

1992

Allstate Insurance Company v. Liberty Mutual Insurance Group : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,)	
)	
Plaintiff/Appellant,)	
)	
vs.)	Case No. 920646-CA
)	
LIBERTY MUTUAL INSURANCE GROUP,)	Priority No. 16
)	
Defendant/Appellee.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE JOHN A. ROKICH

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SUMMARY OF ARGUMENT

Liberty Mutual contractually assumed the duty to insure the Buick until the lease terminated. It had an insurable interest in the Buick at the time of the accident because the lease had not terminated at that time.

Allstate has standing to enforce the Lease Agreement between Liberty Mutual's insured Jockey, and Wheels. Furthermore, because Liberty Mutual never raised the issue of standing in the trial court, the argument cannot be considered for the first time on appeal.

Public policy considerations mandate judgment in favor of Allstate. Liberty Mutual's arguments minimize available insurance coverage, a concept repugnant to public policy in this state. Allstate's position, which maximizes available insurance coverage on any vehicle, is consistent with public policy in the State of Utah.

ARGUMENT

POINT I. LIBERTY MUTUAL CONTRACTUALLY ASSUMED THE DUTY TO INSURE THE BUICK UNTIL THE LEASE TERMINATED.

In Liberty Mutual's brief, it contends that Jockey did not possess an insurable interest in the Buick for several reasons, arguing that it did not possess a leasehold interest in the Buick, that it did not own the Buick, that it did not possess or control

the Buick, and that it had no risk of legal liability to third parties with respect to the use of the Buick. Most of these grounds are irrelevant to this appeal. The sole issue this court must consider is whether Jockey had a leasehold interest in the Buick. If the leasehold interest existed through the contract entered into between Liberty Mutual's insured Jockey and Wheels, Liberty Mutual had an insurable interest in the Buick and is obligated to provide insurance coverage for the Buick.

Liberty Mutual's argument that it lacked any "ownership interest" in the Buick because of the Lease Agreement, and therefore had no duty to insure it, ignores the facts and Utah law concerning the enforcement of contractual duties. It is undisputed that the lease requires Jockey to insure the Buick for the term of the lease. (Lease Agreement, attached as Addendum Exhibit A to Brief of Appellant, para. 11). Even Ford Pearson, the Vice President of Wheels whose testimony Liberty Mutual relied on in support of its Motion for Summary Judgment in the lower court, agreed that Jockey must insure the vehicle for the term of the lease:

- Q. As I understand it, Jockey, from the prior testimony of you and Mr. Mulane, that Jockey was required to provide liability insurance for the term of the leasehold only and not before the leasehold began or after it terminated.
- A. If you will give me a minute I will look at the lease.

Q. Okay.

A. The first sentence in the lease agreement on paragraph 11 under insurance says, "lessee agrees to assume all liability for injury, death, or property damage occasioned by the operation and possession of the motor vehicle during the term of the lease."

Q. Okay. So it's whatever the term of the lease is, that's the term that they have liability insurance for?

A. Yes.

(R. 374, emphasis added).

Liberty Mutual's contention that it had no ownership responsibilities in connection with the Buick thus ignores paragraph 11 of the lease, and overlooks well-established Utah law, which provides that contracts are, as a general rule, enforceable against the parties thereto. See e.g., John Call Engineering v. Manti City Corp., 743 P.2d 1205, 1208 (Utah 1987), where the Utah Supreme Court stated that "a party is bound by the contract which he or she voluntarily and knowingly signs." (citation omitted). See also, Bekins Bar V Ranch v. Huth, 664 P.2d 455, 459 (Utah 1983) ("[I]t is not for the courts to assume the paternalistic role of declaring that one who has freely bound himself need not perform because the bargain is not favorable."); Hal Taylor Associates v. Unionamerica, Inc., 657 P.2d 743, 749 (Utah 1982) ("This Court will not rewrite a contract to supply terms which the parties omitted."). Because Liberty Mutual contractually undertook

ownership responsibilities with respect to the Buick, and specifically agreed to provide liability insurance until the lease terminated, its argument that it had no duty to insure the Buick must be rejected by this Court.

Liberty Mutual also ignores the Utah Supreme Court's decision in State Farm v. Holt, 503 P.2d 1205 (Utah 1972). Liberty Mutual contends that Holt is not applicable in this appeal. However, it is controlling on the question of whether Liberty Mutual's insured had an insurable interest in the Buick when the accident occurred. Like Liberty Mutual, the insurer in argued that its insured had "divested himself of all interest (in the vehicle) and, therefore, had no insurable interest in it at the time of the accident." Id. at 1205. The Court rejected that argument on the ground that title had not passed when the accident occurred, and that State Farm's insured therefore had an insurable interest.¹ Similarly, Jockey had a contractual duty in this matter to provide insurance until title passed to Habish, and thus had an insurable interest in the Buick until title was properly transferred. The trial court erred in ruling otherwise.

