# ALLIANZ INSURANCE CO. v. CAVAGNUOLO

2004 | Cited 0 times | S.D. New York | May 6, 2004

OPINION & ORDER

Plaintiff Allianz Insurance Company ("Allianz") moves for summaryjudgment against defendants/third-party plaintiffs, Dominic Cavagnuoloand Angela Cavagnuolo (collectively "the Cavagnuolos"), who cross-movefor summary judgment against Allianz. The Cavagnuolos also move for leaveto amend their answer to add a cross claim against Andrea Maiorano. Forthe reasons set forth below, Allianz's motion is granted and theCavagnuolos' cross-motion is denied. The Cavagnuolos' motion for leave toamend their answer is also denied. I. BACKGROUND[1]

On January 17, 1998, Dominic Cavagnuolo and his mother, AngelaCavagnuolo, entered into a written lease agreement ("the Lease") with theMercedes Benz Credit Corporation ("MBCC") to lease a 1998 Mercedes Benzmodel ML-320 automobile from David Michael Motor Car Corporation inFreehold, New Jersey. Pursuant to paragraph 16 of the Lease, theCavagnuolos obtained liability insurance with Allstate Insurance Company("Allstate") in the amount of $100,000 per person.

On October 7, 1998, Mr. Cavagnuolo asked Andrea Maiorano to pick up theleased vehicle from where it was parked and drive it to Mr. Cavagnuolo'splace of business so it could be used by Ms. Cavagnuolo. En route,Maiorano struck and injured a pedestrian, Paul Gagliano, who was crossingthe street at the corner of Fulton and Gold Streets in Manhattan.Gagliano filed suit ("the Gagliano lawsuit") in New York State SupremeCourt, Kings County against Maiorano and Ms. Cavagnuolo and subsequentlyamended his complaint to add Mr. Cavagnuolo and MBCC as additionaldefendants. Frank Merlino, Allstate's in-house counsel, filed an answeron behalf of all defendants, although Allstate later assigned MBCCseparate counsel, Lester, Schwab, Katz & Dwyer LLP. The Gaglianolawsuit was ultimately settled for the amount of $260,000. Of that sum,Allstate paid $100,000 on behalf of the Cavagnuolos and Maiorano, thefull extent of their insurance coverage. Allianz agreed to pay theremaining $160,000 on behalf of MBCC.

On March 10, 2003, Allianz filed the instant action to obtain commonlaw and contractual indemnification from the Cavagnuolos and Maioranounder the terms of the Lease, which provides that the Cavagnuolos wouldpay all of the "costs and expenses, including attorneys' fees," associatedwith "any claims, losses, injuries, expenses, or costs related to theuse, maintenance, or condition of the vehicle." Lease ¶ 23. On July 2,2003, the Cavagnuolos instituted a third-party action against Allstate, Merlino, Robert Tusa,and the Law Offices of Robert Tusa f/k/a the Law Offices of FrankMerlino, in which they asserted malpractice and negligence claims andsought indemnification in the event that Allianz prevailed on itsclaims. Allianz now moves for summary judgment,

contending that theindemnification clause entitles MB'CC, and Allianz and its subrogee, tobe repaid for the $160,000 MBCC expended to settle the Gagliano lawsuit,as well as costs, disbursements, and legal fees, for a total of$217,933.99. The Cavagnuolos cross-move for summary judgment on thegrounds that the indemnification clause is against public policy and thusunenforceable. Alternatively, the Cavagnuolos seek a fairness hearing todetermine whether the Gagliano lawsuit was settled for an appropriatesum. The Cavagnuolos also seek leave to amend their answer to add across-claim against Maiorano, who has not yet appeared in the instantlawsuit.

II. DISCUSSION

A. Standard of Review

Pursuant to Federal Rule of Civil Procedure ("Fed.R. Civ. P.") 56(c), adistrict court must grant summary judgment if the evidence demonstratesthat "there is no genuine issue as to any material fact and [that] themoving party is entitled to judgment as a matter of law." Anderson v.Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). "Summary judgment isproperly regarded not as a disfavored procedural shortcut, but rather asan integral part of the Federal Rules as a whole, which are designed to`secure the just, speedy and inexpensive determination of every action.'"Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed.R.Civ.P.1).

