadelphia*, 698 A.2d 128, 133 (Pa. Commw. Ct. 1997). Therefore, even if additional evidence was unearthed during the course of discovery, it could not be offered to contradict the admitted facts, outlined above.

3. The admissions of Defaulting Defendants are applicable to co-defendants.

The admissions at issue in this case deal with the Policy, which is an insurance contract between Plaintiff and Azim. No other parties were privy to the Policy. Therefore, as Plaintiff argues, it would be unjust to permit Defendant to create a coverage dispute where none exists between the actual parties to the insurance contract. In this context, the admissions of Defaulting Defendants are applicable to co-defendants.

4. Plaintiff's interpretation of the Known Loss Doctrine does not render the backdated coverage illusory.

Defendant cites *Heller v. Pa. League of Cities and Municipalities*, in support of his argument that Plaintiff's interpretation of the Known Loss Doctrine renders the backdated coverage illusory. 613 Pa. 143 (2011). In *Heller*, a police officer was injured in a motor vehicle accident which occurred in the scope and course of his employment. He applied for and received

workers' compensation benefits. In addition, he sought underinsured motorist coverage from his employer in order to compensate him for his damages. The insurance company denied the officer's underinsured motorist claim on the basis that there was an exclusion within the policy stating that underinsured motorist coverage does not apply to any claim by anyone eligible for workers' compensation benefits. The Pennsylvania Supreme Court found that the insurance coverage at issue was illusory, since the Court could not envision an instance where an injury sustained by a Borough employee during the course and scope of employment would render him ineligible for workers' compensation, yet give rise to an underinsured motorist claim. Therefore, the Court held that the officer was entitled to the underinsured motorist coverage because the insurer charged a premium for illusory coverage which was void as against public policy.

In the case at bar, the issue is not whether the Policy contains exclusions that render the coverage illusory. Rather, Defendant contends that reformation of the policy would create illusory coverage because Plaintiff backdated the increase in liability coverage limits to six (6) days before the accident, and a claim has been made for a loss which occurred during the backdated coverage period. However, as discussed above, Plaintiff was not informed that there had been a serious accident which would trigger coverage under the Policy at the time it agreed to increase the liability coverage limits and backdate the coverage. The facts of *Heller* are distinguishable, since the case at bar does not involve exclusions contained within the Policy.

CONCLUSION

Plaintiff has demonstrated that reformation of the liability limits of the Policy is appropriate. Consequently, the court issues the following:

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ORDER

AND NOW, this 17th day of September, 2015, upon consideration of Plaintiff's Motion for Summary Judgment, and any response thereto, it is hereby ORDERED AND DECREED that said Motion is **GRANTED**.

ATTEST:

BY THE COURT:

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JOSEPH C. MADENSPACHER
JUDGE

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