



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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January 24, 2019

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Re: *Yenebecha Damtew and Allstate Insurance Co. v. Shawfang Jeng*
Case No. CL-2018-10588

Dear Counsel:

This matter comes before the Court on Plaintiffs' Motion and Joint Motion to Dismiss Defendant's Appeal, filed November 30, 2018. The Court heard arguments

OPINION LETTER

on December 14, 2018 and then took the matter under advisement. For the reasons that follow, Plaintiffs' Motions to Dismiss Defendant's Appeal are granted.

BACKGROUND

This case addresses the procedural requirements for an appeal from General District Court to the Circuit Court under the provisions of Virginia Code §16.1-107. Specifically, I will address the meaning of a "written irrevocable confirmation of [indemnity] coverage" and what an appellant must do to satisfy this requirement.

Yenebecha Damtew filed a warrant in debt against Shawfang Jeng in the Fairfax County General District Court on December 4, 2017, alleging damages suffered in an automobile accident. The General District Court at trial on May 21, 2018, awarded Ms. Damtew and Allstate Insurance Company ("Allstate")¹ \$24,000 plus costs. The Court awarded \$18,565.41 to Ms. Damtew and \$5,434.59 to Allstate for property damage. Mr. Jeng then filed a notice of appeal. He attempted to perfect his appeal on June 18, 2018 by submitting to this Court a letter from Ford Motor Company purporting to be a written irrevocable confirmation of indemnity coverage in the amount of the judgment and costs pursuant to Virginia Code §16.1-107. Mr. Jeng did not post any funds with the Court within the statutory appeal period.

Ms. Damtew moved to dismiss the appeal on the grounds that Mr. Jeng failed to comply with the statutory procedures for an appeal to the Fairfax Circuit Court. Ms. Damtew asserts that Ford Motor Company is not Mr. Jeng's insurer because a representative of Ford Motor admitted in the purported confirmation of indemnity coverage letter that American Road Insurance Company ("American Road") provided the insurance coverage pursuant to Mr. Jeng's lease agreement with Ford Motor. Ms. Damtew further argues that Ford Motor is not an insurer at all because the company is not "engaged in the business of making contracts of insurance." Ms. Damtew asks the Court to deem Mr. Jeng's error as incurable and to dismiss the appeal because he failed to comply with the statute. Counsel for Allstate also argues the appeal should be dismissed because Allstate did not receive timely notice of the appeal.

Mr. Jeng contends that Ford Motor is his insurer because the lease agreement executed between Mr. Jeng and Ford Motor on the vehicle involved in the accident provided insurance on the vehicle during the lease period. Mr. Jeng asserts that Ford Motor had arranged to "meet that contractual obligation by having a policy of liability insurance with The American Road Insurance Company."

¹ Allstate intervened just before trial.

Mr. Jeng further argues that even if this Court holds his appeal is defective, he can easily cure this defect by having American Road draft the letter to confirm indemnity coverage. Mr. Jeng asserts that having the “wrong party” author the letter is “near-perfect compliance,” and that the Court should allow him time to correct the deficiency. Lastly, in response to the argument that Mr. Jeng failed to provide notice to Allstate of the appeal, Mr. Jeng contends that he named both parties as plaintiffs on his notice of appeal and he emailed Allstate about the appeal. Mr. Jeng also notes that providing notice and serving the appeal is the sole duty of the clerk of court under Virginia Code §16.1-112.

The issue presented to the Court is whether Ford Motor’s letter constitutes a “written irrevocable confirmation of [indemnity] coverage” under Virginia Code §16.1-107. This issue consists of two subparts: Whether the language of the letter is sufficient confirmation, and whether Ford Motor is Mr. Jeng’s insurer under the statute. The second issue before the Court is whether Mr. Jeng timely provided proper notice to Allstate of his appeal pursuant to Virginia Code §16.1-112.

For the reasons discussed below, Ms. Damtew’s Motion to Dismiss and Allstate’s Joining Motion to Dismiss are granted.

ANALYSIS

1. Whether Ford Motor’s letter constitutes a “written irrevocable confirmation of coverage” under Virginia Code §16.1-107.

Virginia Code §16.1-107 states that “[n]o appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond...” One of the exceptions for the requirement of posting an appeal bond is if the defendant has “indemnity coverage through a policy of liability insurance.” In this event, the “defendant’s insurer [must] provide a written irrevocable confirmation of coverage in the amount of the judgment.” These provisions are mandatory. *Hurst v. Ballard*, 230 Va. 365 (1985).