In determining whether there is a genuine issue of material fact, acourt must resolve all ambiguities and draw all inferences against themoving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)(per curiam); Donahue v. Windsor Locks Bd. of Fire Comm'rs, 834 F.2d 54,57 (2d Cir. 1987). However, the mere existence of disputed factual issuesis insufficient to defeat a motion for summary judgment. Knight v. U.S.Fire Ins. Co., 804 F.2d 9, 11-12 (2d Cir. 1986). The disputed issues offact must be "material to the outcome of the litigation," id. at 11, andmust be backed by evidence that would allow "a rational trier of fact tofind for the non-moving party," Matsushita Elec. Indus. Co. v. ZenithRadio Corp., 475 U.S. 574, 587 (1986). The non-movant "must do more than simply show that there is somemetaphysical doubt as to the material facts." Id. With respect tomateriality, "substantive law will identify which facts are material.Only disputes over facts that might affect the outcome of the suit underthe governing law will properly preclude entry of summary judgment.Factual disputes that are irrelevant or unnecessary will not be counted."Anderson, 477 U.S. at 248.

B. Choice of Law

In diversity actions such as this, when conflicts exist between therules of two states, the Court applies choice-of-law rules of New York,the forum state. Klaxon Co. v. Stentor Elec. Mfg., 313 U.S. 487, 496(1941). It is firmly established under New York law, that where a caseinvolves a contract with a clear choice-of-law provision, "[a]bsent fraudor violation of public policy, a court is to apply the law selected inthe contract as long as the state selected has sufficient contacts withthe transaction."

Hartford Fire Ins. Co. v. Orient Overseas ContainersLines (UK) Ltd., 230 F.3d 549, 556 (2d Cir. 2000). Here, as theCavagnuolos note, the Lease has a specific choice-of-law provision.Paragraph 25 of the Lease, titled "Applicable Law" (bold and italicsremoved), provides: "The laws of the state in which the Lessor (Dealer)has its principle place of business will govern this Lease and anydisputes that may arise from it." The Cavagnuolos leased the Mercedesfrom a car dealership located in Freehold, New Jersey, thus indicatingthat the parties determined that New Jersey law would apply to anydisputes arising from their agreement.

"New York courts generally defer to the choice of law made by theparties to a contract." Cargill Inc. v. Charles Kowskv Res., Inc.,949 F.2d 51, 55 (2d Cir. 1991). Moreover, the "parties' intention and theplace of the making of the contract are to be given heavy weight indetermining which jurisdiction has the most significant contacts."Mechanic v. Princeton Ski Shop, Inc., No. 91 Civ. 6740, 1992 WL 397576,at *3 (S.D.N.Y. Dec. 30, 1992). These two factors counsel for theapplication of New Jersey law. While the parties rely heavily on New Yorklaw in the motion and cross-motion submissions, they have presentedneither arguments or case law for the application of New York law.[2] Isee no reason to apply New York law where the relevant contract was entered into in another state, it providesfor the application of the law of another state, and none of the partiesto the contract are New York residents. [3] Instead, as the partiesagreed in the contract, New Jersey law applies.

C. Indemnification Clause

Allianz argues that the Lease contains an unambiguous indemnificationclause that requires the Cavagnuolos to reimburse Allianz as subrogee ofMBCC for the total amount of expenses and legal fees associated withtheir operation of the vehicle. The Cavagnuolos assert in both theiropposition to Allianz's motion for summary judgment and their owncross-motion that this clause is void as against public policy because itis manifestly unfair and solely the result of the disproportionatebargaining power between the parties to the contract. For the followingreasons, I conclude that there is no issue of material fact and theindemnification clause must be enforced as written.

