IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2010-CV-52
Lower Court Case No.: 2010-SC-192

SNIC FINANCIAL GROUP, INC. d/b/a AI AUTO GLASS & SALES, INC. as Assignee of Asfar Nihal and American Town Car Services,
Appellant,
v.

CAROLINA CASUALTY INSURANCE COMPANY,
Appellee.
____/

Appeal from the County Court,
for Orange County,
Heather L. Higbee, County Judge.

David J. Pedersen, Esquire,
for Appellant.

Eric R. Eide, Esquire,
for Appellee.

Before WHITEHEAD, PERRY, JR., THORPE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT'S JUDGMENT

SNIC Financial Group, Inc. d/b/a/ A1 Auto Glass & Sales, Inc. ("Appellant") brought an action against Carolina Casualty Insurance Company ("Appellee") to recover insurance benefits related to the replacement of an automobile windshield. Appellant timely appeals the trial court's order rendered September 14, 2010 granting final judgment for Appellee. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A) and dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

As gathered from the court record, American Town Car Services is a business that provides limousine services and is owned and operated by Massod Siddiqui. American Town Car Services had an insurance policy with Appellee that included comprehensive and collision insurance and a provision that covered the repair or replacement of windshields for the vehicles covered under the policy. In the beginning of the year 2005, Mr. Siddiqui added to the insurance policy a vehicle owned by his friend Asfar Nihal who was also engaged in providing limousine services, but who was not an employee of American Town Car Services. Mr. Nihal agreed to make monthly payments to Mr. Siddiqui to cover his part of the insurance costs.

On or about March 14, 2005, Mr. Nihal's vehicle windshield was broken. Shortly thereafter, Mr. Nihal contacted Appellant's repair shop to repair or replace the windshield. Upon examining the damaged windshield, an employee or representative of Appellant agreed to replace the windshield and had Mr. Nihal execute the work order and assignment of benefits. Upon completion of replacement of the windshield, Appellant forwarded the invoice to Appellee in the amount of $999.02. There is dispute in the record as to when Appellant initially forwarded the invoice to Appellee and how many times thereafter, if any, Appellant sought payment for the invoice. On January 13, 2010, Appellee's adjuster, Joseph Scerno, received information as to the unpaid windshield claim from Appellant and issued a check in payment for the claim. However, Mr. Scerno was not informed by Appellant that the request for payment was based upon an assignment. The check dated January 14, 2010 was made payable in the amount of $212.74 to American Town Car Services as the named insured for the policy and also made payable to Appellant. On or about January 14, 2010, the check was mailed to Mr. Siddqui who, upon receipt of the check, contacted Appellant to sign over the check to it. Appellant's owner, Imran Chaudhry, informed Mr. Siddiqui that he could not accept the check because his company had

filed a lawsuit to collect on the claim. The check was never cashed. Joe Scerno, testified at trial that if he had known that Mr. Nihal was not an employee of American Town Car Services, he would not have provided coverage and he would not have issued the check in payment of the windshield as Mr. Nihal did not fall under the category of an employee whose vehicle would be covered under the policy.

On Appeal, Appellant argues that the trial court erred in entering final judgment based on the following: 1) Finding that no insurance coverage existed for the repair and/or replacement of the windshield under the policy of insurance; 2) Finding that as a matter of law the language in the insurance policy prohibited the assignment of the after-loss claim for the replacement of the windshield; 3) Finding that the owner of the covered automobile was not the insured under the policy for replacement of the windshield and as a result could not assign the after-loss claim and appellant was without standing; 4) Finding that the owner of the covered automobile was without authority to execute the assignment of the insurance benefits for the after loss claim.

Conversely, Appellee argues that Appellant's claim is based upon an alleged assignment provided by Mr. Nihal. Inasmuch as Mr. Nihal is not a Named Insured, nor an employee of the Named Insured, American Town Car Services, there was no coverage through Appellee's policy. Specifically, Appellee argues that the trial court applied the clear language of the insurance policy to those factual determinations made and properly ruled that the policy does not provide coverage to Mr. Nihal. Further, Appellee states that the trial court then made legal determinations that there was insufficient evidence to support Mr. Nihal's standing and Appellant's standing and that Mr. Nihal was not within coverage under the insurance policy. Therefore, Appellee argues that the factual determinations and conclusions of law rendered by

the trial court should be affirmed in all respects on appeal as the findings are based upon competent substantial evidence.

After the non-jury trial was held on August 31, 2010, the trial court's findings in the Final Judgment entered on September 14, 2010 were the following:

> "1) No coverage existed for the damages claimed by plaintiff. 2) This Court does not have the power to create insurance coverage where none otherwise exists and must give an unambiguous insurance contract its effect as written. *Duncan Auto Realty LTD v. Allstate Insurance Company*, 754 So. 2d 863 (Fla. 3d DCA 2000). 3) With no coverage for Asfar Nihal provided by the subject policy, plaintiff's claim must fail as to defendant. 4) Further, in as much as plaintiff's claim flows through Asfar Nihal, and coverage does not exist for Asfar Nihal under the subject policy, plaintiff has no standing to pursue this lawsuit against defendant. 5) On March 14, 2005, the date of the purported execution of the subject assignment, Asfar Nihal was not an employee of American Town Car Services and did not have authority from Masood Siddiqui or American Town Car Services to undertake actions and responsibilities such as execution of a binding assignment on behalf of that company. 6) Further, no one had obtained Carolina Casualty's written consent to transfer any rights under the policy pursuant to Common Policy Conditions, Section F. Transfer of Your Rights And Duties Under This Policy, stating: "this policy may not be transferred without our written consent…" A policy may be assignable, or not assignable, as provided by its terms. F.S. §627.422. Therefore, the terms of the policy provide guidance."

Accordingly, the issue in this appeal is whether the trial court erred in granting Final Judgment in favor of Appellee. The standard of review for final judgment is de novo and the court's actual findings are reviewed to determine whether they are supported by competent substantial evidence. An appellate court will not disturb a final judgment if there is competent substantial evidence to support a ruling on which a judgment is based. *Berges v. Infinity Insurance Co*., 896 So. 2d 665, 676 (Fla. 2004). It is well established that in appellate proceedings the decision of a trial court is presumed to be correct and the burden is on the appellant to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979); *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983).

Upon review of the court record, this Court finds that the trial court did not err when granting Final Judgment in favor of Appellee. The record shows that Asfar Nihal did not have authority to assign over benefits as he was not an employee or an agent of American Town Car Services. This Court concurs with the trial court's findings as they are based upon competent substantial evidence.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment, rendered September 14, 2010 is **AFFIRMED**. Accordingly, "Appellant's Motion to Tax Costs and Attorney's Fees" filed March 21, 2011 is **DENIED.**

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this _8th___ day of ___September_________, 2011.

_/S/___________________________
REGINALD K. WHITEHEAD
Circuit Judge

__/S/___________________________
BELVIN PERRY, JR.
Circuit Judge

_/S/___________________________
JANET C. THORPE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this _14th___ day of ____September_________, 2011 to: **David J. Pedersen, Esquire**, 1516 E. Colonial Drive, Suite 305, Orlando, Florida 32803 and **Eric R. Eide, Esquire,** Grower, Ketcham, Rutherford, Bronson, Eide & Telan, P.A., Post Office Box 538065, Orlando, Florida 32853-8065.

______/S/________________
Judicial Assistant