STATE OF MICHIGAN

COURT OF APPEALS

HERTZ CORPORATION,

Plaintiff-Counterdefendant/Third-Party Defendant-Appellee/Cross-Appellee,

v

MICHAEL SCOTT STACHOWIAK,

Defendant-Counterplaintiff/Cross-Appellant/Appellee,

and

ROBERT STACHOWIAK, Personal Representative of the ESTATE OF MATTHEW STACHOWIAK,

Defendant/Appellee,

and

SAFECO INSURANCE COMPANY OF AMERICA and JOHN STACHOWIAK,

Third-party Plaintiffs-Appellees/Cross-Appellants,

and

CINCINNATI INSURANCE COMPANY,

Intervening Plaintiff-Appellant/Cross-Appellee,

and

RAMKISSOON NANKISSOOR,

Defendant.

UNPUBLISHED
June 27, 2006

No. 254741
Calhoun Circuit Court
LC No. 02-001449-CK

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Defendants John and Michael Stachowiak and Safeco Insurance Company and intervening plaintiff Cincinnati Insurance Company appeal as of right the circuit court's order granting summary disposition to plaintiff, holding that plaintiff was only liable for the statutory maximum set forth in MCL 257.401(3) for personal injury that resulted from an accident involving a car rented to John Stachowiak by plaintiff and driven by Stachowiak's son Michael. We affirm.

I

Defendants and intervening plaintiff first assert that the circuit court erred in granting summary disposition to plaintiff on the basis of MCL 257.401(3) because plaintiff was negligent in leasing the vehicle to John; and therefore, was not entitled to the protection of the statutory maximum liability set forth in MCL 257.401(3).

MCL 257.401 provides in pertinent part:

> (1) This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family.
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> (2) A person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days . . . is not liable at common law for damages for injuries to either person or property resulting from the operation of the leased motor vehicle. . .
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> 3) Notwithstanding subsection (1), a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period of 30 days or less is liable for an injury caused by the negligent operation of the leased motor vehicle only if the injury occurred while the leased motor vehicle was being operated by an authorized driver under the lease agreement or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member. Unless the lessor, or his or her agent, was negligent in the leasing of the motor vehicle, the lessor's liability under this subsection is limited to $20,000.00 because of

> bodily injury to or death of 1 person in any 1 accident and $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident.
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> (4) A person engaged in the business of leasing motor vehicles as provided under subsection (3) shall notify a lessee that the lessor is liable only up to the maximum amounts provided for in subsection (3), and only if the leased motor vehicle was being operated by the lessee or other authorized driver or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member, and that the lessee may be liable to the lessor up to amounts provided for in subsection (3), and to an injured person for amounts awarded in excess of the maximum amounts provided for in subsection (3).
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> (5) Subsections (3) and (4) shall not be construed to expand or reduce, except as otherwise provided by this act, the liability of a person engaged in the business of leasing motor vehicles or to impair that person's right to indemnity or contribution, or both.

Thus, plaintiff's liability is limited to $20,000/$40,000 unless it was "negligent in the leasing of the motor vehicle."

Defendants and intervening plaintiff argue that plaintiff was negligent in the leasing of the vehicle because it had the wrong information regarding Stachowiak's address and it rented the vehicle to him under the corporate account of a company for which he did not work. Further, plaintiff failed to inform him of the statutory maximum set forth in MCL 257.401(3) as required by MCL 257.401(4).

A

We reject the argument that negligence with respect to Stachowiak's address or the account number constitutes "negligence in the leasing of the motor vehicle" within the contemplation of the statute. This negligence clearly had no relation to the accident, and no practical effect at all. The argument that plaintiff exposed Bechtel, the company whose account was used, to potential liability is not addressed to concerns relevant to MCL 257.401. Bechtel was not responsible, was not held responsible, and there is no reason to believe that the Legislature intended that errors of this sort would lead to the forfeiture of MCL257.401(3)'s protection.