Paragraph 23 of the Lease, signed by the Cavagnuolos, reads: "If youare subjected to any claims, losses, injuries, expenses, or costs relatedto the use, maintenance, or condition of the vehicle, I will pay all ofyour resulting costs and expenses, including attorneys' fees."[4] Thislanguage is clear and unambiguous. See Allianz Ins. Co. v. Lerner,296 F. Supp.2d 417, 423 (E.D.N.Y, 2003) (rejecting defendant's argumentthat identical contractual language was ambiguous). The Cavagnuolos arguethat this language is impermissible under New Jersey law because it wasnot the product of a meaningful bargain.[5] According to theCavagnuolos, New Jersey law provides that a contract may be set aside where it is eitherunconscionable or the product of unequal bargaining power. While there isan established line of cases standing for precisely this proposition, thefacts of this case are inapposite. Moreover, the Court's "power todeclare a contractual provision void as against public policy `must beexercised with caution and only in cases that are free from doubt.'"Briarglen II Condo. Ass'n, Inc. v. Township of Freehold,330 N.J. Super. 345, 355-56 (App. Div. 2000) (quoting

Saxton Contr. &Mgmt. Corp. v. Masterclean of N.C., Inc., 273 N.J. Super 374, 377 (LawDiv. 1992), aff'd, 273 N.J. Super 231 (1994)).

Instead, this indemnification provision must be read against the evenmore firmly established principle that contracts are enforced as they arewritten. Vasquez v. Glassboro Serv. Ass'n, Inc., 83 N.J. 86, 101 (1980).Further, a court cannot re-write a better contract for either party.Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960). These basictenets of contract law apply with equal force to indemnificationprovisos. Ramos v. Browning Ferris Indus, of S. Jersey, Inc., 103 N.J. 177,191 (1986) ("Indemnity contracts are interpreted in accordance with therules governing the construction of contracts generally."). Indeed, NewJersey courts "have traditionally upheld contractual limitations ofliability." Marbro, Inc. v. Borough of Tinton Falls, 297 N.J. Super. 411,418 (Law Div. 1996). Therefore, "[p]arties to a contract may agree tolimit their liability as long as the limitation is not violative ofpublic policy." Moreira Constr. Co. v. Moretrench Corp., 97 N.J. Super. 391,394 (App. Div. 1967), aff'd, 51 N.J. 405 (1968); see also Chem. Bank ofN.J. Nat. Ass'n v. Bailey, 296 N.J. Super. 515, 526-27 (App. Div. 1997)("It is fundamental that parties to a contract may allocate risk of lossby agreeing to limit their liability as long as the limitation does notviolate public policy.").

While public policy considerations cannot easily be defined, a contractinvalidated on this ground must clearly cause injury to the public.Henningsen v. Bloomfield Motors, Inc., 32 N J. 358, 403-4 (1960). The NewJersey Supreme Court has found liability limitations void as againstpublic policy only under significantly different circumstances from thosepresent here. E.g., Vasquez, 83 N.J. 86, 104-5 (1980) (holding thatemployment contracts offered to migrant workers that provided forimmediate eviction upon termination was unconscionable and against public policy); Shell Oil Co. v. Marinello, 63 N.J. 402, 408-9 (1973)(ruling that the lease and dealer agreement provisions that permittedShell Oil Co. to unilaterally terminate a business relationship withoutcause on only ten days notice were grossly unfair and against publicpolicy); Henningsen, 32 N.J. at 404 (invalidating a disclaimer of animplied warranty of merchantability because of the grosslydisproportionate bargaining power and grave danger that a defectiveautomobile presented to the purchaser and public). There may be broadpublic harm, at least in the volume of such clauses, but it is notdiscussed within the papers before me and so will not be considered.

