IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

VICTORIA SPECIALTY INSURANCE CO.	)	**CASE NO. CV 11-769003**
	)	
Plaintiff,	)	**JUDGE PAMELA A. BARKER**
	)	
v.	)	**OPINION AND JOURNAL ENTRY ON MOTIONS FOR SUMMARY JUDGMENT OF PLAINTIFF AND DEFENDANT ANTON SAROSSY-CHRISTON**
	)	
SAM SKOURLIS, et al.	)	
	)	
Defendants	)	
	)	

This matter is before the Court on Plaintiff Victoria Specialty Insurance Company's Motion For Summary Judgment, filed on February 5, 2013 ("Plaintiff's Motion"), Defendant Anton Sarossy-Christon's Brief In Opposition To Plaintiff Victoria Specialty Insurance Company's Motion For Summary Judgment And Cross-Motion For Summary Judgment, filed on March 7, 2013 ("Defendant's Motion"), Plaintiff's Reply To Defendant Anton Sarossy-Christon's Brief In Opposition To Plaintiff's Motion For Summary Judgment and Brief In Opposition To Defendant's Cross Motion, filed March 18, 2013 ("Plaintiff's Response"), and Defendant Anton Sarossy-Christon's Reply To Plaintiff Victoria Specialty Insurance Company's Brief In Opposition To Defendant's Cross-Motion For Summary Judgment, filed on March 28, 2013 ("Defendant's Reply").

Plaintiff seeks a declaration by this Court that it does not owe liability coverage to Defendant Christopher Skourlis aka Christo Skourlis (hereinafter "Christo"), including a duty to defend him in the lawsuit captioned Anton Sarossy-Christon as Administrator of the Estate of Tibor Sarossy, Deceased, filed in the Cuyahoga County Court of Common Pleas, case number CV 11-746712 ("the underlying lawsuit"), or indemnify him for any damages or injuries to the

plaintiff in the underlying lawsuit in connection with the January 24, 2010 motor vehicle accident that is the subject of the underlying lawsuit ("the accident").

The Evidence

The evidence presented demonstrates the following facts relevant to the insurance coverage issue presented by this case. At the time of the accident, Christo was operating a Ford F-150 pick-up truck owned by his brother, John Skourlis. Christo was a listed driver – not a named insured[1] as Defendant Anton Sarossy-Christon (hereinafter "Defendant") has argued – under a policy of insurance, number 005530845, issued by Plaintiff to Sam Skourlis (hereinafter "Sam"), listing only a 1997 Mercury Grand Marquis, and in effect on the date of the accident ("the policy").[2] Neither Defendant nor the decedent, Tibor Sarossy, qualifies as an insured under the policy.

The Insuring Agreement of the Liability Coverage of the policy provides that Plaintiff will pay for damage which "**you**", meaning the "**policyholder**" or resident spouse[3], or a "**relative**", meaning one who regularly lives in the **policyholder's** household who is related to the "**policyholder**" by blood[4], are legally liable as a result of an accident arising out of the use of "**your auto**", i.e., 'the vehicle(s) described in the Declarations", or the 1997 Mercury Grand Marquis.[5] There is no dispute that at the time of the accident and as a listed driver on the policy and the resident son of Sam, Christo qualified as an insured under the policy and that he

---

[1] The declarations page of the policy lists Sam Skourlis as the "Policyholder" and the policy defines "**POLICYHOLDER**" as the "named **insured**". **DEFINITIONS** section, at paragraph 1, page 1 of the policy.

[2] A certified copy of the policy is attached as Exhibit "A" to Plaintiff's First Amended Complaint For Declaratory Judgment with Exhibits And Praecipe Annexed ("the Complaint").

[3] **DEFINITIONS** section, paragraph 2, at page 1 of the policy.

[4] **DEFINITIONS** section, paragraph 3, at page 1 of the policy.

