

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CIVIL DIVISION

FRANCISCA RAMIREZ,
Plaintiff,

CASE NO. 07-CA-002356

vs.

DIVISION: F

PROGRESSIVE AMERICAN INSURANCE CO.,
AUTO-OWNERS INSURANCE CO., and
ALLSTATE INSURANCE CO.,

Defendants.

FINAL JUDGMENT

THIS ACTION was tried before the Court on February 23, 2011 and February 24, 2011. The Plaintiff, Francisca Ramirez, was represented by Kennan G. Dandar, and the Defendant, Auto-Owners Insurance Co., was represented by John Guyton. On the evidence presented the court makes the following findings and reaches the following conclusions:

It is therefore

ORDERED and ADJUDGED:

ISSUES AND ARGUMENTS OF THE PARTIES

1. The issue presented to the court is whether Francisca Ramirez is entitled to uninsured motorist coverage under an Auto-Owners Insurance Company policy that was purchased on October 22, 2003.
2. Plaintiff Ramirez argues that she is entitled to coverage because the policy issued by Auto-Owners Insurance Company was to a sole proprietorship. Alternatively, the Plaintiff argues that she is entitled to uninsured motorist coverage under the policy, because even if it was a corporate policy, she is entitled to coverage as an officer of the corporation.

3. Defendant Auto-Owners argues that the policy does not cover Mrs. Ramirez because she was not listed as a driver on any of the corporate vehicles and she was not driving or riding in a corporate owned vehicle at the time she was injured. The policy in question was issued to "Marcheza Fence" with an address at Silkrun Court.
4. Plaintiff argues that she and her husband, Guillermo Ramirez, operated two distinctly different businesses. One was Marqueza Fence, which was an unincorporated business that installed fencing. The second was Marqueza Fence, Inc., which sold retail fencing materials from a location on State Road 60 in Dover, Florida. Ms. Ramirez and her husband Guillermo Ramirez claim that the two businesses were run separately, and that the fence installation company was never involved in the retail sale of fencing materials nor was it ever incorporated.
5. Did the Auto Owners Insurance policy, number 44 – 744 – 369 – 00, issued on October 22, 2003, and covering the period October 22, 2003, to October 22, 2004, provide coverage to a corporate entity known as Marqueza Fence?
6. Did the Auto Owners Insurance policy, number 44 – 744 – 369 – 00, issued on October 22, 2003 and covering the period October 22, 2003 through October 22, 2004 provide coverage to a sole proprietorship known as Marqueza Fence?
7. Is Francisca Ramirez entitled to uninsured motorist coverage under the Auto Owners Insurance policy, number 44 – 744 – 369 – 00, issued on October 22, 2003 and covering the period October 22, 2003 through October 22, 2004?

FINDINGS

1. Marqueza Fence, Inc. was incorporated on May 12, 2003 with an effective date of May 7, 2003.
2. Ms. Ramirez testified that the fence installation business known as Marqueza Fence started in May 2003 under the name Marqueza Fence.
3. Ms. Ramirez also testified that they opened a checking account with Colonial Bank in May of 2003 in the "company" name and used it to pay employees.
4. Both Mr. and Ms. Ramirez testified that Marqueza Fence, the retail fence business on State Road 60, did not start business until August 2004
5. It seems unlikely that they (Plaintiff and her husband) would have incorporated Marqueza Fence, Inc. in May of 2003, and not used it for the installation business, and then wait until August 2004 (15 months) to use the corporation for the retail business on State Road 60.

6. The Articles of Incorporation for Marqueza Fence, Inc., state that it was organized for the purpose of "selling and installing" fence. Yet both Francisca Ramirez and Guillermo Ramirez claim that it was never used for the installation business but only for the retail sales business.
7. A Traveler's insurance policy was issued on May 8, 2003, for Marqueza Fence with a policy effective date of May 12, 2003, to May 12, 2004. That policy states that it is for a new business.
8. A Traveler's renewal policy was issued on March 24, 2004, for Marqueza Fence. That policy states that the insured is a "corporation," uses the Silkrun address, and designates the type of business as "fence installer." That policy was issued 4 to 5 months before the fencing sales business commenced, according to Plaintiff's testimony.
9. On October 22, 2003, Mr. and Mrs. Ramirez went to the Poppell Insurance Company agency to procure auto insurance. An agent took the information from Mr. and Mrs. Ramirez and completed a commercial insurance application form. The name of the insured on the application was listed as Marqueza Fence. The address for the business was listed as 4721 Silkrun Court, Plant City, FL 33567. In connection with that application, an Acord Business Application was also completed on a form referred to as the Acord standard form. Insurance was requested for a 1995 Mitsubishi and the applicants were requested to list all drivers, including family members, that will be driving a "company" vehicle and to list all employees who drive owned vehicles on "company" business. The only individual listed on the business application was Guillermo Ramirez. Contained in the Poppell Insurance Agency's file is a photocopy of an automobile title for a 1995 Mitsubishi truck. The registered owner on the title is listed as "Marqueza Fence Co." Mr. Mark Poppell testified that they do not obtain titles from the Division of Motor Vehicles and he is unaware of any means by which a title could be obtained, other than if the applicant for the insurance provided it. The title contains the spelling of "Marqueza Fence Co.," Marcheza with a "Z," which is consistent with the spelling on the insurance application of the word "Marqueza" Fence.
10. While testifying Mrs. Ramirez acknowledged that a copy of a business card was that of her son, and that the business card was for the retail fence business on State Road 60. It is interesting to note that that business card spelled Marqueza Fence with a "Z," according to her testimony. She claimed that that was a mistake and that the name was misspelled.
11. It is interesting to note also that the application prepared by the Poppell Insurance Agency for the Auto Owners Insurance policy on October 22, 2003 listed the applicant as Marqueza Fence with a "Z."

