

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Andres G. de Cos, Esquire
Swartz Campbell LLC
300 Delaware Avenue, Suite 1130
P.O. Box 330
Wilmington, Delaware 19899
Attorney for Plaintiff

Ms. Evelyn Virula
134 Riverview Drive
New Castle, Delaware 19720

Michael J. Logullo, Esquire
Shelsby & Leoni
221 Main Street
Stanton, Delaware 19801
Attorney for Intervenor
National Grange
Insurance Company

Matthew M. Bartkowski, Esquire
Kimmel Carter Roman & Peltz, P.A.
56 W. Main St., Plaza 273, 4th Floor
P.O. Box 8149
Newark, Delaware 19714
Attorney for Defendants
Eartha Speed and Harvey Speed

***Re: Peak Property and Casualty Insurance Co. v. Eartha
Speed, Harvey Speed, Evelyn Virula, and Darwin
Villatoro***
C.A. No. 08C-07-220 RRC

Submitted: February 22, 2010
Decided: February 25, 2010

On Eartha Speed and Harvey Speeds' Motion for Reargument.
DENIED.

Dear Mr. de Cos, Mr. Bartkowski, Ms. Virula, and Mr. Logullo:

INTRODUCTION

Before the Court is Eartha and Harvey Speeds' ("the Speed Defendants") motion for reargument of the Court's decision of February 12, 2010, which granted Plaintiff's motion for summary judgment. The Speed

Defendants seek to reargue only the portion of the Court’s Letter Opinion in which the Court addressed Defendants’ argument “that a plain reading of the insurance policy did not require permission from the owner of the vehicle for Darwin Villatoro to be covered under the Peak Insurance Policy.”¹ Because this Court did not misapprehend the facts or the law in holding that the language of the policy alone did not preclude summary judgment, Plaintiff’s Motion for Reargument is **DENIED**.

FACTS and PROCEDURAL HISTORY

As set forth fully in the Court’s February 12, 2010 Letter Opinion, this declaratory judgment action arose from a January 3, 2008 automobile accident at which time Darwin Villatoro caused injury to Eartha and Harvey Speed.² The vehicle driven by Darwin Villatoro was owned by Evelyn Virula. Ms. Virula maintained insurance on her vehicle through an insurance policy purchased from Plaintiff.

“Although only Ms. Virula is named as the ‘Insured’ in the policy, Darwin Villatoro’s father, Porfirio, is listed in the “Driver Information” section. Ms. Virula knew Porfirio from church, and Ms. Virula allowed Porfirio to use her vehicle frequently to get to and from work.”³

After the discovery period had expired, Plaintiff filed a motion for summary judgment arguing that there was insufficient evidence in the record to establish that Darwin Villatoro was permitted by Evelyn Virula to use the vehicle. Plaintiff asserted that the Speed Defendants did not appropriately undertake discovery within the required time period, and thus “must accept the consequences of their tactical decision to not undertake appropriate discovery . . .”⁴

In response to the motion for summary judgment, the Speed Defendants argued (1) “that Ms. Virula’s credibility needs to be determined by a jury and that further inquiry into the facts is necessary,”⁵ and (2) that Darwin did not need permission to drive Ms. Virula’s vehicle because Porfirio was covered by the insurance policy.

This Court ultimately granted summary judgment in favor of Plaintiff, and held that the Speed Defendants had failed to adduce sufficient evidence

¹ Mot. for Rearg. at ¶ 1.

² For a more complete set of facts and the procedural background see *Peak Property and Cas. Ins. Co. v. Speed*, 2010 WL 530072 (Del. Super.)

³ *Id.* at * 1.

⁴ *Id.* at 2.

⁵ *Id.*

in the record to preclude summary judgment. The Court also refused to extend the deadline to take discovery holding that the Speed Defendants “must accept the consequences of [their] ‘tactical decision[]’” to not undertake discovery within the allotted time period.⁶

PARTIES’ CONTENTIONS

In their motion for reargument, the Speed Defendants seek reargument only as to argument two (that under the terms of the insurance policy Darwin did not need permission to drive the vehicle). In support of their motion, the Speed Defendants assert that interpretation of the insurance policy is a matter of law that would preclude summary judgment.⁷ Additionally, the Speed Defendants argue that the issue of permission that the Court addressed in its February 10, 2010 Letter Opinion is “irrelevant” because Darwin Villatoro did not need the permission of Ms. Virula to be covered by Plaintiff’s insurance policy.⁸

In response, Plaintiff argues that Defendants have failed to address any legal precedent that was overlooked by the Court. Plaintiff asserts that the Speed Defendants “re-state arguments made in their Response” and argues that the Court addressed Defendants’ insurance policy arguments in its Letter Opinion.⁹ Additionally, Plaintiff notes that the Speed Defendants failed to file a motion for summary judgment seeking an interpretation of the insurance policy in their favor.¹⁰ Plaintiff argues that the Speed Defendants’ motion “falls far outside the scope of Rule 59” and, therefore, must be denied.¹¹

DISCUSSION

The only issue before the Court is whether pursuant to Superior Court Civil Rule 59, the Court “‘overlooked a precedent or legal principle that would have controlling effect, or that [it] has misapprehended the law or the facts such as would affect the outcome of the decision[]’”¹² when it decided

⁶ *Id.* at * 3.

