

PV Holding Corp. v Kaufman
2016 NY Slip Op 31440(U)
July 26, 2016
Supreme Court, New York County
Docket Number: 158386/2015
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 55

-----X
PV HOLDING CORP.,

Plaintiff,

DECISION/ORDER
Index No. 158386/2015

-against-

ADAM KAUFMAN and ELANA SHNEYER,

Defendants.

-----X
HON. CYNTHIA KERN, J.:

Plaintiff PV Holding Corp. (“PV Holding”) commenced the instant action seeking indemnification for an accident involving a vehicle rented by defendant Adam Kaufman (“Kaufman”) from Avis Rent A Car System, LLC (“Avis”). Defendants now move for an Order pursuant to CPLR § 3212 awarding them summary judgment dismissing plaintiff’s complaint. Plaintiff cross-moves for an Order pursuant to CPLR § 1003 amending plaintiff’s summons and complaint to correct the name of plaintiff and dismissing defendants’ counterclaim.

The relevant facts are as follows. On or about August 16, 2013, Kaufman rented a white 2013 Chevrolet Malibu (the “vehicle”) from Avis in Portland, Oregon. Kaufman and Avis entered into a rental agreement, which contains the following provision in paragraph 19:

Anyone driving the car who is permitted to drive it by this agreement will be protected against liability for causing bodily injury or death to others or damaging the property of someone other than the authorized driver and/or the renter up to the minimum financial responsibility limits required by the law of the jurisdiction in which the accident occurs... Except where required by law to be primary, any protection provided by us shall be secondary to, and not in excess of, any applicable insurance available to you, or any other driver, from any other source, whether primary, excess, secondary or contingent in any way.

The rental agreement further provides in paragraph 21 that “[y]ou [renter] agree to indemnify us [Avis], our parent and affiliated companies for and hold us harmless from any loss, liability and expense that we incur arising out of the use of the car, including reasonable attorney’s fees: (a) which exceeds the greater of either

the minimum limits of financial responsibility pursuant to the motor vehicle insurance law of the applicable jurisdiction, or the limits of any liability protection that we furnish to you; or (b) which results from any unauthorized use or prohibited operation of the car.”

On or about August 17, 2013, defendant Elena Shneyer (“Shneyer”) was driving the vehicle in Oregon when she caused an accident (the “accident”). It is undisputed that Shneyer was an authorized driver pursuant to the rental agreement as the spouse of Kaufman as she was at least twenty-five years old and a licensed driver. Neither Kaufman nor Shneyer had automobile insurance at the time of the accident. As a result of the accident, two non-parties sustained damages to their vehicles and one non-party sustained personal injuries. These three individuals filed claims against Avis, which claims Avis paid. One of the claims for property damage was for \$8,848.26, the other claim for property damage was for \$960.99, together with \$190.75 for rental reimbursement, and the claim for personal injuries was for \$1,181.30, for a total amount of \$11,181.30 (the “claims”). Plaintiff thereafter commenced the instant action to recover the amounts of the claims Avis paid, asserting causes of action for contractual indemnification and an account stated against Kaufman and a cause of action for negligence against Shneyer.

As an initial matter, the portion of plaintiff’s cross-motion to amend plaintiff’s summons and complaint to correct the name of plaintiff from PV Holding to Avis Rent a Car System, LLC is resolved pursuant to the stipulation dated June 10, 2016 and signed by all parties substituting Avis Rent a Car System, LLC as plaintiff in place of PV Holding.

The court now considers defendants’ motion for summary judgment dismissing plaintiff’s complaint on the ground that the rental agreement required Avis to insure defendants for the accident. It is well settled that construction of a written contract is a question of law, appropriately decided by the court on a motion for summary judgment, as long as the contract is unambiguous and the intent of the parties can be determined from the face of the agreement. *Mallad Constr. Corp. v. County Fed. Sav. & Loan Assn.*, 32 N.Y.2d 285, 291 (1973). However, “[r]esolution by a fact finder is required where...interpretation of a contract term is susceptible to varying reasonable interpretations and intent must be gleaned from disputed

evidence or from inferences outside the written words.” *Time Warner Entertainment Co. v. Brustowsky*, 221 A.D.2d 268 (1st Dept 1995).