CONCLUSIONS

1. The Court as the trier of fact may use reason and common sense to reach conclusions and may draw reasonable inferences from the evidence.
2. The name Marqueza with a "Z" was used interchangeably with the word Marquesa with an "S" by the Plaintiff and her family.
3. Marquesa Fence, Inc. was incorporated in May of 2003 for the purpose of operating a business installing fence. The purpose of the corporation is clearly stated in the Articles of Incorporation as "selling and installing fencing."
4. It would defy reason and logic to believe that that the Plaintiff and her family incorporated in May of 2003, for a business selling fence that was not to commence until August of 2004; and did not use the corporation for the business installing fence which commenced business at the same time that the Articles of Incorporation were filed for Marquesa Fence, Inc.
5. The Court concludes that the business Marquesa Fence, Inc. was incorporated in May of 2003, which is simultaneous with the commencement of the fence installation business, and that the Plaintiff and her husband used the name "Marquesa" with an "S" and "Marqueza" with a "Z" interchangeably.
6. The Auto Owners Insurance policy issued in May of 2003 was for the business known as "Marqueza" with a "Z" fence company. Based upon the testimony and evidence the Court concludes that the Plaintiff's husband or Plaintiff provided a copy of the title to the Mitsubishi vehicle to the Poppell Insurance agency. That title shows the owner of the Mitsubishi vehicle as: "Marqueza Fence Co."
7. The Auto Owners policy of insurance states that Auto Owners agrees to insure the described vehicle, which at the time of the issuance of the policy was a 1995 Mitsubishi, and a homemade trailer. Section 4 of the Auto Owners policy states that if the first named insured in the Declarations is an individual and the automobile described in the Declarations is a private passenger automobile than certain extensions of coverage apply. The Court finds that the first named insured was a Florida corporation not an individual. Thus the extensions of coverage in Section 4 do not apply. Moreover, the section of the policy dealing with "Non-Stacked Uninsured Motorist Coverage" states that coverage will be provided to a person legally entitled to recover from the owner or operator of an uninsured automobile because of bodily injury sustained while "occupying or getting into or out of an automobile" that is covered by "Section 2 - Liability Coverage" of the policy. It is undisputed that the Plaintiff was not occupying or getting into or out of an automobile covered under the liability coverage of the Auto Owners insurance policy. Subparagraph 2a of the policy under the Uninsured Motorist Coverage provisions states that if the first named insured in the Declarations is an individual

the coverage is extended as follows. There is no extension of coverage because the first named insured in the Declarations is not an individual, but rather is a corporation.

8. The named insured under the Auto Owners Insurance Company policy number 44 – 744 – 369 – 00 issued on October 22, 2003, and covering the period of October 22, 2003, to October 22, 2004, was Marqueza Fence (with a Z) which was a Florida corporation, incorporated and known as Marquesa Fence (with an S) effective May 7, 2003. The Marqueza Fence (with a Z) referenced as the named insured in the Auto Owners Insurance Company’s policy number 44 – 744 – 369 – 00 is a Florida corporation not a sole proprietorship or partnership.
9. At the time of loss on October 21, 2004, the Plaintiff Francisca Ramirez was not occupying a scheduled vehicle listed in the Auto Owners Insurance Company’s policy.
10. Francisca Ramirez was not a Class I insured under the Auto Owners Insurance policy number 44 – 744 – 369 – 00 because the policy was issued to a corporation and not to an individual. Moreover, Plaintiff was not occupying an insured vehicle and had not been listed as a driver of the company vehicles.
11. Francisca Ramirez is not entitled to uninsured motorist coverage under the Auto Owners Insurance Company’s policy number 44 – 744 – 369 – 00 for the loss dated October 21, 2004.

DONE and ORDERED in Chambers at Tampa, Hillsborough County, Florida, this

_____ day of April, 2011.

ORIGINAL SIGNED
CONFORMED COPY

APR 05 2011

CHARLES ED BERGMANN
CIRCUIT JUDGE

CHARLES ED BERGMANN

Circuit Judge

Copies to:

Kennan G. Dandar, Esquire

John Guyton Esquire