⁷ Mot. for Rearg. at ¶¶ 6-8.

⁸ *Id.* at ¶ 8.

⁹ Resp. to Mot. for Rearg. at ¶ 2.

¹⁰ *Id.* at ¶ 5.

¹¹ *Id.*

¹² *Gass v. Truax*, 2002 WL 1426537, at * 1 (Del. Super) (citing *Monsanto Company v. Aetna Casualty and Surety Company*, 1994 WL 46726, at *2 (Del. Super.) (citations omitted), *aff’d*, 653 A.2d 305 (Del.1994).

that the policy language did not demonstrate that Darwin Villatoro was covered by Plaintiff's insurance policy.

Although the Speed Defendants style their motion as a motion for reargument, it is essentially an untimely motion for summary judgment seeking an interpretation of the insurance policy in their favor.¹³ If this Court were now to hold the Darwin Villatoro did not need permission to drive Ms. Virula's vehicle because he was covered by the insurance policy, this Court would in effect be granting summary judgment to the Speed Defendants because the Court would be holding that Darwin Villatoro was covered by Plaintiff's insurance policy.¹⁴

As previously discussed in the February 12, 2010 Letter Opinion, the Speed Defendants did not file a motion for summary judgment seeking an interpretation of the insurance policy in their favor as they theoretically could have done.¹⁵ Although the Speed Defendants attempted to argue in their response to the summary judgment motion that the policy language was sufficient to preclude summary judgment, they never affirmatively asked the Court to interpret the insurance policy in their favor.

Additionally, this Court did address the Speed Defendants' policy argument in its February 12, 2010 Letter Opinion. The Court stated that:

“you” is defined to mean “*the* person named,” (emphasis added) but does not say “any person named.” The policy lists Evelyn Virula as the “Insured.” Porfirio is only listed under the section entitled “Driver Information” and is not listed as an “Insured.” Although Evelyn Virula voluntarily increased her premium by disclosing that she was granting permission to someone outside of her household to use her car, this disclosure does not automatically make Porfirio a named “Insured” with the ability to grant his son permission to drive Ms. Virula's vehicle.¹⁶

¹³ Notably, the Speed Defendants cited no cases regarding this argument in their initial response to summary judgment. Only now do they cite a case holding that interpretation of contract language is a question of law. *See* Mot. for Rearg. at ¶ 7 (citing *Emmons v. Hartford Underwriters Inc. Co.*, 697 A.2d 742 (Del. 1997)).

¹⁴ Although this is apparently the result the Speed Defendants desire, they did not move for summary judgment during the allotted time period.

¹⁵ In their response to summary judgment, the Speed Defendants also asked for more time to undertake discovery. If, as the Speed Defendants now assert, the interpretation of the insurance contract is a question of law for the Court to decide, it seems unreasonable to argue that more discovery was necessary because a ruling in favor of the Speed Defendants would demonstrate that Darwin Villatoro did not need permission to drive the vehicle.

¹⁶ *Peak Property*, 2010 WL 530072, at * 4.

This Court noted in its Letter Opinion that the Speed Defendants failed to raise its policy language argument as an affirmative defense and failed to bring their own motion for summary judgment. Although the Speed Defendants are correct that neither action was required, this Court notes that if the Speed Defendants truly had felt their legal position had merit, they would have taken other action in the form of filing their own motion for summary judgment.

In fact, the Speed Defendants did not cite any cases in their response to summary judgment in connection with this issue and did not cite any additional cases to the Court at oral argument. Their written legal argument on this issue was contained in only two short paragraphs of their response to summary judgment that stated in their entirety:

5. The policy, which is not even referred to in Plaintiff's motion for summary judgment or listed as an Exhibit, states on p. 2 of 7:

Anyone using, with *your* permission, a *car* described on the declarations page, or any additional, replacement or substitute car, has the same rights and obligations that *you* have under this insurance.

You, Your are defined under the policy at p. 1 of 7 as:

You, Your; means the person named on the declarations page and that person's husband or wife if a resident of the same household. It also means a member of the family who is a resident of the household and who doesn't own a car or whose spouse doesn't own a car.

6. A simple review of the declarations page indicates that Porfirio Villatoro is named on the declarations page. Darwin Villatoro is his son. Page 9 of Evelyn Virula's deposition indicates that Darwin Villatoro lived with his father. Darwin Villatoro was a minor at the time of the accident and cannot own a car. Hence, a simple reading of the policy indicates that Darwin Villatoro does not need Evelyn Virula or his father's permission to use the vehicle to be covered by the policy.¹⁷

The foregoing is the entirety of the Speed Defendants' second legal argument in opposition to Plaintiff's motion for summary judgment. The Court finds it significant that the Speed Defendants did not cite any legal authority until the motion for reargument on this issue.

The Speed Defendants' motion for reargument fails to demonstrate that the Court "overlooked a precedent or legal principle that would have

¹⁷ Resp. to Mot. for Summ. J.

controlling effect, or that [it] has misapprehended the law or the facts such as would affect the outcome of the decision.”¹⁸ Thus, their motion for reargument is **DENIED**.

Richard R. Cooch

oc: Prothonotary

¹⁸ *Gass*, 2002 WL 1426537, at * 1 (Del. Super).