Allstate New Jersey Ins. Co. v. Penske Truck Leasing

Allstate N.J. Ins. Co. v. Penske Truck Leasing, 2013 N.J. Super. Unpub. LEXIS 2863

Superior Court of New Jersey, Appellate Division
April 16, 2013, Argued; December 2, 2013, Decided
DOCKET NO. A-5900-11T3

Reporter: **2013 N.J. Super. Unpub. LEXIS 2863**| 2013 WL 6223381

ALLSTATE NEW JERSEY INSURANCE COMPANY, Plaintiff-Appellant, v. PENSKE TRUCK LEASING, MEIR DORFMAN, AND OLD REPUBLIC INSURANCE COMPANY, Defendants-Respondents.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[1]** On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-2564-11.

Core Terms

motor carrier, insurance, vehicle, coverage, transport, truck, liability, interstate, policy, property, regulate, lease, requirement, accident, register, law, liability coverage, republic, for-hire, minimum, motor, trip, summary judgment, interstate commerce, motor vehicle, agreement, mandate, amount, person, argument

Counsel: David J. Dickinson argued the cause for appellant (McDermott & McGee, L.L.P., attorneys; Gabrielle J. Pribula, on the brief).

Charles W. Atkinson, III argued the cause for respondents (Biancamano & DiStefano, P.C., attorneys; Lawrence F. Citro, of counsel; Mr. Atkinson, on the brief).

Judges: Before Judges Reisner, Harris, and Hayden. The opinion of the court was delivered by MARGARET M. HAYDEN, J.A.D.

Opinion by: MARGARET M. HAYDEN

Opinion

The opinion of the court was delivered by

MARGARET M. HAYDEN, J.A.D.

This case arises from an insurance coverage dispute between plaintiff, Allstate New Jersey Insurance Co. (Allstate), and defendants Old Republic Insurance Co. (Old Republic), Penske Truck Leasing Co., L.P. (Penske), and Meir Dorfman (Dorfman) (collectively defendants). Allstate appeals the June 15, 2012 Law Division order denying its motion to compel arbitration and granting defendants' motion for summary judgment and dismissal of the complaint. For the reasons that follow, we affirm.

I.

The record reveals the following facts, which are basically undisputed. On March 23, 2009, Dorfman, a New York resident, rented a twenty-six-foot-long **[2]** truck for one day from Penske, a registered interstate motor carrier. Penske maintained motor vehicle liability insurance with a policy limit of one million dollars through Old Republic, a Maryland-based company. The Old Republic insurance policy

contained a step-down provision for leased vehicles, which provided liability coverage as to "[b]oth lessees and rentees of covered autos as insureds, but only to the extent and for the limits of liability agreed to under contractual agreement with [Penske]."

Dorfman leased the Penske truck in Upper Saddle River and returned it to the same location within twenty-four hours. Dorfman obtained only the limited liability coverage provided by Penske in the rental agreement, which was then $15,000 per injury and $30,000 per occurrence ($15,000/$30,000) in coverage. He declined to purchase supplemental liability coverage and did not have any personal automotive insurance.

Unfortunately, during that day, Dorfman was involved in an accident in Lakewood, New Jersey with a car driven by Carmen L. Quinones. Quinones had two passengers at the time of the accident, and all three were injured in the accident. Quinones had motor vehicle insurance through Allstate, **[3]** which paid Personal Injury Protection (PIP) Benefits to all three occupants of the insured vehicle. Defendants settled the claims of the three injured people for a total of $30,000.

Allstate unsuccessfully sought reimbursement of its PIP payout from Old Republic. On March 21, 2011, Allstate filed a complaint against defendants for PIP reimbursement and demanded arbitration pursuant to *N.J.S.A.* 39:6A-9.1. After discovery, Allstate filed a motion to compel arbitration, and defendants cross-moved for summary judgment.

Defendants argued they did not have to arbitrate because Old Republic's $15,000/$30,000 policy limits had already been exhausted in the settlement payments. Allstate countered that the $15,000/$30,000 provision in the rental agreement and the Old Republic policy were inapplicable because Penske was an interstate motor carrier subject only to federal regulation requiring a minimum of $750,000 in coverage. Allstate argued that it did not matter that Dorfman was not engaged in interstate commerce at the time of the accident. Defendants, on the other hand, argued that the federal law did not apply as Dorfman's trip was a personal local one, not a for-hire interstate trip covered **[4]** by the Motor Carrier Act of 1980 (MCA). *Pub. L. No.* 96-296, 94 Stat. 793 (codified as amended in scattered sections of 18 & 49 *U.S.C.*). Thus, defendants maintained, the federal law and its regulations did not apply to the March 23, 2009 accident.

