

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

TOM ORLANDO, Clerk
JOURNAL ENTRY
James L. Miraldi, Judge

Date 02/05/19

Case No. 16CV190531

OHIO EDISON COMPANY
Plaintiff

AMANDA K YURECHKO
Plaintiff's Attorney (216)685-1060

VS

ROBERT CORTEZ
Defendant

CHRISTOPHER JANKOWSKI
Defendant's Attorney (330)722-8989

This matter came before the Court upon the motion of Third-party Defendant Owners Insurance Company ("Owners") for summary judgment and the motion of Plaintiff Ohio Edison Company to strike.

Summary Judgment

Third-party Plaintiff Robert Cortez filed a Third-party Complaint against Owners setting forth claims for indemnification, breach of contract, promissory estoppel, declaratory judgment and bad faith arising from Owners determination that Cortez was not entitled to insurance coverage for damages caused to the property of Ohio Edison on April 14, 2016. Owners contends that Mr. Cortez is not entitled to coverage because he removed the liability coverage for the subject vehicle prior to the April 14, 2016 motor vehicle accident.

The following facts are undisputed. Ohio Edison Company sued Mr. Cortez for damage to its property caused by his 1987 International 2575 truck. Judgment was granted in favor of Ohio Edison and against Defendant Cortez. Mr. Cortez filed a Third-party Complaint alleging that his truck should have been covered by a commercial insurance policy with Owners. The commercial policy was issued on October 26, 2015 and had a policy term through October 26, 2016. Effective December 29, 2015, Cortez, through his insurance agent, removed the liability coverage resulting in a reduction in the premium cost. On April 14, 2016, the date of the accident, Cortez was not personally registered with PUCO, and was not working for Gregory Trucking when the accident happened.

Mr. Cortez contends that Owners sent a form to PUCO on October 1, 2014 stating that he had coverage but did not send the form to PUCO notifying it of its cancellation until October 26, 2016. As such, Owners is required to provide coverage for the accident.

Summary judgment is only appropriate where (1) no genuine issue of material fact exists; (2) the movant is entitled to judgment as a matter of law; and (3) the evidence can only produce a finding that is contrary to the non-moving party. Civ.R. 56(C). Before making such a contrary finding, however, a court must view the facts in the light most favorable to the non-moving party and must resolve any doubt in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359 (1992). Summary judgment consists of a burden-shifting framework. To prevail on a motion for summary judgment, the party moving for summary judgment must first be able to point to evidentiary materials that demonstrate there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

Based upon the evidence submitted pursuant to Civ. R. 56, the Court finds that the commercial insurance policy was issued on October 26, 2015 for Mr. Cortez's 1987 International 2575 truck. The policy term was through October 26, 2016. Effective December 29, 2015, Cortez removed the liability coverage in the policy, resulting in a reduction in the premium cost. On April 14, 2016, the date of the accident, Cortez was not personally registered with PUCO, and was not working for Gregory Trucking when the accident happened. Owners sent a form to PUCO on October 1, 2014 stating that he had coverage even though Cortez was not personally registered with PUCO. Owners also notified PUCO of the cancellation of the policy when the policy term ended on October 26, 2016. There was no notification to PUCO when Cortez changed his coverage two months into the policy period. Any registration with PUCO was by Gregory Trucking.

The Court finds that Owners' business decision to notify PUCO of the policy's issuance and cancellation does not require Owners to provide insurance coverage for premiums that were not paid when Mr. Cortez chose to cancel the liability portion of the policy two months into the policy term and chose not to personally register with PUCO. Owner's motion for summary judgment is granted. The Court declares the rights and responsibilities of the parties as follows: Owners is not required to provide Mr. Cortez with liability insurance coverage under the policy for the April 14, 2016 accident.

Motion to strike

Owners filed an objection to the amended judgment in favor of Ohio Edison that added Civ. R. 54(B) language. Owners contends that it did not have a chance to defend against Ohio Edison's motion for summary judgment against Mr. Cortez.

Therefore, it should not be responsible for any amount of the judgment if insurance coverage is determined to exist. Ohio Edison filed a motion to strike the "Objection." The Court finds that the objection was filed for the record and will remain part of the file. The Court has granted Owners' motion for summary judgment finding no coverage exists, making the objection unnecessary. The motion to strike is denied.


Judge James L. Miraldi

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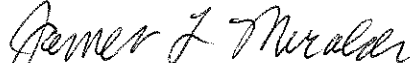
Defendant's
Attorney

(330)722-8989

Owners Insurance Company's motion for summary judgment is granted. The Court declares the rights and responsibilities of the parties as follows: Owners is not required to provide Mr. Cortez with liability insurance coverage under the policy for the April 14, 2016 accident. Ohio Edison Company's motion to strike is denied. See Journal.

Case closed. Costs to Defendant Cortez.

The final pretrial set for June 6, 2019 and the jury trial set for June 26, 2019 are cancelled.


Judge James L. Miraldi

To The Clerk: THIS IS A FINAL APPEALABLE ORDER
Please serve upon all parties not in default for failure to appear;
Notice of the Judgment and it's date of entry upon the Journal