

STATE OF MICHIGAN
COURT OF APPEALS

ALAN F. BUCKMAN,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

December 23, 2008

No. 280171

Kalamazoo Circuit Court

LC No. 07-000216-NI

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order compelling arbitration in this matter. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sought damages for a serious impairment of body function and lost wages allegedly resulting from an automobile accident on December 17, 2002, in which plaintiff's vehicle was rear-ended by a vehicle driven by an uninsured driver. Plaintiff alleged in his complaint that, on the date of the accident, he was insured by defendant under the provisions of an automobile insurance policy issued in accordance with the no fault insurance act, MCL 500.1301 *et seq.* The terms and conditions of the policy required defendant to pay uninsured motorist coverage to plaintiff if he sustained a bodily injury caused by an accident arising out of the ownership, operation, maintenance, or use of a motor vehicle. Plaintiff attached to his complaint an Allstate insurance policy containing a provision for arbitration in the event that the parties could not agree on the right of the insured to receive damages or the amount of damages, but not containing a declaration sheet, the names of any insureds, or the effective date of the policy. In its answer to the complaint, defendant admitted that plaintiff was issued a policy of automobile insurance by defendant that was in effect on December 17, 2002, but asserted that the policy attached to plaintiff's complaint was not complete.

Plaintiff moved to compel arbitration pursuant to the terms of defendant's insurance policy. Defendant responded that it was not required to submit the matter to arbitration. Defendant attached to its response a document naming plaintiff as an insured but stating an effective date of January 11, 2003, several weeks after the accident in this case. The document contains a policy endorsement entitled "Michigan Auto Amendatory Endorsement – AU2453-2," providing that, in the event that the parties cannot agree on the insured's right to receive damages or the amount of damages, the disagreement will be resolved in a court of competent jurisdiction.

Defendant also provided an affidavit by Linda Sisson, an employee of Allstate Insurance Company. In her affidavit, Ms. Sisson stated that a renewal offer was issued to plaintiff on December 11, 2002, covering the vehicle that was involved in the accident and two other vehicles, one of which was a Grand Prix. Ms. Sisson stated that, shortly after December 11, 2002, plaintiff contacted his insurance agent and advised that the Grand Prix had been sold and should be removed from the policy. Ms. Sisson further stated that, “because the renewal had already been issued, a revised declaration sheet on the renewal policy was issued which deleted the Grand Prix effected [sic: effective?] December 9, 2002. The declaration sheet was issued with a renewal date commencing on January 11, 2003, through July 11, 2003, due to the change in the vehicles.” Ms. Sisson finally stated, “At the time the policy of insurance was renewed on December 11, 2002, Auto Amendatory Endorsement – AU2453-2 was in effect and had been in effect and applied to the Buckman policy of insurance noted above since July 11, 2002.”

The trial court granted plaintiff’s motion for arbitration, finding that the arbitration clause appearing in the contract attached to plaintiff’s complaint was still in effect at the time of the accident. Defendant filed a motion for reconsideration, attaching a renewal declaration issued to plaintiff effective July 11, 2002, to January 11, 2003, including the “Michigan Auto Amendatory Endorsement – AU2453-2,” which contains the following provision:

If the insured person and we do not agree on that person’s right to receive any damages or the amount of that person’s damages, then the disagreement will be resolved in a court of competent jurisdiction.

The initial page of the newly produced policy states, “Your policy effective date is July 11, 2002,” and the page containing the amendatory endorsement also states at the top “Effective date: July 11, 2002.” Page four of the newly produced policy, also stating an effective date of July 11, 2002, states that the policy consists of the declaration sheet as well as several other listed items, one of which is “Auto Amendatory Endorsement form AU2453-2.” The trial court denied the motion for reconsideration, finding that defendant had not demonstrated palpable error by which the court or parties had been misled, and further noting that defendant’s request for reconsideration was based on evidence that could have been presented in support of its response to the original motion to compel arbitration.

A trial court’s determination that an issue is subject to arbitration is reviewed de novo. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 152; 742 NW2d 409 (2007). We conclude that the trial court erred in its initial ruling granting plaintiff’s motion to compel arbitration, because the evidence submitted to the court was not adequate to demonstrate that the insurance contract effective on the date of the accident contained an arbitration clause. When a claim is based upon a written instrument, that instrument is generally required to be attached to the pleading and is considered to be a part of the pleading. MCR 2.113(F); *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007). The policy attached to plaintiff’s complaint contained no declaration sheet, no policy number, no effective dates, and no indication of the identity of the insured. Clearly it was not a complete contract and, by lacking the effective dates and identity of the insureds, lacked the pertinent information

required to be included. Plaintiff's motion for arbitration provided no further particulars concerning the policy. Therefore, based on plaintiff's complaint and motion,¹ the evidence was not adequate to show that the matter was governed by an arbitration clause, and the trial court erred by compelling the matter to arbitration.

Our reversal of the trial court's initial decision renders moot defendant's claim that the trial court abused its discretion by denying defendant's motion for reconsideration.

Reversed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter

¹ Defendant could have put the matter to a quick end by producing the relevant policy with identifying information. However, defendant instead produced a renewal offer that was on its face effective after the date of the accident, along with the affidavit of Linda Sisson, which stated that this renewal offer was effective on the date of the accident. Defense counsel added to the confusion by representing at the hearing of plaintiff's motion to compel arbitration, that an arbitration provision was in effect until December 11, 2002, when it was replaced by the amendatory endorsement which provided that disputes would be resolved by a court of competent jurisdiction. The trial court correctly noted that the affidavit of Ms. Sisson (stating that the amendatory endorsement was effective since July 11, 2002) contradicted the document actually produced by defendant (indicating an effective date of January 13, 2003). Ms. Sisson's affidavit is also inconsistent with the statement of counsel for defendant that an arbitration provision had been in effect until December 11, 2002. Faced with defendant's inconsistent evidence, the trial court relied on the language of the contract produced by plaintiff, which was legally insufficient to justify the order granting arbitration.