On June 15, 2012, the trial judge heard oral argument on both motions. He concluded that the MCA was not applicable as it was not disputed that Dorfman's trip was strictly local, personal, and did not involve interstate commerce. The judge also determined that, since Old Republic had paid claims totaling the policy limits, there was nothing to arbitrate and, consequently, he dismissed the complaint. This appeal followed.

II.

On appeal, Allstate contends that the judge erred in granting summary judgment concerning the amount of available liability coverage. First, it maintains that the judge erred in applying the policy limits provided in the rental agreement and insurance policy because Penske is an interstate motor carrier subject to the MCA and its regulations, which may not be limited by state law. It also argues, citing *N.J.S.A.* 39:6A-3 and *N.J.S.A.* 39:6B-1, that the leased vehicle, as a commercial truck, was not subject to New Jersey motor **[5]** vehicle insurance laws. We disagree.

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law." *R.* 4:46-2(c). "While 'genuine' issues of material fact preclude the granting of summary judgment, . . . those that are 'of an insubstantial nature' do not." *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 530, 666 A.2d 146 (1995) (citations omitted). "Our review of the trial court's grant of summary judgment is de novo, employing the same standard used by the trial court." *Tarabokia v. Structure Tone*, 429 N.J. Super. 103, 106, 57 A.3d 25 (App. Div. 2012) (citing *Prudential Prop. & Cas. Ins. Co. v. Boylan*, 307 N.J. Super. 162, 167, 704 A.2d 597 (App. Div.), *certif. denied*, 154 N.J. 608, 713 A.2d 499 (1998)), *certif. denied*, 213 N.J. 534, 65 A.3d 260 (2013).

Allstate does not dispute that Old Republic has already paid out $30,000 on this incident, the coverage limit listed in the rental agreement and the Old Republic policy. Rather, Allstate contends that those amounts are not pertinent here because Penske is required **[6]** to have a minimum of $750,000 in liability coverage pursuant to the MCA. Allstate argues that because Penske is an interstate motor carrier, any trip with a Penske truck for any purpose was subject solely to the MCA's liability coverage requirement. We view these arguments as a misunderstanding of the applicable law.

We begin with an analysis of the MCA, which provides in pertinent part:

> (1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration *for the transportation of property by motor carrier or motor private carrier* (as such terms are defined in section 13102 of this title) in the United States between a place in a State and--
>
> (A) a place in another State;
>
> (B) another place in the same State through a place outside of that State; or
>
> (C) a place outside the United States.
>
> (2) The level of financial responsibility established under paragraph (1) of this subsection shall be at least $750,000.
>
> [49 *U.S.C.A.* § 31139(b) (emphasis added).]

The MCA defines "motor carrier" as "a person providing **[7]** motor vehicle transportation for compensation." *Id.* § 13102(14). "Motor private carrier" is "a person, other than a motor carrier, transporting property" when (1) another section of the code regarding transport of passengers applies; (2) "the person is the owner, lessee, or bailee of the property being transported; and" (3) "the property is being transported for sale, lease, rent, or bailment to further a commercial enterprise." *Id.* § 13102 (15).

The Federal Motor Carrier Safety Regulations set forth the "minimum levels of financial responsibility" as $750,000 for all "for-hire" motor carriers of nonhazardous property. 49 *C.F.R.* § 387.9. Under these regulations, a "motor carrier" is either "a for-hire motor carrier or private motor carrier." *Id.* § 387.5. "For-hire carriage means the business of transporting, for compensation, the goods or property of another." *Ibid.* The "for-hire" carriage must be "[i]n interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds[.]"[1] *Id.* § 387.9. Private carriage is also covered by these regulations, but only where hazardous substances are being transported, *Ibid.*, which is not the case here.

The MCA and its regulations evince a legislative policy to "ensure[a source of compensation for injured parties when a lease agreement might lead to a gap in coverage[.]" *Canal Ins. Co. v. Underwriters at Lloyd's London*, 435 F.3d 431, 441 (3d Cir. 2006); *see also QBE Ins. Co. v. P & F Container Servs., Inc.*, 362 N.J. Super. 445, 450, 828 A.2d 935 (App. Div. 2003); *Travelers Indem. Co. of Ill. v. W. Am. Specialized Transp. Co.*, 317 F. Supp. 2d 693, 698 (W.D. La. 2004), *aff'd*, 409 F.3d 256 (5th Cir. 2005).

