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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-000932-MR

STATE AUTO INSURANCE COMPANY

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE PHIL PATTON, JUDGE  
ACTION NO. 04-CI-00338

LINDA CRENSHAW, ADMINISTRATOR  
OF THE ESTATE OF JEREMY SMITH;  
ELIZABETH A. BOYD AND  
COMPTON'S AUTO SALES

APPELLEES

AND

NO. 2011-CA-000970-MR

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LINDA CRENSHAW, ADMINISTRATOR  
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APPELLEES

OPINION  
REVERSING AND REMANDING APPEAL NO. 2011-CA-000932-MR  
AND AFFIRMING APPEAL NO. 2011-CA-000970-MR

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BEFORE: CLAYTON, KELLER AND MAZE, JUDGES.

MAZE, JUDGE: These consolidated appeals arise out of two summary judgment orders entered by the Barren Circuit Court in an action involving a motor vehicle accident between Elizabeth Boyd and Jeremy Smith. In a summary judgment order entered on June 13, 2008, the trial court determined that Compton's Auto Sales remained the owner of the vehicle for insurance purposes because it failed to promptly file the paperwork transferring the vehicle's title. Thereafter, Smith filed a claim against the Boyds' insurer, State Auto Insurance Co., seeking to enforce a 2004 settlement offer for the limits of the Boyds' policy. The trial court concluded that offer remained open and Smith's acceptance of the offer in 2008 was valid.

In Compton's appeal, we agree with the trial court that Compton's failure to promptly file the title-transfer paperwork results in it being deemed the owner of the vehicle for insurance purposes. But in State Auto's appeal, we conclude that Smith's refusal to accept State Auto's settlement offer in 2004 amounted to a rejection of the offer's terms. Consequently the offer was terminated at that point and could not be accepted later. Hence, we affirm the trial court's order in Appeal No. 2011-CA-00970-MR, and we reverse the trial court's order Appeal No. 2011-CA-000932-MR and remand for entry of an order dismissing Smith's claim against State Auto.

### **Relevant Facts**

Since these two appeals are related, we shall set out the facts of both in chronological order. On September 2, 2003, Christopher Boyd purchased a 1995 Chevrolet Cavalier from Compton's Auto Sales in Bowling Green, Kentucky. At the time of the sale, Christopher Boyd presented a proof-of-insurance card showing that he had liability insurance on the vehicle through State Auto. Thereafter, he promptly contacted State Auto and added the Cavalier to an existing policy. Also on September 2, 2003, Christopher Boyd and Compton's executed a financing statement, and the "Transfer of Title By Owner" and "Application for Title/Affidavit of Total Consideration" portions of the vehicle's Certificate of Title.

Following completion of this paperwork, Compton's gave possession of the vehicle to Christopher Boyd. However, Compton's did not transfer the title at that time because Christopher Boyd had not executed the Title Lien Statement at that time. Christopher Boyd returned to Compton's on September 22, 2003, and executed the Title Lien Statement. Shortly thereafter, on September 27, 2003, Christopher Boyd's wife Elizabeth was involved in a motor vehicle accident while driving the Cavalier in Barren County. Her vehicle struck a motorcycle being driven by Jeremy Smith. Christopher Boyd promptly notified State Auto and Compton's of the accident. At Christopher Boyd's request, Compton's filed the paperwork formally transferring title on October 13, 2003.

Since there was a question concerning ownership of the vehicle, Smith indicated that he intended to pursue claims against the Boyds and Compton's. In early 2004, State Auto concluded that their insureds, the Boyds, would likely be adjudged the owners of the vehicle. Consequently, on March 18, 2004, a representative of State Auto offered to settle the matter with Smith for the policy limits of \$25,000, in exchange for a full and final release of the Boyds. Smith declined to accept the offer at that time, indicating that he planned to pursue a claim against Compton's and its insurance carrier.

On May 18, 2004, Smith filed this action against Elizabeth Boyd and Compton's, seeking damages for the September 27, 2003 accident. Compton's denied ownership of the vehicle on two grounds. First, Compton's argued that its delay in transferring the title was due to Christopher Boyd's failure to sign the lien statement in a timely manner. In the alternative, Compton's alleged that Christopher Boyd purchased the vehicle under a conditional sales agreement and that he became the owner of the vehicle by operation of Kentucky Revised Statutes KRS 186A.010(7)(b).

Following an extended period of discovery, Smith moved for summary judgment. On June 13, 2008, the trial court granted the motion, concluding that Compton's was the owner of the vehicle "for insurance purposes." Immediately after entry of this order, Smith sent a letter to State Auto accepting its offer of \$25,000 in settlement of the claim against the Boyds. State Auto refused

to tender payment, taking the position that its settlement offer had been rejected or had lapsed.

