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Global Aerospace, Inc., Corrected Order on Choice of Law

Elizabeth E. Long

Fulton County Superior Court, Judge

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



GLOBAL AEROSPACE, INC.,)
)
 Plaintiff,)
)
 v.)
)
 LIMA DELTA COMPANY, et al.,)
)
 Defendants.)

Civil Action File No.
2012CV214772

COPY

CORRECTED ORDER ON CHOICE OF LAW

Defendants have filed a Motion to Apply Delaware Law. The parties in this matter contest which state’s law should be applied—Georgia or Delaware—in the absence of a choice of law provision in the insurance policy (the “Policy”) at issue. Upon consideration of the parties’ briefs and the record of the case, the Court finds that Georgia law applies.

In the absence of a choice of law provision in a contract, Georgia courts apply *lex loci contractus*. See *Farm Credit of Northwest Florida, ACA v. Eason Peanut Co.*, 312 Ga. App. 374, 381 (2011). In the context of insurance contracts, the contract is “made” at the place where the contract is delivered. See *Gen. Elec. Credit Corp. v. Home Indem. Co.*, 168 Ga App. 344, 350(2)(b) (1983); see also *O’Neal v. State Farm Mut. Auto. Ins. Co.*, 243 Ga. App. 756, 757 (2000).

As the Court of Appeals noted in its decision affirming this Court’s Order denying Defendants’ Motion to Dismiss for lack of personal jurisdiction, Wells Fargo’s Atlanta office accepted delivery of the Policy on behalf of the insureds and was responsible for forwarding the Policy documents. The Court of Appeals also determined that the evidence presented showed that Wells Fargo was acting as the agent of the insured when it procured the Policy from Global. Based on the evidence before it at the time of its opinion, the Court of Appeals found that Georgia law would likely apply, but acknowledged that additional evidence affecting this

question may come to light during discovery. “If such additional evidence is produced, then it will be for the trial court to decide, in the first instance, whether Georgia law controls this case.” *Lima Delta Co. v. Global Aerospace, Inc.*, 325 Ga. App. 76, 83 n.7 (2013).

In support of their position that Delaware law applies, Defendants, the insured parties, argue that Wells Fargo was not their agent, and that the Policy was not “delivered” until Wells Fargo forwarded the Policy to Delaware. Defendants cite the deposition testimony of Wells Fargo employees, Lauren Hanes and Dean Anderson, as well as Vickie Adams, a Global underwriter, all of whom testified that Wells Fargo was not an agent of the insured. They also argue that Wells Fargo was not authorized to execute the Policy on behalf of Defendants, was not responsible for premium payments, and was not paid a commission for securing the Policy on behalf of Defendants. Instead, Defendants executed the Policy in Delaware after receiving it from Wells Fargo and sent their payment from Delaware to Wells Fargo at its Texas address.

Global argues that under Georgia law, a broker of an insurance policy is the agent of the insured, not the insurer. *See Pope v. Mercury Indem. Co. of Georgia*, 297 Ga. App. 535, 540(3) (2009); *Kirby v. Northwestern Nat. Cas. Co.*, 213 Ga. App. 673, 678 (2) (1994); *Amtrust North America v. Smith*, 315 Ga. App. 133-134-135(1) (2012). Generally speaking, an agency relationship can be established “by circumstantial evidence, apparent relations, and conduct of the parties.” *Lima Delta Co.* at 81 (quoting *Nat'l Prop. Owners Ins. Co. v. Wells*, 166 Ga. App. 281, 282(2) (1983)).

Here, as the Court of Appeals noted, Dan Piraino, acting on behalf of the Defendants, contacted the Atlanta office of Wells Fargo as he had many times in the past. In fact, Wells

Fargo had previously assisted Piraino and the Defendants in providing insurance for the aircraft at issue.

Defendants rely on the deposition testimony of lay witnesses of Wells Fargo and Global employees who assert that Wells Fargo was not the agent of Defendants. The other evidence relied on by Defendants was available to the Court of Appeals at the time of its ruling. This Court finds that the Court of Appeals' finding that Wells Fargo was the agent of Defendants is controlling.

Defendants argue strongly that delivery of the Policy occurred in Delaware, not Georgia where Wells Fargo received it electronically. Since Wells Fargo was the agent of Defendants, it is not unusual that it would accept delivery on behalf of Defendants. All the contacts between Global, the insurer, and Defendants, the insured, had been through Wells Fargo, including locating the insurer, payment of the Policy premium and delivery of the Policy. While Defendants' Delaware address was provided in the Policy's Declarations, there are no express terms regarding delivery of the final Policy by mail to this address or otherwise mandating a particular method of delivery for new policies. Given this lack of direction by the express terms of the Policy, the Court agrees with the Court of Appeals that electronic delivery of the final Policy to the insureds' agent, Wells Fargo, was sufficient delivery. Again, no new evidence has been presented that disturbs the Court of Appeals' finding that delivery occurred in Georgia.

The Court does not find evidence sufficient to support the application of Delaware law in contravention of the Court of Appeals' initial conclusion that Georgia law applies. The Motion to Apply Delaware Law is **DENIED**.

SO ORDERED this 14th day of April, 2015.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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