Similarly, while an argument to the effect that this was a contract ofadhesion may have had some relevance, it too was omitted from thearguments presented and will not be considered. On this score, however,it is worth noting that the Cavagnuolos' lease of a current modelMercedes Benz[6] was not a consumer necessity nor "were [they] drivento accept the [lease] because of a monopolistic market or any othereconomic constraint." Rudbart v. N. Jersey Dist. Water Supply Comm'n,127 N.J. 344, 356 (1992). Under the terms of the Lease, the Cavagnuolosagreed to pay MBCC $20,936.34 in monthly installments of $775.42 over aperiod of twenty-seven months. Clearly, the Cavagnuolos could have usedthis not insignificant sum to purchase or lease another vehicle withdifferent terms. This situation does not bespeak grossly unfairbargaining power or economic compulsion, nor does it implicate the publicinterest in any significant manner. Any comparison of the Cavagnolos'situation

to that of the migrant workers in Vazquez, who were immediatelyrendered unemployed and homeless upon termination of their employmentcontract, or the service station owner in Shell Oil Co., who investedyears to build good will in his service station only to have his businesscontract abruptly terminated without cause, strains credulity. And whileHenningsen involved the purchase of an automobile, which arguablyparallels the Cavagnuolos' Lease, the contract provisions there — whichsought to insulate the automobile manufacturer and the dealer from anyliability for a defective motor vehicle — raised concerns of a whollydifferent character. In contrast, the indemnification provision heresimply shifted liability to the parties who had primary responsible forthe operation and maintenance of the motor vehicle, for which, by the way,they could have purchased more insurance if they chose to do so.Indemnification under these circumstances is entirely reasonable andconsistent with common law principles. E.g., Interfaith Cmty. Org. v.Honeywell Int'l Inc., 263 F. Supp.2d 796, 871 (D.N.J. 2003) ("A party isentitled to common law indemnification where its liability is entirelyconstructive, vicarious, and not based on any fault of its own."); seealso Vitty v. D.C.P. Corp., 268 N.J. Super. 447, 457 (App. Div. 1993)("As between two parties, the one who is at fault should ordinarily bearthe consequences of its negligence.").

The Cavagnuolos' remaining arguments that Mr. Cavagnuolo did not reador understand the contract warrant only passing mention. It is firmlyestablished under New Jersey law that "[a] party who enters into acontract in writing, without any fraud or imposition being practiced uponhim, is conclusively presumed to understand and assent to its terms andlegal effect." Rudbart, 127 N.J. at 353. Mr. Cavagnuolo acknowledged thathe signed and initialed the Lease. (D. Cavagnuolo Dep. at 8:17-18,9:2-13:2.) There is no issue of material fact with respect to theindemnification provision. It is valid and will be enforced as written.

D. Fairness Hearing

Alternatively, the Cavagnuolos claim that they are entitled to afairness hearing on the reasonableness of the settlement of the Gaglianolawsuit. The Cavagnuolos base their arguments on Atlantic Cement Co.,Inc. v. Fidelity & Casualty Co. of N.Y., 63 N.Y.2d 798, 802 (1984), acase in which the New York Court of Appeals affirmed the remission of thecase for trial as to the reasonableness of the amount of settlement priorto any award of indemnification. See also Hamilton v. Khalife,735 N.Y.S.2d 564, 567 (2d Dep't 2001) ("If the indemnification provisionis enforceable . . . there must be a hearing to determine thereasonableness of the settlement."); Lubermens Mut Ins. Co. of the KemperGroup of Ins. Cos. v. Lumber Mut. Ins. Co., 538 N.Y.S.2d 542, 544 (1stDep't 1989) ("Inasmuch as appellant did not participate in the defense ofthe third-party action or in the settlement, and as there was no juryverdict establishing the amount of damage[s]. . . appellant is alsoentitled to contest the reasonableness of the amount paid pursuant to thesettlement agreement."). The Cavagnuolos overlook the fact that while the Gagliano lawsuit was filed in New York, pursuant to the choice oflaw provision, New Jersey law governs interpretation of the Lease and anydispute between the parties. Because the instant matter pertains to theamounts owed, if any, under the indemnification provision of the Lease,New York case law that establishes the right to a fairness hearing isinapposite.

