

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

[REDACTED]

Plaintiff,

v.

**STAPLES, INC. and ACE AMERICAN
INSURANCE COMPANY,**

Defendants.

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Case No. [REDACTED]

ORDER

This case came before the Court on Defendant Ace American Insurance Company’s Motion to Dismiss. Defendant Ace American Insurance Company (“Ace American”) contends that it is an improper party because Georgia law does not permit direct actions against liability insurers except in certain circumstances and none of those circumstances apply in this case. After considering the pleadings of the parties and the applicable case law, as well as the arguments presented at the hearing on the matter, the Court finds, as follows:

This is a personal injury claim arising from a motor vehicle collision between Plaintiff and a vehicle owned by Defendant Staples, Inc. (“Staples”). The lawsuit was originally filed against Staples in Fulton State Court. The Plaintiff then moved to add Defendant Ace American pursuant to O.C.G.A. § 40-2-140, contending that Defendant Staples’s delivery truck was a commercial motor vehicle, which made Defendant Staples a motor carrier under Georgia law. The Fulton County Court granted the motion and added Ace American as a Defendant. The case was then transferred to this Court. Defendant Ace American now moves to be dismissed on the grounds that Defendant Staples is not a motor carrier and, as such, a direct claim against its insurance carrier is improper. It argues that Defendant Staples is not a “motor carrier” because, by the Plaintiff’s own Complaint, Defendant Staples was operating its truck for its own business purposes rather than in course of transporting for hire persons, household goods, or property at the time of the incident. See Plaintiff’s Complaint, ¶¶ 10-18. The question before the Court, therefore, is whether Staples qualifies as a “motor carrier” under Georgia law.

In interpreting statutes, the Court will first look at the plain language of the statute. “In

construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd or impracticable consequences, the court simply construes it according to its terms and conducts no further inquiry.” Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 540, 774 S.E.2d 114 (2015), citing Savannah Cemetery Group v. DePue-Wilbert Vault Co., 307 Ga. App. 206, 207, 704 S.E.2d 858 (2010) (Punctuation and footnote omitted.) Furthermore, “in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole.” Doctors Hosp. of Augusta, LLC, 332 Ga. App. at 540, citing Walker County v. Tri-State Crematory, 292 Ga. App. 411, 414-415, 664 S.E.2d 788 (2008) (Citation and punctuation omitted.) Different subsections of a statute should be read in *pari materia*, and the Court must strive to “reconcile them, if possible, so that they may be read as consistent and harmonious with one another.” Doctors Hosp. of Augusta, LLC, 332 Ga. App. at 540, citing City of LaGrange v. Ga. Public Svc. Comm., 296 Ga. App. 615, 621, 675 S.E.2d 525 (2009) (Punctuation and footnote omitted.)

Under Title 40, Chapter 2 of the Official Code of Georgia, “[a]ny person having a cause of action, whether arising in tort or contract, under this Code section may join in the same cause of action **the motor carrier** and its insurance carrier.” O.C.G.A. § 40-2-140(d)(1)(4) (emphasis added). At the outset, in interpreting the statute, the Court must first determine the applicable definition for “motor carrier.” In support of its motion, Defendant Ace American relies on the definition of a “motor carrier” found in O.C.G.A. § 40-1-100. As used therein, a “motor carrier” is defined as every person owning, controlling or managing any motor vehicle used in the business of transporting for hire, persons, household goods, or property.” O.C.G.A. § 40-1-100(12). The term “carrier” is defined as “a person who undertakes the transporting of goods or passengers for compensation.” O.C.G.A. § 40-1-100(1). Finally, “for compensation” or “for hire” is defined as an activity relating to a person engaged in the transportation of goods or passengers for compensation. O.C.G.A. § 40-1-100(8). None of the definitions cited by Defendant, however, are found in Chapter 2 of title 40, the chapter where the direct action statute is located.

For his part, Plaintiff argues that O.C.G.A. § 40-2-1(6)(B) provides the applicable “motor carrier” definition. O.C.G.A. § 40-2-1(6)(B) provides that a “motor carrier” includes “[a]ny entity defined by the commissioner or commissioner of public safety **who operates or controls**

commercial motor vehicles as defined in 49 C.F.R. Section 390.5 or this chapter whether operated in interstate or intrastate commerce, or both.” (Emphasis added.) That federal regulatory definition establishes that any truck with a GVWR over 10,000 pounds constitutes a “commercial motor vehicle.” Notably, before setting forth the definitions in the statute, the first seven words of the text of O.C.G.A. § 40-2-1 are: “[a]s used in this chapter [i.e., Title 40, Chapter 2], the term...” (Emphasis added.) Ultimately, the Court agrees with Plaintiff and finds that the plain language of O.C.G.A. § 40-2-1 establishes that the operative terms for Title 40, Chapter 2 are found within that statute and, therefore, the appropriate definition of “motor carrier” to be used in this case is the one found in O.C.G.A. § 40-2-1.

Next in the analysis to determine whether Plaintiff’s O.C.G.A. § 40-2-140(d)(1)(4) direct action is appropriate in the present case, the Court must decide whether Defendant Staples falls within the “motor carrier” definition of O.C.G.A. § 40-2-1. The record in this case shows that Defendant Staples’ vehicle at issue in this case was a truck with a GVWR at or above 10,001 pounds. See Staples Resp. to RFA 20 (Set 1). Saunders Baugh was the Staple’s employee driving the Defendant’s vehicle at the time of the incident. Baugh expressly testified that the truck’s gross vehicle weight rating (“GVWR”) was 19,500 pounds. See Baugh Dep. 18:04-10. Both him and his supervisor, Antwon Swain, testified that the subject truck was a commercial motor vehicle. See Baugh Dep. 9:25-10:02; Swain Dep. 47:24-48:02. Moreover, Defendant Staples 30(b)(6) representative also testified that the vehicle involved in the collision was a commercial motor vehicle. See Staples Depo. 33:3-19. In addition, Staples’s internal documents further reflect that the subject truck was a “commercial motor vehicle.” For example, the Staples Driver Manual instructs all of its drivers that “the truck you drive every day is considered a commercial motor vehicle under the Federal Motor Carrier Safety Regulations,” and the forms that Staples instructed its drivers to fill out identify Staples as a “motor carrier.” See Drivers Manual at p. 3. Finally, the instructions of the “Driver Certification for Other Compensated Work” filled out by Baugh as part of his work as a Staples driver expressly provides in relevant part: “[w]hen employed by a motor carrier, the driver must report to the carrier all on-duty time working for other employers.” See 4/29/09 Driver Certification for Sanders Baugh.

Under this governing definition, an entity that owns or operates “commercial motor vehicles” is a “motor carrier” and is therefore subject to a direct action. As such, Defendant Staples is a motor carrier for purposes of O.C.G.A. § 40-2-140(d)(1)(4) and the direct action

against Defendant Ace American is proper.

Based on the foregoing, Defendant Ace American Insurance Company's Motion to Dismiss is hereby **DENIED**.

SO ORDERED, this 24 day of May, 2018.



Hon. Dax E. López
Judge, State Court of DeKalb County

CC: All parties

STATE COURT OF
DEKALB COUNTY, GA.
5/29/2018 11:09 AM
E-FILED
BY: Monique Roberts