When a company falls under these mandates, "an MCS-90 endorsement must accompany any liability policy issued to a registered motor carrier." *Lloyd's, supra*, 435 F.3d at 442; *see also Carolina Cas. Ins. Co. v. Yeates*, 584 F.3d 868, 870 (10th Cir. 2009). The endorsement provides that commercial liability insurers are responsible for final judgments against the insured resulting from negligence related to the use of a vehicle subject to the mandates. *Lloyd's, supra*, 435 F.3d at 442 n.4. "[T]he coverage provided pursuant to an MCS-90 Endorsement takes the form of a suretyship, rather than providing insurance coverage per se." *Travelers, supra*, 317 F. Supp. 2d at 698; **[9]** *see also QBE, supra*, 362 N.J. Super. at 450-51.

Allstate contends that Penske's status as an interstate motor carrier triggers the endorsement for all accidents, no matter the location or purpose of the trip. However, this argument ignores the plain wording of the statute, which mandates the liability coverage, not per company or per vehicle, but "for the transportation of property by motor carrier or motor private carrier" to another state or country or

through another state. 49 *U.S.C.A.* § 31139. *See, e.g., Canal Ins. Co. v. F.W. Clukey Trucking Co.*, 295 N.J. Super. 131, 141-42, 684 A.2d 953 (App. Div. 1996) (noting that an interstate motor carrier's potential liability for an accident while involved in interstate commerce was the federally mandated $750,000).

Moreover, we previously rejected Allstate's argument and held that a trip-specific analysis was necessary to determine whether the MCA liability coverage applied. *QBE, supra*, 362 N.J. Super. at 457-58. In *QBE*, we noted that a substantial body of federal case law looked at the nature and course of a cargo's transport, as well as the individual trip, in determining whether the MCA was applicable. *Id.* at 458-61 (noting that "[t]o distinguish interstate **[10]** from intrastate commerce in hauling, the essential character of the commerce must be analyzed"). In that case, where the registered interstate motor carrier that had leased the truck was transporting goods for-hire, we determined that, if the long-term lease showed an intent to use the truck for both interstate and intrastate commerce, the trip could be considered to be in interstate commerce. *Id.* at 461.

Indeed, the great weight of authority throughout the country is that the analysis must consider the trip-specific information to determine whether a vehicle is transporting property in interstate commerce. *See Brunson v. Canal Ins. Co.*, 602 F. Supp. 2d 711, 715-16 (D.S.C. 2007) (The issue in determining the applicability of MCA is whether "at the time of the accident" the vehicle was operating for-hire, transporting property, and engaging in interstate commerce.); *Canal Ins. Co. v. Coleman*, 625 F.3d 244, 251 (5th Cir. 2010) ("[T]he weight of authority from [the Fifth Circuit] and beyond supports [the] conclusion that the MCS-90 does not cover vehicles when they are not presently transporting property in interstate commerce."); *Newman v. State Farm Mut. Auto Ins. Co.*, 62 So. 3d 808, 811-12 (La. Ct. App. 2011) **[11]** (noting the trip-specific review properly showed the endorsement inapplicable where the vehicle was not being used for-hire or interstate). *But see Royal Indem. Co. v. Jacobsen*, 863 F. Supp. 1537, 1540-42 (D. Utah 1994) (declining to use a trip-specific reading).

In the case at bar, an analysis of Dorfman's trip shows that it did not trigger the MCA's liability coverage requirement. Unlike the driver in *QBE*, there is no evidence that Dorfman worked for an interstate motor carrier. Clearly, Dorfman does not meet the MCA definition of a for-hire motor carrier as there is no suggestion in the record that he was being paid for his use of the Penske truck. Further, no evidence was presented that he was transporting any property for pay at the time of the accident. Finally, it is undisputed that his trip was entirely intrastate, and there is no evidence that Dorfman rented the truck for one day to utilize it for-hire outside the state. Allstate submitted no contrary assertions in its opposition to defendants' summary judgment motion.

III.