In the present case, the portion of defendants’ motion for summary judgment dismissing plaintiff’s cause of action for negligence against Shneyer is granted as the rental agreement unambiguously provides that Shneyer is protected against liability. Paragraph 19 of the rental agreement provides that “[a]nyone driving the car who is permitted to drive it by this agreement will be protected against liability for causing bodily injury or death to others or damaging the property...up to the minimum financial responsibility limits required by the law of the jurisdiction in which the accident occurs.” This language protects Shneyer, who was permitted to drive the vehicle, from liability for the property damage and personal injuries resulting from the accident, up to the minimum financial responsibility limit required by Oregon law. Pursuant to Oregon law, the minimum financial responsibility limit is \$25,000.00 for bodily injury or death and \$20,000.00 for property damage. Oregon Revised Statutes § 806.070(2)(a) and (c). Thus, Shneyer is protected by the rental agreement from liability for the claims, as they are below Oregon’s minimum financial responsibility limit.

Plaintiff’s argument that paragraph 19 of the rental agreement only provides secondary protection, even though defendants do not have other insurance, is without merit. The rental agreement further provides in paragraph 19 that “[e]xcept where required by law to be primary, any protection provided by us shall be secondary to, and not in excess of, any applicable insurance available to you...whether primary, excess, secondary or contingent in any way.” This clause provides that any protection shall be secondary only to “any applicable insurance available to” the renter, without making any particular provision for the case where the renter has no primary insurance. Thus, as Shneyer has no other available insurance, this clause does not apply to make the liability protection unambiguously provided earlier in paragraph 19 secondary.

Further, plaintiff’s argument that paragraph 20 of the rental agreement, which provides for the purchase of Additional Liability Insurance (“ALI”), establishes that the rental agreement only provided secondary protection is without merit. Although paragraph 20 states that, if the renter purchases ALI, the

minimum coverage provided by paragraph 19 of the rental agreement will be primary, nothing in the provision provides that the liability protection unambiguously provided in paragraph 19 is secondary where the renter has no other available insurance.

The portion of defendants' motion for summary judgment dismissing plaintiff's cause of action for indemnification against Kaufman is also granted as the rental agreement does not require Kaufman to indemnify plaintiff for the claims. Paragraph 21 of the rental agreement provides that "[y]ou [Kaufman] agree to indemnify us [Avis]...for...any loss, liability and expense that we incur arising out of the use of the car...(a) which exceeds the greater of either the minimum limits of financial responsibility pursuant to the motor vehicle insurance law of the applicable jurisdiction, or the limits of any liability protection that we furnish to you; or (b) which results from any unauthorized use or prohibited operation of the car."

In the present case, this indemnification provision does not require Kaufman to indemnify plaintiff for the claims as the claims do not exceed the minimum financial responsibility limit set forth by Oregon law and it is undisputed that the accident did not result from the unauthorized use or prohibited operation of the vehicle.

Plaintiff's argument that Kaufman agreed to indemnify it for any loss on the ground that plaintiff did not furnish any liability protection to defendants is without merit as the indemnification provision unambiguously provides that Kaufman agreed to indemnify plaintiff only for loss exceeding "the greater of" the minimum financial responsibility limit, which is \$25,000.00 for bodily injury or death and \$20,000.00 for property damage pursuant to Oregon law, or the limits of liability protection furnished by plaintiff.

The portion of defendants' motion for summary judgment dismissing plaintiff's cause of action for an account stated against Kaufman is also granted. "[A]n account stated cannot be made an instrument to create liability when none otherwise exists but assumes the existence of some indebtedness between the parties or an express agreement to treat the statement in question as an account stated." *Martin H. Bauman Associates, Inc. v. H & M Intern. Transport, Inc.*, 171 A.D.2d 479, 483 (1st Dept 1991). Because the rental agreement does not require Kaufman to indemnify plaintiff for the claims, plaintiff cannot state a cause of action for an account stated.

The portion of plaintiff's cross-motion to dismiss defendants' counterclaim that plaintiff and its counsel should be sanctioned for bringing an action without any merit is granted as defendants have not alleged conduct justifying the imposition of sanctions.

Accordingly, both defendants' motion for summary judgment dismissing plaintiff's complaint and plaintiff's cross-motion to amend the caption and dismiss defendants' counterclaim are granted. It is hereby

ORDERED that all papers, pleadings and proceedings in the instant action be amended by substituting Avis Rent A Car System, LLC as plaintiff in the place and stead of PV Holding Corp., without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that the action shall bear the following caption:

-----X
AVIS RENT A CAR SYSTEM, LLC,

Plaintiff,

-against-

ADAM KAUFMAN and ELENA SHNEYER,

Defendants.
-----X

And it is further

ORDERED that plaintiff's complaint is dismissed; and it is further

ORDERED that defendants' counterclaim is dismissed.

This constitutes the decision and order of the court.

DATE :

7/26/16

CK

KERN, CYNTHIA S., JSC

HON. CYNTHIA S. KERN
J.S.C.