[5] The Liability Coverage Insuring Agreement is set forth at page 6 of the policy. The term "**your auto**" is defined at paragraph 7 under the **DEFINTIIONS** section.

was not operating the 1997 Mercury Grand Marquis. Indeed, there is no dispute that the only way liability coverage would be afforded under the policy is if the F-150 truck that Christo was operating at the time of the accident qualifies "as a temporary substitute for **your auto**", meaning that **"[y]our auto** [or the Marquis] must be out of use because of: a) breakdown; b) repair; c) servicing; or d) **loss**.[6]

Plaintiff argues that the truck Christo was operating at the time of the accident does not qualify as a temporary substitute for the 1997 Mercury Grand Marquis, because according to Sam, the Marquis he owned has never been in a not-running or not-working condition[7], and on the day of the accident it was in good running condition[8] and if Sam was not using it, he would have given it to Christo to use.[9]

Aside from arguing that the EUO is not admissible for purposes of Plaintiff's Motion, which argument has been rejected by this Court[10], Defendant argues that the 1997 Mercury Grand Marquis was "out of use" because of breakdown, repair or servicing. In support of this argument, Defendant cites to the deposition testimony of John Skourlis to establish that it was Christo and his brothers that were responsible for maintaining the Marquis, and then quotes from Sam's EUO[11], to support his assertion that "[s]ince Sam was not responsible for servicing the Marquis, it is not surprising that he could not recall one way or the other whether the Marquis was out of use for breakdown, servicing or repair on January 24, 2010 [*sic*]." However, Sam's testimony so quoted, along with the rest of Sam's testimony that was omitted by

---

[6] "USE OF OTHER MOTOR VEHICLES" at paragraph 1, page 6 of the policy.
[7] Examination Under Oath of Sam Skourlis, page 18, lines 17-22.
[8] *Id.* at page 17, lines 11-15.
[9] *Id.* at page 16, lines 2-22.
[10] See Opinion and Journal Entry denying Defendant's Motion to Strike EUO.
[11] Defendant's Motion, at page 8.

Defendant, was not given in response to the question as to whether or not the Marquis was out of use for breakdown, servicing or repair. When read in its complete and therefore proper context, Sam's testimony demonstrates that if he was not using the Marquis on the day or night of the accident, then Christo would have had permission to use it or he would have given it to him to use; Sam just could not remember if he had used it and therefore, could not remember if it was available to Christo for his use the day of the accident.[12]

Defendant has not presented any evidence to this Court demonstrating that the Marquis was out of use because of breakdown, repair, servicing or loss. Indeed, the undisputed EUO testimony of Sam presented by Plaintiff demonstrates that the Marquis was in condition running condition on the date of the accident.

Summary Judgment Standard

Civ. R. 56(C) provides in relevant part as follows:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

"In order to properly grant a summary judgment motion pursuant to Civ. R. 56(C), a trial court must review the pleadings, deposition testimony, and other evidentiary materials and determine that: '*** (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence

[12] *Id.*, page 16, lines 2-25, page7, lines 1-4.

that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O.3d 466, 472, 364 N.E.2d 267, 274; ***.'" *Johnson v. Great American Ins. Co.* (1988), 44 Ohio App.3d 71, 72-73.

The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment. *Harless v. Willis Day Warehousing Company, et al.* (1978), 54 Ohio St.2d 64, 66, 8 O.O.3d 73, 375 N.E.2d 46, 47. Civ. R. 56(E) requires that the adverse or non-moving party set forth specific facts showing that there is a genuine issue for trial and the non-moving party must so perform if he is to avoid summary judgment. *Id.*, 54 Ohio St.2d at 65.

"Although a party seeking summary judgment must inform the trial court of the basis for its motion, the movant need not necessarily support its motion with evidentiary materials which directly negate its opponent's claim. *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 323. Rather, the movant may sometimes meet its burden by pointing out to the trial judge 'that there is an absence of evidence to support the nonmoving party's case.' *Id.* at 325. See, also, *Hodgkinson v. Dunlop Tire & Rubber Corp.* (1987), 38 Ohio App.3d 101, 526 N.E.2d 89." *Johnson v. Great American Ins. Co.* (1988), 44 Ohio App.3d 71, 72-73.

