

RECEIVED
10-25-12

404.012

COPY

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

COBB COUNTY, GA
FILED IN OFFICE

2012 OCT 19 PM 2:22

Jay C. Stephens
COBB SUPERIOR COURT CLERK

PEERLESS INDEMNITY INSURANCE
COMPANY,

Plaintiff,

vs.

DIANA ESPINOZA, OSCAR PADILLA,
JUAN RAYA and MARVIN ALLEN,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION
FILE NO.: 11-1-2575-51

**ORDER GRANTING PEERLESS INDEMNITY COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

The above-styled case is before the court for consideration of Peerless Indemnity Insurance Company's Motion for Summary Judgment on its Declaratory Judgment. Peerless Indemnity Insurance Company seeks a declaration that it has no duty to defend Marvin Allen or pay any judgment rendered against him nor indemnify any claims arising from an October 10, 2010 accident because Marvin Allen was not an "insured" pursuant to the terms of the commercial automobile policy Peerless issued to Total Building Supplies, Inc.

After carefully considering the entire record of proceedings and the arguments of counsel, the Court concludes that Peerless Indemnity Insurance Company's Motion for Summary must be granted.

Marvin Allen was involved in an automobile accident with Juan Raya, Diana Espinoza and Oscar Padilla on Sunday, October 10, 2010. At the time of the accident, Marvin Allen was driving a vehicle owned by Total Building Supplies, Inc. The vehicle was listed as a covered vehicle under a commercial automobile policy issued by Peerless Indemnity Insurance Company. The Peerless policy provides coverage for damages for bodily injury caused by an "insured."

COPY

Under the policy, Peerless has the right and duty to defend any “insured” against a suit asking for such damages. However, there is no duty to defend when the insurance does not apply.

“Insured” is defined in the policy to include “anyone else while using with your permission a ‘covered auto’ you own, hire or borrow except...” The words “you” and “your” refer to the named insured shown in the declarations, which is Total Building Supplies, Inc.

Georgia law has long upheld the validity of permissive use clauses, holding that they may be relied upon even upon the advent of compulsory liability insurance. Massachusetts Bay Ins. Co. v. Wooten, et al., 215 Ga. App. 386, 450 S.E. 2d 857 (1994). Permissive use clauses such as the one in the policy at issue are valid, even where the named insured can limit the scope of permission through instructions, rules or regulations. Barfield v. Royal Ins. Co. of America et al., 228 Ga. App. 841, 492 S.E. 2d 688 (1997). In evaluating permissive use clauses, the Courts have held that “[T]here is an absence of permission within the meaning of a policy if the vehicle is being driven at a time or a place or for a purpose not authorized by the insured.” See Barfield v. Royal Ins. Co. of America, *citing to* Select Ins. Co. v. Register, 192 Ga. App. 145, 147, 384 S.E. 2d 238 (1989). See Select Ins. Co. v. Register (where employee was driving company truck for personal reasons, he was not an insured under the permissive use clause of the employer’s policy and summary judgment was granted to the insurer). See also Massachusetts Bay Ins. Co. v. Wooten, et al., 215 Ga. App. 386, 450 S.E. 2d 857 (1994) (where employee was using the company truck for personal reasons, there was no coverage under the permissive use clause of the employer’s policy).

In this case, the undisputed evidence establishes that Marvin Allen did not have permission to use the vehicle owned by Total Building Supplies, Inc. at the time of the accident on October 10, 2010. Marvin Allen was employed at Total Building Supplies Inc. as a delivery

COPY

driver. He was given the subject vehicle to use for work purposes only. Marvin Allen testified that his supervisors at Total Building Supplies, Inc. gave him very specific instructions about his use of the truck. He testified that he was only allowed to use the truck for work purposes. He was expressly forbidden from using the truck for personal reasons or while intoxicated. Marvin Allen has admitted that he did not have permission to use the subject vehicle at the time of the accident. He admitted that he was using the vehicle for personal reasons and while intoxicated.

Consistently with the foregoing, it is the judgment of this Court that Peerless Indemnity Insurance Company is entitled to summary judgment as a matter of law and is not obligated to defend Marvin Allen or pay any judgment rendered against him because he was not an "insured" pursuant to the terms of the policy Peerless Indemnity Insurance Company issued to Total Building Supplies, Inc. Furthermore, Peerless Indemnity Insurance Company owes no duty to indemnify any of the named Defendants under the subject Peerless policy for any claims arising out of the October 10, 2010 occurrence.

SO ORDERED this 12 day of Oct, 2012.



HON. G. GRANT BRANTLEY
JUDGE, SUPERIOR COURT OF COBB COUNTY

Distribution List

J. Robb Crusier, Esquire
Alina A. Krivitsky, Esquire
CRUSER & MITCHELL, LLP
Meridian II, Suite 2000
275 Scientific Drive
Norcross, GA 30092

Marvin Allen, *Pro Se*
524 Boggs Road, SW
Mableton, GA 30126

Gilbert Taylor, Esq.
Law Office of Gilbert M. Taylor, LLC
6101 Oakbrook Parkway
Norcross, GA 30093

Anthony E. DeNapoli, Esq.
2970 Clairmont Road, N.E., Suite 600
Atlanta, GA 30329

COPY

Attorney for Nationwide

COPY

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed (through the Cobb County Mail System) a copy of the foregoing order to the following, to wit:


J. Robb Cruser
Alina A. Krivitsky
Attorneys at Law
Meridian II, Suite 2000
275 Scientific Drive
Norcross, GA 30092

Marvin Allen, Pro Se
524 Boggs Roads, SW
Mableton, GA 30126

Gilbert Taylor
Attorney at Law
6101 Oakbrook Parkway
Norcross, GA 30092

Anthony E. DeNapoli
Attorney at Law
2970 Clairmont Road, NE, Suite 600
Atlanta, GA 30329

This 12th day of October, 2012


Rhonda L. Cochran
Judicial Administrative Assistant to the
Senior Judges of Cobb Superior Court