[Cite as *Countywide Fed. Credit Union v. Safe Auto Ins. Co.*, 2004-Ohio-3560.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

COUNTYWIDE FEDERAL CREDIT UNION
Plaintiff-Appellee : C.A. CASE NO. 04CA0006

vs. : T.C. CASE NO. 01CV0353

SAFE AUTO INSURANCE COMPANY : (Civil Appeal from Common Pleas Court)
Defendant-Appellant :

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O P I N I O N

Rendered on the 2nd day of July, 2004.

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GRADY, J.

{¶1} The issue in this appeal is whether an insured, by assigning to a lienholder the right to have the proceeds of the property loss coverage her automobile insurance policy provides, thereby imposed on the insurer a duty to notify the lienholder of the insurer's intent to cancel the policy for the insured's non-payment of premiums. We find that on

this record no such duty was created and imposed. Therefore, we will reverse a summary judgment for the lienholder that the trial court granted, from which this appeal is taken.

{¶2} In February of 1998, Countywide Federal Credit Union ("Countywide") loaned Cheryl Turner funds to purchase a new automobile. Countywide acquired a security interest in the automobile from Turner. As a condition of the loan, Turner agreed to obtain a policy of automobile insurance providing property loss coverage, the proceeds of which would be paid to Countywide by the insurer to satisfy the balance due Countywide on its loan should Turner's automobile be damaged beyond repair.

{¶3} On May 13, 1998, Turner obtained the required coverage from Safe Auto Insurance Co. ("Safe Auto"). However, Turner failed to pay the necessary premium. Safe Auto notified Turner that it would cancel the policy unless she paid the premium. Turner failed to do so, and Safe Auto canceled the policy on June 13, 1998. Four days later, on June 17, Safe Auto notified Countywide that Turner's policy had been canceled. On January 15, 1999, Turner's vehicle was destroyed in an accident. It appears that Turner had not obtained other property loss coverage.

{¶4} Countywide commenced the action below on May 16, 2001, seeking to recover the proceeds of the property loss coverage from Safe Auto that its contract with Turner had provided. Countywide asserted that Safe Auto's cancellation

was ineffective as to Countywide because Safe Auto did not provide Countywide prior notice of its intent to cancel Turner's policy. Such notice would, according to Countywide, have allowed it to protect its interests by paying the required premium.

{¶5} After responsive pleadings were filed, Countywide and Safe Auto each filed motions for summary judgment. The trial court denied Safe Auto's motion. The court granted Countywide's motion, finding that in this circumstance "[i]t would be 'sensible and reasonable' to expect Safe Auto to notify the lienholder of the cancellation of insurance." (Judgment entry, p.5). Safe Auto filed a timely notice of appeal.

{¶6} Safe Auto argues that the trial court erred when it found that Safe Auto had a duty to provide Countywide prior notice of Safe Auto's intent to cancel Turner's policy, such that Safe Auto's failure to provide that notice now requires Safe Auto to pay Countywide the property loss proceeds Safe Auto's policy would have provided to Countywide had it been in effect when Turner's auto was damaged beyond repair.

{¶7} R.C. 3937.32 provides that "[n]o cancellation of an automobile insurance policy is effective, unless when it is pursuant to a written notice to the insured of cancellation." Paragraph (E) of that section provides that "[w]here cancellation is for nonpayment of premium (,) at least ten days notice from the date of mailing of

cancellation accompanied by the reason therefore (sic) shall be given."

{¶8} **The trial court found, correctly, that R.C. 3937.32 imposed no duty on Safe Auto to provide Countywide prior notice of its intention to cancel the policy Safe Auto had issued to Turner. The requirements that section imposes are confined to notice which must be sent to the insured, Turner, not to a third party such as a lienholder.**

{¶9} **The only other possible source of any duty that Safe Auto may have had to provide the benefit of prior notice of cancellation to Countywide is the insurance contract between Turner and Safe Auto. Because Countywide was not a party to that agreement, Countywide's claim for relief is necessarily that of a third-party beneficiary to the insurance contract. In order for Countywide to prevail on its claim, there must be evidence that the promisee, Turner, on her part intended to directly benefit Countywide on a duty that Turner owed Countywide.** ***Trinova Corporation v. Pilkington Brothers P.L.C.*** **(1994), 70 Ohio St.3d 271. Then, the promisor, Safe Auto, is presumed to have agreed to be bound by a promise implicit in its agreement with the promisee to provide that benefit to the third party.**

{¶10} **It is undisputed that Countywide is identified on the Declarations Page of the Safe Auto policy as a lienholder entitled to the proceeds of the policy's property loss coverage in the event Turner's auto is damaged beyond repair. It is also undisputed that, consistent with R.C.**

3937.32, the express terms of the policy require Safe Auto to provide prior notice of cancellation to Turner. The issue is whether, in combination, these provisions likewise required Safe Auto to provide Countywide prior notice of cancellation.