Thereafter, on December 16, 2009, Smith filed an amended complaint against State Auto to recover the \$25,000 which it previously offered in settlement. Following additional discovery on this claim, the matter was presented to the trial court on cross-motions for summary judgment. On March 16, 2011, the trial court granted Smith's motion, finding that State Auto had never withdrawn its settlement offer and had, in fact, reaffirmed the offer while Smith's claim against Compton's was pending. Consequently, the trial court concluded that Smith's acceptance of the offer was timely. Subsequently, the trial court denied State Auto's motion to alter, amend or vacate the judgment. Kentucky Rules of Civil Procedure (CR) 59.05. Compton's and State Auto separately appealed from their judgments, and those appeals were consolidated before this Court.

As an initial matter, State Auto admits coverage of the Boyds' vehicle. However, State Auto notes that its policy has an "Other Insurance" clause, which provides that its coverage shall be in excess of any other coverage of the vehicle. Since the trial court found that Compton's is the owner of the vehicle for insurance purposes, State Auto's liability coverage is secondary to any liability coverage provided by Compton's insurance carrier. If Compton's is not the owner of the vehicle for insurance purposes, then State Auto's coverage is primary and any question about its settlement offer to Smith is moot. Therefore, we must first address the issues presented in Compton's appeal.

**Compton's Appeal (No. 2011-CA-000970-MR)**

Compton's argues that summary judgment was inappropriate because there were genuine issues of material fact regarding its duty to file the paperwork transferring title of the vehicle to Christopher Boyd. The standard of review governing an appeal of a summary judgment is well settled. We must determine whether the trial court erred in concluding that there was "no genuine issues as to any material fact and that the moving party was entitled to a judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. In *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985), the Supreme Court of Kentucky held that for summary judgment to be proper, "the movant shows that the adverse party could not prevail under any circumstances."

The Kentucky Supreme Court also stated that "the proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). However, "the word 'impossible' is used in a practical sense, not an absolute sense." *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992). Furthermore, the party opposing summary judgment "cannot rely

on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but ‘must present affirmative evidence in order to defeat a properly supported motion for summary judgment.’” *Steelvest*, 807 S.W.2d at 481 (internal quotations and citations omitted). “Because summary judgments involve no fact finding, the Court of Appeals reviews them *de novo*, in the sense that we owe no deference to the conclusions of the trial court.” *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

The central issue in Compton’s appeal concerns who was the owner of the vehicle for purposes of primary insurance coverage. KRS 186.010(7)(a) defines “owner” to mean:

a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.

KRS 186A.215 and 186A.220 set out the requirements for transfer of a motor vehicle title. KRS 186A.215 sets out the general requirements for all transfers as follows:

1) If an owner transfers his interest in a vehicle, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title, except if the space provided therefor on the owner's certificate of title fails to meet the Kentucky requirements for lawful conveyance of title or if the space provided therefor on the owner's certificate of title fails to meet the requirements for the owner to execute an odometer disclosure statement as required by federal law in effect at the time transferor executes an assignment and warranty of title. Pursuant to the exceptions provided by

this subsection and in other cases where applicable, the transferor shall execute an assignment and warranty of title to the transferee by executing the application as provided by the Department of Vehicle Regulation and available from the county clerk. The transferor shall cause the application with the certificate of title attached to be delivered to the transferee.

(2) Except as otherwise provided in this chapter, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title and registration. If an application is required by subsection (1) of this section, the transferee shall execute the applicable portions provided to him by his transferor. Any unexpired registration shall remain valid upon transfer of said vehicle to the transferee.

(3) The application with its supporting documentation attached shall promptly be submitted to the county clerk as provided in KRS 186A.115, together with the required fees.

(4) If it comes to the attention of a transferor that a transferee did not promptly submit the necessary document within fifteen (15) calendar days to the county clerk as required by law in order to complete the transfer transaction, a transferor shall submit to the county clerk, in his county of residence, an affidavit that he has transferred his interest in a specific vehicle, and the clerk shall enter appropriate data into the AVIS system which shall restrict any registration transaction from occurring on that vehicle until the transfer has been processed. The Transportation Cabinet may adopt administrative regulations governing this subsection. This subsection shall not apply to any transactions involving licensed Kentucky motor vehicle dealers.