¹Allstate notes that the Holt decision conflicts with the case of Galati v. New Amsterdam Casualty Co., 381 S.W.2d 5 (Mo. Ct. App. 1964) (cited in Appellee's Brief at 17) in this regard. In contrast to the Utah Supreme Court's ruling in Holt, the Galati court held that the failure to transfer title to the vehicle before the accident was irrelevant insofar as insurance coverage was concerned. Id. at 9.

POINT II. JOCKEY'S LEASEHOLD INTEREST IN THE BUICK WAS IN EFFECT ON THE DATE OF THE ACCIDENT.

The lease agreement does not specifically state when the lease terminates, except for purposes of billing. Because Jockey agreed to operate the Buick "in strict conformity with all laws" (Lease, para. 8), and because it is the law in Utah that a vehicle cannot be operated without liability insurance, the only logical conclusion in this matter is that the lease would continue until such time as a new title was issued to another owner. It is undisputed that the title to the Buick was not issued to Jack Habish until after the accident occurred. Thus, Liberty Mutual's argument that Jockey's leasehold interest terminated prior to the day of the accident is not persuasive.

POINT III. ALLSTATE HAS STANDING TO ENFORCE THE LEASE AGREEMENT.

In Point III of its brief, appellee Liberty Mutual argues that Allstate lacks standing to enforce the lease entered into between Wheels and Jockey. This argument is without merit. Clearly, Jack Habish, as an employee of Jockey, was an intended third-party beneficiary of the contract. See e.g., Ron Case Roofing & Asphalt v. Blomquist, 773 P.2d 1382 (Utah 1989).

Furthermore, and more importantly, Liberty Mutual has never raised this argument previously. The law is well settled that arguments not considered by the trial court will not be considered

for the first time on appeal. Mascaro v. Davis, 741 P.2d 938, 944 (Utah 1987) ("[M]atters not raised at the trial court level will not be considered . . . on appeal, particularly when the problem could have been resolved below"). Liberty Mutual could have raised this issue in the trial court. Because it failed to do so, its improper attempt to raise a third-party beneficiary issue in this appeal must be rejected.

POINT IV. PUBLIC POLICY CONSIDERATIONS MANDATE SUMMARY JUDGMENT IN FAVOR OF ALLSTATE.

The court should consider all considerations, including public policy, in considering the positions of the parties herein. Liberty Mutual's argument that its obligation to insure the Buick terminated before title was transferred could potentially lead to repugnant results if carried to its logical conclusion. If Liberty Mutual is successful in persuading the Court to ignore the Utah Supreme Court's decision in State Farm v. Holt, supra, the important requirement that all cars have liability insurance may be impaired.

On the other hand, a decision by this Court that Liberty Mutual owes sole coverage on the Buick, or that Liberty Mutual and Allstate both insured the vehicle at the time of the accident, would support the legislature's objective that all automobiles operated in Utah be insured. From a policy standpoint, this Court

should maximize the available insurance coverage on any vehicle, and not rule in such a way as to minimize such coverage, as argued by Liberty Mutual.

CONCLUSION

Jockey had ownership responsibilities for the Buick until the new certificate of title was issued after the accident. Liberty Mutual, as Jockey's insurance carrier, is obligated under its policy with Jockey to insure the Buick until title was transferred. Public policy considerations also mandate that the Court determine that Liberty Mutual insured the car at the time of the accident. For the foregoing reasons, this Court should reverse the trial court's grant of summary judgment in favor of Liberty Mutual, and enter judgment for Allstate in accordance with its Motion for Summary Judgment.

DATED this 18th day of February, 1993.

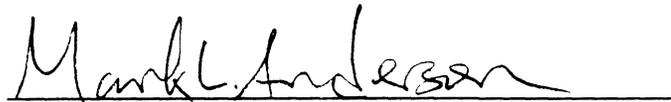
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 1993, four true and correct copies of the foregoing REPLY BRIEF OF APPELLANT were mailed first-class, postage prepaid to:

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DETERMATIVE STATUTE

Until the Department shall have issued such new certificate of registration and certificate of ownership, delivery of any vehicle required to be registered shall be deemed not to have been made and title thereto shall be deemed not to have passed, and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose except as provided in Section 41-1-77.

Utah Code Ann. § 41-1-72 (1988).