UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7614
Summary Calendar

DEE ANN PEMBERTON,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, An Illinois Corporation,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
(1:92-CV-136)

(March 10, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[*]

In this insurance coverage dispute, defendant-appellant State Farm Mutual Automobile Insurance Company appeals the judgment of the district court holding it liable to plaintiff-appellee Dee Ann Pemberton, as assignee of Pemberton Oil, Inc., for the stipulated amount of $75,000 on the basis that Pemberton Oil was a named insured in State Farm's insurance policy and did not release

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

its claim against State Farm. Because we conclude that Garlon Pemberton unambiguously released State Farm from any claims for benefits under the automobile policy for which Pemberton Oil was the named insured, we REVERSE the judgment of the district court and RENDER judgment for State Farm.

The facts and procedural history of this case are set out fully in this court's previous opinion in this case dismissing for want of a final judgment. See Pemberton v. State Farm Mut. Auto Ins. Co., 996 F.2d 789, 790 (5th Cir. 1993). For present purposes, the relevant, uncontroverted facts are few. On October 8, 1989, Garlon Pemberton was driving a BMW owned by Pemberton Oil when it collided with a vehicle driven by an uninsured motorist; Garlon's wife, Dee, and their two children were also in the BMW.

On August 31, 1990, Garlon executed a release in favor of State Farm that provides in relevant part:

> FOR AND IN CONSIDERATION of the sum of SEVENTY-FIVE THOUSAND AND NO/100 ($75,000.00) DOLLARS, being paid by STATE FARM AUTOMOBILE INSURANCE COMPANY, the undersigned, GARLON PEMBERTON, does hereby forever fully release, acquit, discharge and covenant to defend and hold harmless STATE FARM AUTOMOBILE INSURANCE COMPANY, as well as their agents, representatives, successors, heirs and assigns, and anyand all other persons, firms, or corporations (hereinafter referred to as "Releasees"), *from any and all claims* for injuries, property damage, *and any and all other damages sustained by the undersigned* as a result of a vehicular accident which occurred on or about October 28, 1989, including but not limited to *any claim for benefits of any description arising out of* State Farm Automobile Insurance Company Policy Nos. 1836-915-F17-24C, 1909-676-C15-24, 1844-652-B1324C and 24-98-4643-3.

(emphasis added). At the time the release was signed, Garlon Pemberton was the sole shareholder in Pemberton Oil, as well as its president and chief executive officer.[1] Pemberton Oil is the sole named insured on Policy No. 190-9675-C15-24 which is specifically mentioned above in the release signed by Garlon.[2]

Nearly two years after the Pembertons signed their releases, Dee Ann Pemberton, as assignee of Pemberton Oil, brought suit against State Farm seeking to recover *Pemberton Oil's* damages resulting from Garlon's inability to work during the time he recovered from the accident. Both parties moved for summary judgment on the issue of liability, and the district court granted Dee's motion.

This court applies the same standard that governs the district court in reviewing a ruling on a motion for summary judgment. See Reid v. State Farm Mut. Auto Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). Specifically, we should not affirm a summary judgment ruling unless we are "convinced, after an independent review of the record that 'there is no genuine issue as to any material fact' and that the movant is 'entitled to a judgment as a matter of law.'" See Brooks, Tarlton, Gilbert, Douglas & Kressler v. United States Fire Ins. Co., 832 F.2d 1358, 1364 (5th Cir. 1987)

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[1]Dee Pemberton signed an identical release in favor of State Farm the very same day.

[2]The Pembertons are the named insureds on Policy No. 24-98-4643-3 -- an umbrella policy providing an additional $1,000,000 in uninsured motorist coverage. The two other policies listed in the releases signed by the Pembertons are also personal insurance policies issued by State Farm to Garlon and Dee Ann Pemberton as named insureds.

(quoting Fed. R. Civ. P. 56(c)). Finally, in making this determination, we view all of the evidence and the inferences drawn from the evidence in the light most favorable to the nonmovant. See Reid, 784 F.2d at 578.

Under Mississippi law, this court, having no power to modify, add to, or subtract from its terms, must give effect to the express terms of the release agreement. See First Nat'l Bank of Vicksburg v. Caruthers, 443 So.2d 861, 864 (Miss. 1983). Our de novo review leads us to conclude that Garlon Pemberton unambiguously released State Farm from any claims by Pemberton Oil or its assignees under Policy No. 190-9675-C15-24 regarding his accident on October 28, 1989. The controlling language of the release is both broad and unequivocal. Under it, Garlon released State Farm "*from any and all claims for ... any and all other damages*" sustained as a result of the accident. Significantly, the release further explicitly included "*any and all claims*" for benefits under Policy No. 190-9675-C15-24 under which Pemberton Oil is the named insured. Lastly, Garlon Pemberton, as the only shareholder or officer of Pemberton Oil at the time, had the unquestionable, exclusive authority to release State Farm.

In short, giving effect to the express terms of the release agreement, the plaintiff's claim under the corporation's insurance policy for damages sustained by Pemberton Oil is clearly encompassed by the terms of the release and is therefore barred.

For the foregoing reasons, we REVERSE the district court's judgment for Dee Ann Pemberton and RENDER judgment for defendant-appellant State Farm.