What constitutes a “written irrevocable confirmation of coverage” is, apparently, a matter of first impression. Despite the lack of case law, the purpose of these stringent appeal procedures is clear: to protect the appellee from further loss on appeal and guarantee the appellee satisfaction of judgment, if awarded to her in the Circuit Court. *See Sharma v. Sharma*, 46 Va. App. 584, 590 (2005) (stating that the purpose of §16.1-107 is to ensure “that any judgment that may be rendered on appeal, if perfected, will be satisfied...”).

This Court must look to the language of the letter submitted by Ford Motor to determine if the writing provides complete assurance that the appellee will receive satisfaction of the judgment if she prevails in the Circuit Court. The following is the letter submitted by Ford Motor to Mr. Barr, Clerk:

I am writing in reference to the above matter as a representative of Ford Motor Company. This litigation arises out of an automobile accident involving Mr. Jeng. Mr. Jeng was driving a vehicle owned by Ford Motor Company and leased to Mr. Jeng. Mr. Jeng has indemnity coverage through that vehicle, put at issue in this litigation, through a policy of liability insurance with The American Road Insurance Company, policy number 84-1904-500-04L, effective April 15, 2015 to April 15, 2018. The policy limit is \$3,000,000 CSL.

I have been informed that on May 21, 2018, Judgment was entered in this case against Mr. Jeng in the amount of \$24,000.00 with costs of \$74 to Ms. Damtew and Allstate Insurance Company. Mr. Jeng has since filed his Notice of Appeal. Please allow this letter to serve as a written irrevocable confirmation of indemnity coverage in the amount of that Judgment and costs (\$24,074.00).

Sincerely,

Nadine Grabowski
Supervisor – Auto Liability

Ms. Grabowski explicitly states in the letter that the policy of liability insurance is *not* through Ford Motor, but through American Road, a separate entity. It is unclear if Ford Motor has the authority to speak on behalf of American Road or to compel American Road to pay Ms. Damtew in full satisfaction of the judgment. It seems apparent that Ford Motor is *not* taking responsibility for the amount of the judgment.²

While there may exist a contractual relationship between Ford Motor and American Road that implicates Ford Motor as Mr. Jeng's insurer or as an authorized representative of American Road, it is not the Court's duty to initiate an investigation into the internal policies and agreements between these entities and Mr. Jeng. It is Mr. Jeng's responsibility to provide *irrevocable confirmation*, in writing, and within the statutory appeal period, that assures the Court that Ms. Damtew will receive the full amount of the judgment if the Court rules in her favor on appeal. See *Commonwealth ex rel. May v. Walker*, 253 Va. 319 (1997) (holding

² At oral argument the Court inquired if Ford Motor Company owns American Road Insurance Company. There is no evidence that proves Ford Motor Company owns American Road Insurance Company.

that the burden remains on the appellant to comply with the mandatory appeal procedures, even if the mistake was the Court's).

In *Combined Ins. Co. of America v. Mundy*, 210 Va. 3 (1969), the Supreme Court found that the appeal bond, provided by a non-party indemnity company, ensured financial protection to the appellee because it was executed by the indemnity company itself *and* it included a condition that “[Combined Ins. Co. of America, appellant] abide [by] the judgment of the circuit court if the appeal was perfected or satisfy the judgment of the county court if the appeal was not perfected.” *Id.* at 3. In contrast, the letter from Ford Motor does not provide a mandate or condition that Ford Motor or American Road must fulfill; rather, it is more of a general description of Mr. Jeng’s policy of liability insurance.

The statute also explicitly requires that the defendant’s *insurer* provide the written confirmation of indemnity coverage.³ Because Ford Motor admitted that American Road is Mr. Jeng’s insurer, and because the Court cannot determine, based on the language of the letter, the relationship between Ford Motor and American Road, the letter does not constitute a “written irrevocable confirmation of indemnity coverage” as required by §16.1-107.⁴

Having established that the letter does not constitute a written irrevocable confirmation, I must now decide whether this failure is a jurisdictional error. If Mr. Jeng has substantially complied with §16.1-107, then he will be given a reasonable time to cure the defect. “Substantial compliance to accomplish the statutory purpose is all that is required.” *Heller v. City of Virginia Beach*, 213 Va. 683, 698 (1973); *see Miles v. City of Richmond*, 236 Va. 341 (1988) (examining the purpose of the statute at issue to determine if there was substantial compliance with that statute). The purpose of §16.1-107 is to protect the appellee from risk of financial loss on appeal. *See Sharma*, 46 Va. App. at 590. Therefore, the question is whether the letter gives sufficient assurance that Ms. Damtew will receive full satisfaction of the judgment on appeal.