It is not clear that there exists a similar requirement for a fairnesshearing under New Jersey law. New Jersey courts require a fairnesshearing to approve and finalize any settlement of land-use litigation,e.g., Warner Co. v. Sutton, 274 N.J. Super. 464, 483 (App. Div. 1994), orclass action law suits, Discover Bank v. Shea, 362 N.J. Super. 90, 91(App. Div. 2003). Likewise, the Supreme Court of New Jersey has held thatwhen an insurer wrongfully denies coverage, the court must determinewhether the insured's settlement was reasonable and made in good faith inany ensuing enforcement action by the insured. Griggs v. Bertram,88 N.J. 347, 368 (1982). There is some support for a similar assessmentof reasonableness prior to an award of indemnification. E.g., Chem. Bankof N.J. Nat. Ass'n v. Bailey, 296 N.J. Super. 515, 524-25 (App. Div.1997) (noting that indemnification for settlement payments requires,inter alia, that the amount of the settlement be reasonable). However,the few New Jersey cases that discuss such a hearing stem from a directreview in the state court system. See, e.g., Pep Boys v. Cigna Indem.Ins. Co. of N. Am., 300 N.J. Super. 245, 255 (App. Div. 1997) (reversingand remanding for a determination as to whether the amount of settlementwas reasonable). These cases then are more in the realm of a remand thana hearing in the district court. Further, such a hearing would entail areview of a state court judgment and be barred by the Rooker-Feldmandoctrine.

"Under the Rooker-Feldman doctrine, lower federal courts lack subjectmatter jurisdiction over claims that effectively challenge state courtjudgments," based on comity and the firmly-established principle thatonly the Supreme Court can review a final decision of a state court.Kropelnicki v. Siegel, 290 F.3d 118, 128 (2d Cir. 2002). This doctrine isdesigned to protect the integrity of state court judgments, seeHachamovitch v. DeBuono, 159 F.3d 687, 696 (2d Cir. 1998), and musttherefore be invoked "if adjudication of a claim in federal court wouldrequire the court to determine that a state court judgment waserroneously entered or was void," Kropelnicki, 290 F.3d at 129. New YorkState Supreme Court, Kings County did not enter a final judgment in theGagliano lawsuit, but only because the parties entered into a stipulation discontinuing the action based on their settlement agreement.Nevertheless, a settlement agreement may constitute a final judgment forthe purposes of the Rooker-Feldman doctrine. See Lombard v. Lombard, No.00 Civ. 6703, 2001 WL 548725, at *4 (S.D.N.Y. May 23, 2001) (decidingthat the court "lack[ed] subject matter jurisdiction to adjudicateplaintiff's claim that the Stipulation of Settlement should be declarednull and void"); Delgado v. Chan, No. 97 Civ. 2251, 1997 WL 527876, at *4(S.D.N.Y. Aug. 22, 1997) (holding that the Rooker-Feldman doctrineprecluded any review of claims related to a state court judgment in aneviction proceeding that was entered pursuant to a settlementagreement). Moreover, the Cavagnuolos concede that the instant actionarises out of the Gagliano lawsuit and that they were represented bycounsel during the course of that litigation, although, as evinced intheir third-party plaintiff claims, they certainly contest the adequacyof such representation. Any issues regarding the appropriateness of thesettlement and the alleged malpractice of their counsel will have toawait adjudication of the Cavagnuolos third-party negligence claims.

E. Attorneys' Fees

In addition to the $160,000 paid in the settlement of the Gaglianolawsuit, Allianz seeks

reimbursement for $57,933.33 in legal fees. Ofthis amount, the Cavagnuolos do not contest the $3,450 that was paid toLester, Schwab, Katz & Dwyer LLP for defending MBCC's interests inthe underlying action, the Gagliano lawsuit. Instead, the Cavagnuolosargue that Allianz is not entitled to attorneys' fees arising out itsprosecution of the instant action and even if it were, the amount ofattorneys' fees should be based on a computation of hourly rates underthe Lodestar method and not a contingent fee. The indemnification portionof the Lease provides that the Cavagnuolos would be liable for all "costsand expenses, including attorneys' fees" resulting from their use of thevehicle. Nevertheless, as the Cavagnuolos note, under New Jersey law,this provision permits Allianz to recover the costs associated withdefending itself, not for attorneys' fees that accrue for services inconnection with a suit upon the indemnity agreement itself. Johnsonv. Johnson, 92 N.J. Super. 457, 463 (App. Div. 1966) (ruling that anindemnification provision that included an award of attorneys' fees didnot entitle indemintor to attorneys' fees for prosecution of theindemnification action because it was not expressly provided for in the parties' agreement): see also Bethlehem Steel Corp. v. K. L. O. WeldingErectors. Inc., 132 N.J. Super. 496, 499-500 (App. Div. 1975) (holdingthat an indemnification agreement that encompassed "any and all loss orliability" included attorneys fees incurred in defending the underlyingsuit). Accordingly, Allianz is entitled to $3,450 in attorneys' fees.