{¶11} In finding that it would be "sensible and reasonable" for Safe Auto to have provided prior notice of cancellation to Countywide, the trial court referred to several provisions in the Safe Auto policy extending liability coverage, and applied the rule that with respect to questions of coverage ambiguities must be construed strictly against the insurer and liberally in favor of the insured. *King v. Nationwide Ins. Co.* (1988), 35 Ohio St.3d 408. The thrust of that rule runs counter to the more specific evidentiary requirements of the promisee's "direct" intent required to prove third party beneficiary claims as set out in *Trinova*, and is inapplicable here for two further reasons.

{¶12} First, Countywide is not an insured, and the benefits of the rule of *King v. Nationwide* flow only in favor of insureds. See *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849. It does not apply to the rights of coverage a policy confers on incidental beneficiaries. *Id.*

{¶13} Second, Countywide's claim against Safe Auto is not grounded on a right to coverage. Rather, it is grounded on a right to have the proceeds of property loss coverage

due Turner under the Safe Auto policy. That right, if it exists, necessarily derives from the assignment for Countywide's benefit that Turner created when she entered into her contract with Safe Auto.

{¶14} The Safe Auto policy provides that the benefits conferred on a lienholder "are limited to and may not exceed those benefits and/or rights to which the named insured is entitled." (p. 23). Countywide argues that this provision extends to it the right of prior notice of cancellation the policy confers on Turner. We do not agree. The provision confers no substantive right. It merely limits rights otherwise conferred on lienholders. Unless the policy by its terms confers a right of notice on Countywide, it has none merely because the policy confers the right on Turner.

{¶15} Countywide argues that because the policy provides that prior notice of cancellation will be sent to "you," and further specifies that "you" means the named insured and other "individuals" who are identified on the policy's Declarations Page, the fact that Countywide is there identified as the lienholder brings Countywide within the policy's notice requirement. The trial court essentially adopted this argument, relying on the rule of construction in *King v. Nationwide Ins. Co.* to find that the requirement exists.

{¶16} The term "you" as it is used on the declarations page refers to persons who are entitled to coverage and, at least as to the policyholder, who are entitled to prior

notice of cancellation. The defect in Countywide's contention, as we have said, is that the rule of *King* applies to coverage disputes. Here, Countywide claims as a third party beneficiary who is entitled not to coverage but to the proceeds of coverage to which Turner is entitled. To succeed on that claim, Countywide must point to evidence that Turner directly intended to benefit Countywide in respect to a duty Turner owed Countywide. *Trinova*.

{¶17} Turner agreed to maintain insurance coverage for Countywide's benefit, to protect its security interest in her automobile. It may be, as the trial court stated, a sensible and reasonable extension of the right to the policy proceeds that Turner assigned to Countywide to find that she likewise conferred on Countywide the right of prior notice of cancellation that the policy confers on Turner. However, third-party beneficiary claims require evidence of a promisee's intent directly to benefit the third party with respect to a particular right. Unlike the assignment of the right to proceeds, there is no evidence that Turner directly intended to confer a right to prior notice of cancellation on Countywide. The limit of the benefit she intended to confer, as gleaned from the four corners of the contract, is only a right to the proceeds of the property loss coverage the policy provides. Neither did Safe Auto assume a duty to provide notice to anyone other than Turner.

{¶18} We find that the Safe Auto policy by its terms confers no right to prior notice of cancellation on

Countywide. Therefore, Safe Auto had no duty to provide Countywide with notice before it canceled Turner's policy for non-payment of premium. The trial court erred when it found that Safe Auto was subject to that duty, such that its failure to discharge the duty entitles Countywide to the proceeds of the property loss coverage the canceled policy provided to Turner and which she assigned to Countywide.

{¶19} Our holding that no duty to provide notice to Countywide was imposed on Safe Auto by its contract with Turner is based on the terms of the policy and principles of contract law. We do not find that Countywide had no interest that a right of prior notice legitimately could protect. Indeed, if an insurer in Safe Auto's position is made aware by a lienholder that it has a security interest in the property insured, and the insurer acknowledges the lien, as Safe Auto did, then prior notice of cancellation ought to be possible. We encourage the General Assembly to consider amending R.C. 3937.32 to require that prior notice of cancellation be sent to lienholders of which the insurer is aware, as well as to insureds.

{¶20} Safe Auto's assignment of error is sustained. The summary judgment for Countywide will be reversed and the cause remanded to the trial court to enter summary judgment for Safe Auto on its motion.

BROGAN, J. and YOUNG, J., concur.

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