Allstate next argues that summary judgment was improper because the $15,000/$30,000 minimum liability coverage limits do not apply to the leased vehicle as **[12]** it was a commercial truck registered in another state. Specifically, Allstate asserts that *N.J.S.A.* 39:6A-3 does not apply because it requires "Compulsory Automobile Insurance Coverage" and the leased truck was not an automobile. Additionally, Allstate contends that *N.J.S.A.* 39:6B-1, which requires all motor vehicles registered or principally garaged in New Jersey to maintain motor vehicle liability insurance coverage, does not apply because the truck was not "registered or principally garaged" in New Jersey as required. Allstate also argues that New Jersey motor vehicle insurance law does not apply here because the MCA preempts the right to regulate liability insurance coverage for all federally registered motor carriers.

Under *N.J.S.A.* 39:6A-3, "every owner or registered owner of an automobile registered or principally garaged[2] in this State shall maintain automobile liability insurance coverage" in an amount of at least $15,000/$30,000. An "automobile" is "a private passenger automobile of a private passenger or station wagon type . . . ." *N.J.S.A.* 39:6A-2. Similarly, *N.J.S.A.* 39:6B-1 mandates the same $15,000/$30,000 coverage for "[e]very owner or registered owner of a motor vehicle **[13]** registered or principally garaged in this State[.]" The term "motor vehicle" is defined as "all vehicles propelled otherwise than by muscular power[.]" *N.J.S.A.* 39:1-1. Allstate contends the Penske truck does not qualify under these provisions. That is correct, but we do not agree with Allstate's further argument that the Penske truck is therefore subject to higher coverage limits.

When motor vehicles are rented or leased for operation by the lessees, as is the case here, *N.J.S.A.* 45:21-1 to -15 governs. *Gen. Accident Grp. of Ins. Co. v. Liberty Mut. Ins. Co.*, 191 N.J. Super. 530, 534, 468 A.2d 430 (App. Div.), *certif. denied*, 95 N.J. 192, 470 A.2d 416 (1983). Under this statute, "any and every person engaged in the business of renting or leasing motor vehicles," *N.J.S.A.* 45:21-1, must maintain a liability policy covering damage and bodily injured suffered as a result of accidents occurring by reason "of the negligent maintenance, use or operation of such motor vehicle upon the public highways of this state." *N.J.S.A.* 45:21-2. The mandated liability policy must provide for a minimum of $10,000/$20,000. *N.J.S.A.* 45:21-3. This **[14]** amount has been altered to incorporate the higher minimum requirement of $15,000/$30,000. *Agency Rent-A-Car, Inc. v. Indem. Ins. Co. of N. Am.*, 268 N.J. Super. 319, 322-23, 633 A.2d 975 (App. Div. 1993); *see also Hanco v. Sisoukraj*, 364 N.J. Super. 41, 45 n.1, 834 A.2d 443 (App. Div. 2003). Thus, Penske, as a lessor of motor vehicles in this State, was required to have the minimum coverage under this statute.

Finally, Allstate's argument that the MCA preempts all insurance coverage regulation of vehicles owned by federally-registered trucking companies is without sufficient merit to warrant discussion. *R.* 2:11-3 (e)(1)(E). Suffice it to say that as long as a federal statute does not explicitly preempt state laws, the states are free to statutorily supplement or complement a federal statutory scheme, but cannot enact a law that conflicts with federal laws or regulations. *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602, 615-18, 725 A.2d 1104 (1999); *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 77-78, 577 A.2d 1239 (1990).

As discussed above, the MCA and its regulations do not apply to the accident at issue here. Therefore, "the insurer is responsible to the lessee solely on the basis of contractual indemnification up to the fixed amount established **[15]** by the statute." *Agency Rent-A-Car, supra*, 268 N.J. Super. at 324. A "claim against [a] lessee triggers the indemnification, but it cannot increase the amount of contractual liability." *Ibid.*

In sum, based upon the above analysis, the MCA requirement of $750,000 in liability coverage does not apply here; rather, the $15,000/$30,000 minimum coverage mandated by *N.J.S.A.* 45:21-3 and provided for in the rental agreement and Old Republic policy applies. As this case involved purely legal issues and no genuine issues of material fact existed, it was properly dismissed on summary judgment.

Affirmed.

Footnote 1

According to the rental agreement, **[8]** the leased truck exceeded the minimum gross vehicle weight.

Footnote 2

The record does not contain information as to where the truck was principally garaged.

Content Type: **Cases**
Terms: **Allstate New Jersey Ins. Co. v. Penske Truck Leasing**
Narrow by: **None**
Date and Time: **Monday, February 03, 2014 – 04:07 PM**