In *Omni Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co.*, 999 S.W.2d

724 (Ky. App. 1999), this Court explained that, under KRS 186A.215(4), it is the responsibility of the individual transferor and transferee to see that the transfer of



title is accomplished. *Id.* at 726-27. Once the title documents are completed and delivered to the transferee, the documentation must be “promptly submitted” to the county clerk. KRS 186A.215(3). KRS 186A.215(4) requires the transferee to submit the transfer documentation to the county clerk within 15 days.

However, *Omni* addressed title transfers between an individual seller and an individual buyer. The 15-day provision does not apply to transfers involving a licensed motor vehicle dealer. KRS 186A.215(4). Rather, such transfers are governed by KRS 186A.220(5), which provides as follows:

When he assigns the vehicle to a purchaser for use, he shall deliver the properly assigned certificate of title, and other documents if appropriate, to such purchaser, who shall make application for registration and a certificate of title thereon. The dealer may, with the consent of the purchaser, deliver the assigned certificate of title, and other appropriate documents of a new or used vehicle, directly to the county clerk, and on behalf of the purchaser, make application for registration and a certificate of title. In so doing, the dealer shall require from the purchaser proof of insurance as mandated by KRS 304.39-080 before delivering possession of the vehicle. Notwithstanding the provisions of KRS 186.020, 186A.065, 186A.095, 186A.215, and 186A.300, if a dealer elects to deliver the title documents to the county clerk and has not received a clear certificate of title from a prior owner, the dealer shall retain the documents in his possession until the certificate of title is obtained.

Under KRS 186A.220(5), a commercial automobile dealer has two options for transferring title to a purchaser. First, the dealer may deliver the completed title documents to the purchaser along with possession of the vehicle.

Under these circumstances, the purchaser has the obligation to file the transfer

paperwork with the county clerk as provided by KRS 186A.215. Second, the dealer may file the paperwork with the county clerk directly on the purchaser's behalf. In this case, however, the dealer must obtain proof of insurance before delivering possession of the vehicle to the purchaser. While the dealer is not subject to the 15-day requirement of KRS 186A.215(4), the dealer must "promptly" deliver the title documentation to the county clerk as required by KRS 186A.215(3). In *Ellis v. Browning Pontiac-Chevrolet-GMC Truck-Geo, Inc.*, 125 S.W.3d 306 (Ky. App. 2003), this Court held that a dealer's delay of 39 days is too long. *Id.* at 308.

Finally, the dealer has a third option outside of KRS 186A.220. The dealer may sell the vehicle pursuant to a conditional sales agreement. Under such a contract, the seller retains possession of the title until the purchaser performs the contract terms (up to 365 days), but the purchaser will be deemed to be the owner for insurance purposes. KRS 186.010(7)(b). *See also Potts v. Draper*, 864 S.W.2d 896, 898 (Ky. 1993).

Compton's first alleges that it sold the Cavalier to Christopher Boyd under a conditional sales agreement, and thus was relieved of the obligation of giving him the completed title documents or filing them with the county clerk. Compton's contends that there were genuine issues of material fact supporting this claim and thus summary judgment was inappropriate. However, no evidence was presented by Compton's of a conditional sales agreement.

Indeed, their conduct during the transaction evidences a contrary intent. The sales contract includes a handwritten notation stating “Customer pays taxes & transfer fees.” We also note that the sales contract provided for payments over a period of more than one year. The duration of this payment period would have placed the agreement outside of the scope of KRS 186.010(7)(b).

Furthermore, Compton’s and Christopher Boyd executed the “Transfer of Title” and “Application for Title” portions of the Certificate of Title. Finally, the parties executed a “Title Lien Statement.” None of these actions would have been necessary if Compton’s had intended to retain the title under a conditional sales agreement.

Moreover, Compton’s admitted in its answer that it “was in the process of recording the lien statement and transferring the title on such vehicle to Christopher Boyd with the Warren County Court Clerk when [it] was notified that the vehicle had been in an accident.” Although Compton’s argued in the alternative that a conditional sales agreement was involved, it also admitted that it completed that title transfer on October 13, 2003, after the accident and at Christopher Boyd’s request. Compton’s conduct is entirely inconsistent with its claim that the transaction was a conditional sales agreement.

In the alternative, Compton’s argues that *Ellis* does not set out a bright-line rule regarding the promptness requirement. Rather, it contends that, when a dealer elects to file the title transfer paperwork on behalf of the purchaser, an *unexplained* delay will result in the dealer remaining the owner for insurance

purposes. Compton's maintains that its delay in transferring title was justified by Christopher Boyd's failure to complete the Title Lien Statement.