B

In contrast, the failure to provide the notice required by MCL 257.401(4) presents a more difficult question, because it involves a failure to do that which is expressly required by the very statute that affords the limitation of liability. The circuit court relied on two Federal court decisions, *Church Mutual Co v Save-A-Buck Car Rental Co*, 151 F Supp 2d 905 (WD Mich, 2000), and *Allstate Ins Co v Thrifty Rent-A-Car Systems Inc*, 249 F3d 450 (CA 6, 2001), that concluded that the negligence contemplated by MCL 257.401(3) is causal negligence related to the motor vehicle accident, such as leasing an unsafe vehicle, or negligent entrustment.

While we are not convinced that these cases were correctly decided, we reserve decision on this issue for another case presenting different facts. Here, it is undisputed that John

Stachowiak leased the vehicle in Illinois, not Michigan, and it further appears that John Stachowiak's auto insurance and umbrella policies covered the accident, so it cannot be said that he went uncovered due to Hertz's failure to provide the notice required by section (3). Under these circumstances, the circuit court did not err in concluding that Hertz did not lose the protection of section (3)'s $20,000/40,000 limitation on liability by failing to provide the notice required by section (4).[1]

II

Defendants and intervening plaintiff next assert that John and Michael Stachowiak are insureds under the omnibus clause in Hertz's insurance policy, and that because that policy is a fronting policy, i.e, the coverage amount and the deductible amount are the same, Hertz is self-insured and is, therefore, personally liable for the maximum amount of the policy. We disagree.

Initially, we observe that the policy relied on does not apply to this vehicle. In Michigan, where the accident occurred, and in Illinois, where the vehicle was registered, self-insurance is permitted, and no fronting policy is required. The policy states that it only provides coverage in certain states; Michigan and Illinois are not listed.

Further, an omnibus insured merely steps into the shoes of the named insured. See *Kesler v Thedford,* 670 So2d 467 (La App, 1996); *DeJarnett v Federal Kemper Ins Co,* 299 Md 708, 723; 475 A2d 454 (1984); *Smith v Nat'l Indemnity Co,* 57 Wis2d 706, 712-713; 205 NW2d 365 (1973); *Wheeler v State Farm Mutual Automobile Ins Co,* 311 F Supp 724 (DC Okla, 1970). The deductible and the coverage are equal, and there is no real coverage under the policy, except that which Hertz is required to provide by law.

Lastly, while defendants and intervening plaintiff make arguments challenging Hertz' charging John and his insurance company, Safeco, for the damage to the vehicle involved in the accident, they have "waived [the] issue by not including it as an issue in [their] statement of

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[1] Section (1) of the statute imposes unlimited vicarious liability on the owner of the vehicle. A vehicle owner has a statutory obligation to carry motor vehicle liability insurance in the amount of $20,000/40,000. Some drivers carry more, but most do not. The Legislature determined that this amount of insurance, together with benefits available under the no-fault system, MCL 500.3101 *et seq*., provides an adequate source of recovery to persons injured in auto accidents. Prior to the enactment of section (3), car rental companies provided a "deep pocket" for those who were fortuitously injured by the driver of leased vehicle. Section (3) was enacted to make the liability of a car rental company correspond to the mandatory level of insurance. Pursuant to this section, car rental companies would only be responsible for the $20,000/40,000 that most drivers provide in liability insurance. Section (4) requires that certain notices be given to assure that the person who leases the vehicle from the company understands that the company's liability is limited to $20,000/40,000, and only if certain persons are driving, and that the lessee may be responsible to the rental company for that sum, and to the injured person for additional amounts. The clear intent appears to be to warn the lessee of his own potential liability and the need to insure for that liability. Here the lessee, John Stachowiak had the insurance anyway, and was not harmed by the lack of notice. A different issue might be presented if it appeared the lessee had been harmed by the lack of notice.

questions presented and not citing any authority in support of [their] position." *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000) (citations omitted).

Affirmed.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Karen M. Fort Hood