In *Burks*, also cited by Mr. Jeng’s counsel, the Supreme Court held that paying \$70 out of the \$100 appeal bond constituted substantial compliance with the statute because the appellant submitted almost all the required funds and it was apparent that the appellant could submit the \$30 within a reasonable time, thus

³ Contrast this with the requirement for an appeal bond, where the statute allows “someone for [the appellant],” not limited to an insurance provider, to provide the bond. Va. Code § 16.1-107; *see Combined Ins. Co. of America v. Mundy*, 210 Va. 3, 4 (1969).

⁴ That Ms. Grabowski asks that the letter serve as written confirmation does not make the letter compliant with the statute.

fulfilling the protective purpose of the statute. *Burks v. Three Hills Corp.*, 214 Va. 322 (1973). Unlike the appellant in *Burks*, Mr. Jeng did not fulfill even a portion of the statutory requirement: he did not provide any appeal bond, his alleged insurer American Road did not submit written proof of coverage, and the letter submitted cannot be deemed a written irrevocable confirmation of coverage because of the uncorroborated information provided by Ford Motor. While Mr. Jeng contends that a letter authored by the “wrong party” is only a minute error, I disagree. A letter issued by someone other than the defendant’s insurer, and where there is no evidence to support that Ford Motor has authority to act on behalf of the insurer, cannot possibly constitute an *irrevocable confirmation* of coverage that assures the Court that Ms. Damtew will receive full satisfaction of the judgment.

The Supreme Court just this month gave pertinent insight into statutory construction:

“When the language of a statute is unambiguous, we are bound by the plain meaning of that language. And if the language of the statute is subject to more than one interpretation, [this Court] must apply the interpretation that will carry out the legislative intent behind the statute...

To ascertain its plain meaning, this Court evaluates a statute in its entirety “to place its terms in context” in order to “interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal.”

May v. R.A. Yancey Lumber Corp., Record No. 171708, 2019 WL 179173, at *5 (Va. S. Ct. Jan. 10, 2019) (citations & quotations omitted). Section 16.1-107 was drafted with great specificity. A “defendant’s insurer” is required to provide confirmation of coverage; in contrast, the General Assembly allows “someone for [the appellant]” to post the appeal bond. Further, “policy of liability insurance” is clear, specific, and unambiguous, as is “irrevocable,” which is defined in Black’s Law Dictionary (8th ed.) as “Unalterable; committed beyond recall.”

The Supreme Court held in *Hurst v. Ballard*, 230 Va. 365 (1985), that failure to post the writ tax with the appeal bond is a jurisdictional error. There was no discussion of “substantial compliance” in the opinion. Compare the writ tax provision⁵ to the requirement of submitting written confirmation of indemnity coverage: both contain detailed and unambiguous language. Because the Supreme Court mandates full compliance with the writ tax provision to perfect an appeal, the confirmation of indemnity coverage requirement should be treated the same.

⁵ “In addition to the foregoing, any party applying for appeal shall, within 30 days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision A 13 of § 17.1-275, including all fees for service of process of the notice of appeal in the circuit court pursuant to § 16.1-112.” Va. Code §16.1-107.

Due to the above reasons, Ford Motor's letter failed to comply with both the language and the purpose of §16.1-107. The error in the appeal process precludes this Court from exercising jurisdiction over the case. The appeal must be dismissed.

2. Whether Mr. Jeng timely provided proper notice to Allstate of his appeal. Because of my decision above, I do not need to decide this issue.

CONCLUSION

Mr. Jeng committed an incurable error in the appeal process that deprives the Court of jurisdiction to hear the case. The Motions to Dismiss are granted.

An order is attached.

Sincerely,



Robert J. Smith
Fairfax County Circuit Court

Enclosure

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

YENEBECHA DAMTEW)

Plaintiff,)

and)

ALLSTATE INSURANCE CO.,)

Intervenor-Plaintiff,)

v.)

Case No. CL-2018-0010588

SHAWFANG JENG)

Defendant.)

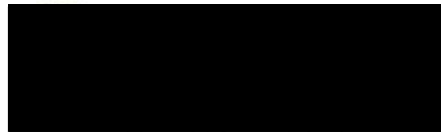
FINAL ORDER

THIS CAUSE came before the Court upon the Plaintiffs' Motions to Dismiss Defendant's Appeal. The Court heard the arguments on December 14, 2018.

For the reasons stated in the attached letter opinion, Plaintiffs' Motions are hereby GRANTED, and

It is ORDERED that Defendant's Appeal is dismissed with prejudice.

ENTERED this 24 day of Jan, 2019.



Circuit Court Judge

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED
IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.