As noted above, Compton's and Christopher Boyd completed the title transfer paperwork on September 2, 2003, but he did not sign the Title Lien Statement that day. Compton's states that it contacted Christopher Boyd several times during the following weeks, but he did not return to sign the Title Lien Statement until September 22, 2003, just five days before his wife's accident. As a result, Compton's maintains that its delay in transferring the title was reasonable, or at least there is a genuine issue of material fact whether it acted promptly to transfer title.

However, the execution of the Title Lien Statement was only necessary to perfect Compton's security interest in the vehicle and did not have to be filed with the title transfer paperwork. KRS 186A.195. Consequently, Compton's had all the documents necessary to file the title-transfer paperwork on September 2, 2003. Based on *Ellis*, Compton's failure to complete the transfer until October 12 violated the promptness requirement of KRS 186A.215(3). Therefore, the trial court correctly held as a matter of law that Compton's remained the primary owner of the vehicle for insurance purposes.

**State Auto's Appeal (No. 2011-CA-000932-MR)**

Thus, we must reach the issue presented in State Auto's appeal. State Auto argues that the trial court erred by finding that Smith made a timely acceptance of its 2004 settlement offer. We agree. The trial court concluded that

State Auto never revoked or withdrew its settlement offer, nor did it expressly set out any time deadlines for its acceptance. As a general rule, what constitutes a reasonable period of time for acceptance is a question of fact. *Brown v. Noland Co.*, 403 S.W.2d 33, 36 (Ky. 1966). *See also* 17A Am. Jur. 2d *Contracts* § 58. Nevertheless, State Auto argues that, as a matter of law, the settlement offer had lapsed prior to Smith's purported acceptance of it in 2008.

In this case, however, we need not determine whether Smith accepted the offer in 2008 because he clearly rejected it in 2004. As succinctly explained in the *Restatement (Second) of Contracts*, § 38(1), "An offeree's power of acceptance is terminated by his rejection of the offer, unless the offeror has manifested a contrary intention." Section 38(2) further explains that "A manifestation of intention not to accept an offer is a rejection unless the offeree manifests an intention to take it under further advisement."

The *Restatement* view is consistent with well-established Kentucky law holding that an acceptance of an offer must be unequivocal in order to create a contract. *Venters v. Stewart*, 261 S.W.2d 444, 446 (Ky. 1953). It is not enough that there are words or acts which imply a probable acceptance. *Id.* Moreover, a conditional or qualified acceptance of an offer amounts to a rejection of the original offer and the proposal of a counteroffer. *See Casner v. Oldham*, 279 S.W.2d 252 (Ky. 1955), and *Hartford Life Ins. Co. v. Milet*, 105 S.W. 144, 145 (Ky. 1907).

In this case, the April 22, 2004 log entry by State Auto's adjuster notes that he spoke to Smith's counsel about the outstanding settlement offer. The log entry records that Smith's counsel states that

HE IS PROBABLY GOING TO FILE SUIT AGAINST  
CAR DEALER & THEY WILL LIKELY PARTY US. I  
REAFFIRMED WE WOULD PAY OUR LIMIT BUT  
HIS CLIENT WOULD HAVE TO SIGN RELEASE  
AND HE SAYS THEY CAN'T DO THAT NOW.

Smith does not dispute the record of this conversation, but argues that this did not amount to a clear rejection of State Auto's settlement offer. He points out that State Auto's adjuster subsequently advised his counsel that State Auto would still pay its policy limit. The trial court construed this and other statements by the adjuster that the offer would remain open while the parallel litigation against Compton's was pending.

We disagree. The subsequent statements by the adjuster merely indicate that State Auto's coverage would be primary if the Boyds were found to be the owners of the vehicle for insurance purposes. We cannot interpret these statements as an agreement to hold open the settlement offer indefinitely. Indeed, State Auto specifically sought a settlement and release of its insureds without being brought into the separate litigation against Compton's. By stating that Smith could not sign a release at that time, his counsel rejected the offer and made a counterproposal to revisit the issue upon completion of the litigation against Compton's. Consequently, we conclude that State Auto's settlement offer was terminated upon Smith's rejection of the offer in 2004. See 1 *Williston on*

*Contracts* § 5:3 (4th ed.). Since State Auto never explicitly renewed or extended the offer, Smith could not accept it in 2008. Therefore, the trial court erred by holding that State Auto remained bound by the terms of the offer.

### **Conclusion**

Accordingly, the June 13, 2008 order of the Barren Circuit Court holding that Compton's is the owner of the vehicle for insurance purposes is affirmed. However, the March 16, 2011 summary judgment order requiring State Auto to tender its settlement offer to Smith is reversed, and this matter is remanded to the Barren Circuit Court with directions to dismiss Smith's claims against State Auto.

ALL CONCUR.

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