

DANVERS MOTOR COMPANY, INC. vs. SEAN LOONEY.

10-P-360

APPEALS COURT OF MASSACHUSETTS

January 26, 2011

EXCERPT OF OPINION

This matter concerns the interpretation of a comprehensive and collision damage waiver clause of a car rental agreement. Danvers Motor Company, Inc. (Danvers Motor) commenced an action in District Court against Sean Looney to recover the cost of damages to a motor vehicle it had rented to Looney. The evidence at the jury-waived trial revealed that Looney rented a car from Danvers Motor for three days. The car rental agreement generally provided that Looney would be liable for any damage to the car. Looney paid for a comprehensive and collision damage waiver (damage waiver), which provided, in part, that Looney would not be responsible for damage to the rental car unless that damage was caused by his own "intentional, willful or wanton act." After renting the car, Looney strapped a canoe to the top of the car, padding the canoe underneath and affixing it to the front and rear bumpers by straps. When Looney returned the car, it had some "dents" in the roof. Looney reported the damage to a customer service representative of Danvers Motor, who said that Danvers Motor would "get back to" Looney. A body shop estimated the damage at \$3,331.17. Looney refused to pay, citing his damage waiver.

A District Court judge, concluding that Looney "intended" to put the canoe on the roof and, therefore, that the damage resulted from an "intentional" act, held that the damage waiver did not apply and entered judgment for Danvers Motor in the amount of \$4,107.64, which included interest, costs, and \$2,000 in attorney's fees. Both parties appealed to the Appellate Division of the District Court (Appellate Division). The Appellate Division reversed, opining that:

"the evidence at trial would not have warranted a finding that Looney intended to damage the roof of the vehicle, or that he should have expected such damage to occur. Indeed, the evidence was to the contrary in that Looney took reasonable precautions to see that such damage did not occur. And it makes sense that he should not be liable. As the Appeals Court noted in [Preferred Mut. Ins. Co. v. Gamache, 42 Mass. App. Ct. 194, 675 N.E.2d 438, S.C., 426 Mass. 93, 686 N.E.2d 989 (1997)], 'reading the phrase "intentional act" as incorporating all volitional acts is so broad that the exclusion would effectively nullify the policy's coverage for "accidents."' Since the negligence of the actor does not preclude his act from being considered an accident, . . . in the context of this case, it would certainly be an odd result for Looney to be liable here, but to have been covered if he momentarily failed to pay attention and slammed into the car in front of him causing far more damage than dents in the roof."

On appeal before this court, Danvers Motor argues that Looney's damage waiver does not apply to the type of damage at issue here. Danvers Motor claims that the damage waiver applies only to "comprehensive and collision damage" to the car. The car rental agreement defines collision damage as "damage to the Vehicle caused by collision or upset," and comprehensive damage as "damage to, or loss of, the Vehicle caused by theft or vandalism by anyone other than You or Your passengers; damage caused by an act of nature, riot or civil disturbance, and fire; but does not include damage caused by an animal transported in the Vehicle." Danvers Motor argues that dents or scratches caused by a canoe do not fall within any of these definitions. We are not persuaded by that argument. Neither "collision" nor "upset" is defined in the car rental agreement. Ordinary usage of the terms supports the interpretation that the dents at issue here could properly be deemed to have been caused by "collision" or "upset" with the canoe. Danvers Motor does not provide any citations that would suggest otherwise. Ambiguity will normally be resolved in favor of the insured.

Danvers Motor next argues that even assuming that the type of damage that occurred here was covered by the damage waiver, because Looney "intended" to place the canoe on the car's roof, any resulting damage was necessarily "intentional" and, therefore, excluded. The Supreme Judicial Court disposed of this of argument in Preferred Mut. Ins. Co. v. Gamache, 426 Mass. at 94, observing that "the broad interpretation urged by [the insurer] -- to the effect that the exclusion bars any accident resulting from a volitional act of the insured irrespective of the insured's intent to cause injury -- lacks any limiting principle and would logically tend to negate coverage in a substantial number of, if not all, accidents." As the Appellate Division observed in this case, Looney took steps to ensure that the roof would not be damaged. Those steps proved to be inadequate. Nonetheless, we are not persuaded that the resulting damage could properly be deemed "the intended [damage] flowing from an intentional act," and thereby fall within the damage waiver's "intentional" act exclusion.

Decision and order of Appellate Division affirmed.

By the Court (Trainor, Katzmann & Rubin, JJ.),

Entered: January 26, 2011.