STATE OF MICHIGAN

COURT OF APPEALS

CANTON FENCE & SUPPLY CO. and AUTO OWNERS INSURANCE CO.,

Plaintiffs-Appellees,

v

YELLOW FREIGHT SYSTEMS,

Defendant-Appellant.

UNPUBLISHED
September 28, 1999

No. 207139
Wayne Circuit Court
LC No. 96-638484 NO

Before: Gribbs, P.J., and Smolenski and Gage, JJ.

PER CURIAM.

Defendant Yellow Freight Systems, Inc. appeals as of right from the circuit court order granting summary disposition and judgment in favor of plaintiffs Canton Fence & Supply Company (Canton Fence) and Auto Owners Insurance Company (Auto Owners). Plaintiffs brought the instant action for declaratory judgment seeking indemnification from defendant for the amount Auto Owners paid to defend and settle the underlying action, in which Daniel Vujnovich, an employee of defendant, sued Canton Fence for negligence.

On July 22, 1994, Vujnovich, who was employed as a truck driver by defendant, delivered a load of freight to Canton Fence. Vujnovich and an employee of Canton Fence began unloading the freight from the truck. While carrying the freight inside the trailer of the truck, the Canton Fence employee dropped his end of the freight and Vujnovich's right shoulder was injured. Vujnovich received workers' compensation benefits from defendant.

Vujnovich brought suit against Canton Fence seeking economic and noneconomic damages. Canton Fence's general liability carrier, Auto Owners, provided legal counsel to defend Canton Fence in the *Vujnovich* matter. Auto Owners attempted to have defendant, the self-insurer of the motor vehicle involved in the accident, take over the defense of defendant. Defendant refused to do so.

On August 27, 1996, plaintiffs brought the instant suit seeking a declaratory judgment ordering defendant to provide a defense and insurance coverage to Canton Fence in the underlying *Vujnovich* lawsuit, including satisfaction of Vujnovich's $65,000 settlement against Canton Fence. Auto Owners

also sought reimbursement for costs it incurred in the defense of Canton Fence, including actual attorney fees.

Plaintiffs and defendant brought cross motions for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted plaintiffs' motion for summary disposition, finding that the accident arose out of the ownership, maintenance or use of a vehicle because it occurred during the loading or unloading of the vehicle, and that Canton Fence's employee was a permissive user of the vehicle. The court further found that all of Vujnovich's allegations of negligence in the underlying suit were tied to the activity of loading or unloading the vehicle. The trial court granted plaintiffs' motion for summary disposition and entered a money judgment against defendant for $65,000, plus costs of $12,584.71. We affirm.

First, defendant argues on appeal that plaintiffs' complaint in the underlying suit does not assert a valid claim because Canton Fence was not entitled to coverage by defendant as a self-insurer. Defendant argues that it should not be held to the specific statutory requirements for insurance policies because it is self-insured and there is no policy per se. There is no merit to this claim. A certificate of self-insurance is the functional equivalent of a commercial policy of insurance with respect to the no-fault act. *Enterprise Leasing Co. of Detroit v Sako*, 233 Mich App 281-284; 590 NW2d 617 (1998). Defendant acknowledges that a self-insured has all the obligations of an insurer under the act. MCL 500.3101(4); MSA 24.13101(4).

Nor is defendant relieved of liability by MCL 500.3106(2); MSA 24.13106(2), because, in its role as Vujnovich's employer, it paid Vujnovich workers' compensation benefits. Payment of workers' compensation benefits would be relevant in a claim for first-party no-fault benefits, but MCL 500.3106(2); MSA 24.13106(2) does not apply to third-party residual liability cases. *North v Kolomyjec*, 199 Mich App 724, 728-729; 502 NW2d 765 (1993). The underlying suit here involved a claim for third-party residual tort liability arising out of the use of defendant's truck. Vujnovich's recovery in the underlying suit was not a recovery against defendant, but rather a recovery against Canton Fence. Defendant, as insurer of the truck, was ultimately responsible for providing insurance coverage and a defense for Canton Fence.

Defendant contends that it has no implied contract or common law duty of indemnification. Because defendant's duty in this matter arises under the no-fault act, this issue need not be considered.

There is no merit to defendant's claim that self-insurers are not required by the no-fault act to provide coverage for "permissive users" of their vehicles. The trial court properly found that Canton Fence was entitled to coverage under defendant's certificate of self-insurance. The owner of a registered vehicle in this state must maintain security for payment of benefits under personal protection, insurance, property protection insurance and residual liability insurance. MCL 500.3101(1); MSA 24.13101(1). In order to obtain a certificate of self-insurance, defendant had to demonstrate that it had and would continue to have the ability to pay judgments obtained against it. MCL 257.531; MSA 9.2231. As noted previously, defendant, as a self-insured entity, has all the obligations and rights of an insurer and is the functional equivalent of an insurer under the no-fault act. MCL 500.3101(4); MSA 25.13101(4). Just as is the case with a commercial insurance policy, the purpose of self-insurance is to

compensate victims properly, *Allstate Ins Co v Elassal*, 203 Mich App 548, 554; 512 NW2d 856 (1994), and the owner of a vehicle is required to provide liability insurance that covers permitted users of the vehicle. MCL 257.520(b); MSA 9.2220(b). Exclusions of coverage are only permitted for named persons and only if such an exclusion is authorized by the insured. MCL 500.3009(2); MSA 24.13009(2). Here, it is undisputed that Canton Fence's employee had permission from Vujnovich to enter the truck and help unload the freight. As a permissive user of defendant's truck, the Canton Fence employee was entitled to coverage under defendant's certificate of self-insurance.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael R. Smolenski
/s/ Hilda R. Gage