The Law

An insurance policy is a contract and therefore, the language of it is construed by the court as a matter of law.[13] In construing the language of an insurance contract, the court is limited to the plain meaning of the words used.[14] It is Defendant's burden to prove that the policy issued by Plaintiff provides coverage for the accident that is the subject of the underlying lawsuit.[15] The Defendant has asserted that any ambiguity in an insurance contract must be strictly against the insurer and liberally in favor of the insured.[16] However, since Defendant is not an insured or a party to the policy or contract, he is not in a position to urge that the contract be construed strictly against Plaintiff and in his favor.[17]

Plaintiff has asserted that Christo has not claimed that his brother's Ford Truck that he was operating at the time of the accident was a temporary substitute for the Marquis and therefore, that Plaintiff must afford liability coverage to him for the accident.[18] In support thereof, Plaintiff has attached as Exhibit "C" to Plaintiff's Response, an affidavit of Robyn Allan, "the primary claims handler" for Plaintiff relative to the accident. However, as contended by Defendant, the affidavit makes it clear that Ms. Allan was not the only claims handler for Plaintiff. Therefore, she cannot speak to whether or not Christo <u>ever</u> made a claim for coverage under the policy and accordingly, Ms. Allan's affidavit is not being considered by the Court.

---

[13] *21st Century Insurance Company v. Doubrava*, 8th Dist. No. 97903, 2012 Ohio 3374, ¶2, citing *Leber v. Smith*, 70 Ohio St.3d 548, 553, 1994-Ohio-361, 639 N.E.2d 1159.

[14] *21 Century Insurance Company v. Doubrava, id.*, citing *Sarmento v. Grange Mut. Cas. Co.*, 106 Ohio St.3d 403, 2005-Ohio-5410, 835 N.E.2d 692, ¶8-9.

[15] *See Jones v. Gonda* (8th Dist. No. 37195), 1978 Ohio App. LEXIS 10247 (Apr. 20, 1978).

[16] Defendant's Motion, at page 11.

[17] *See Cook v. Kozell* (1964), 176 Ohio St. 332, 336, 199 N.E.2d 566, 27 Ohio Op.2d 275; *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, ¶14, 2003-Ohio-5849, 797 N.E.2d 1256; *King v. State Farm Ins. Co.*, 2003-Ohio-6950 ¶39 (Ohio Ct. App., Cuy. Cty. Dec. 19, 2003).

[18] Plaintiff's Opposition, at page 1-2.

However, what is telling regarding this issue is that contrary to Defendant's assertion, Sam and Christo did not assert in their Answer to the Complaint that coverage was owed under the policy. And, although named defendants in this case, Sam and Christo have not opposed Plaintiff's Motion. In other words, when given the opportunity to assert a claim or argument for liability coverage under the policy, Sam and Christo have not done so.

Plaintiff has met its burden of showing that no genuine issue of material fact exists for trial by establishing by competent evidence that the Marquis was not out of service because of breakdown, repair, servicing or loss and by pointing out that there is an absence of evidence to support Defendant's case. Again, Sam testified that it was in good running condition on the date of the accident. Defendant has failed to submit evidence to demonstrate, and has failed to meet his burden to prove that the Marquis was out of service because of breakdown, repair, servicing or loss so as to qualify the Ford Truck that Christo was operating at the time of the accident as a temporary substitute for the Marquis and thereby require Plaintiff to afford liability coverage for the accident. Since there are no genuine issues of material fact and applying the plain language of the insurance contract to the undisputed facts, and the case law cited and discussed by Plaintiff,[19] the Court finds that the Ford Truck that Christo was driving at the time of the accident does not qualify as a temporary substitute for the Marquis.

---

[19] *Atkinson v. State Farm Mutual Automobile Insurance Co.* (1984), 2nd Dist. No. 83 CA 76, 1984 WL 5326; *Boxler v. Allstate Ins. Co.* (1991), 9th Dist. No. 14752, 1991 WL 24960; *Maloney v. State Auto Ins. Co.* (2000), 12th Dist. No. CA99=10=120, 2000 WL 1221898; and *21st Century Ins. Co. v. Doubrava, supra*.

Accordingly, Plaintiff's Motion is **GRANTED** and Defendant's Motion is **DENIED**. Plaintiff does not have a duty provide liability coverage to Christo for his operation or use of the Ford Truck at the time of the accident. Plaintiff has no duty to defend Christo in the underlying lawsuit and has no duty to indemnify Christo for any injuries or damages sustained by the underlying plaintiff/Defendant.

IT IS SO ORDERED.

Pamela A. Barker 4-12-13

JUDGE PAMELA A. BARKER **DATED**

RECEIVED FOR FILING

APR 12 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By ______ Deputy