F. Leave to Amend

Finally, the Cavagnuolos move for leave to amend their answer to add across-claim against Maiorano. Federal Rule of Civil Procedure 15(a)provides that "leave shall be freely given when justice so requires," butthe district court has broad discretion in deciding whether to grant amotion to amend. The July 3, 2003 deadline for asserting claims or causesof action set forth and agreed to in the pre-trial scheduling order haslong since passed and this case is scheduled for trial on May 25, 2004.Any such amendment would be an exercise in futility given that Maioranohas not even appeared in this action. Leave to amend is therefore denied.

III. CONCLUSION

For the foregoing reasons, Allianz's motion for summary judgment isgranted and it is awarded $163,450, representing the $160,000 paid tosettle the underlying lawsuit and $3,450 in attorneys' fees. TheCavagnuolos' cross-motion and motion for leave to amend their answer aredenied. The Clerk of the Court is instructed to close this and any openmotions.

THIS CONSITUTES THE DECISION AND ORDER OF THE COURT.

1. Allianz failed to submit a Statement of Material Facts on Motionfor Summary Judgment as required under Rule 56.1 of the Local Rules forthe United States District Courts for the Southern and Eastern Districtsof New York in connection with its motion and opposition to theCavagnuolos' cross motion. Accordingly, pursuant to subsection (c) of theLocal Rule, the facts outlined in the Cavagnuolos' 56.1 statements aredeemed admitted, Giannullo v. City of New York, 322 F.3d 139, 140 (2dCir. 2003), for the purposes of the motion and cross-motion, which raisesubstantially the same issues, see, e.g.,

# ALLIANZ INSURANCE CO. v. CAVAGNUOLO

2004 | Cited 0 times | S.D. New York | May 6, 2004

United States v. Abady, No. 03Civ. 1683, 2004 WL 444081, at *2-3 (S.D.N.Y. Mar. 11, 2004).

2. The Cavagnuolos argue in their opposition to Allianz's motion forsummary judgment that New Jersey law applies under the Lease's choice oflaw provision. Inexplicably, they rely entirely on New York law in theircross-motion for summary judgment. Allianz did not squarely addresseither this seeming contradiction or the issue of which law applies.Thus, the Court is left to its own analysis to determine under which lawthe Lease ought to be interpreted.

3. Although Mr. Cavagnuolo resided and garaged the Mercedes in NewYork from the time he entered into the Lease in January 1998 until theaccident in which Maiorano struck Gagliano in October 1998, D. CavagnuoloDep. at 13:24-14:8, he moved to Florida in approximately 1999, D.Cavagnuolo Dep. at 5:18-19. The other relevant parties reside in statesother than New York or New Jersey. MBCC has its principle place ofbusiness in Connecticut, Allianz has its principle place of business inCalifornia, and Angela Cavagnuolo is a Florida resident. Compl. ¶¶1-2, 4; D. Cavagnuolo Dep. at 6:24-7:11.

4. A preliminary clause of the Lease indicates that all referencesto "you" or "your" refer to the lessor or the lessor's assignee.

5. The Cavagnuolos raise a similar argument based on New York law intheir cross-motion for summary judgment, the substance of which I addressin the present discussion because of the applicability of New Jersey lawto the instant matter.

6. The January 17, 1998 agreement provided that the Cavagnuoloswould lease a 1998 year model with 57 miles logged on the odometer, whichhad a suggested retail value of $38,590.00.