

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 27 1988

CLERK SUPREME COURT

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AMERICAN GUARANTEE AND
LIABILITY INSURANCE COMPANY,

Plaintiff-Appellant,

vs.

LOUIS LISKA and MAXWELL CITY,
INC., d/b/a CRAFT INDUSTRIES AND
ILLINOIS INDUSTRIAL TOOL,

Defendants-Appellees,

and

CHANDLER MANUFACTURING CO.,
INC.,

Defendant.

Filed January 27, 1988

7-273
86-1358

Appeal from the Iowa District Court for Webster County (63062), R.K.
Richardson, Judge.

An insurer appeals an Iowa district court ruling sustaining an Iowa resident's special appearance regarding the district court's lack of jurisdiction over a declaratory judgment action. **REVERSED AND REMANDED.**

Steven K. Warbasse and Ross Hauser of White & Warbasse, Cedar Rapids,
for plaintiff-appellant.

M. Gene Blackburn and Jerry L. Schnurr III, Fort Dodge, for defendant-
appellee Maxwell.

John W. Gailey & James McCarthy of Gailey & McCarthy, Fort Dodge,
for defendant-appellee Liska.

Kurt L. Wilke of Bennett, Wilke & Tarbox, Fort Dodge, for defendant
Chandler.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

An Iowa resident, Louis Liska, filed a product liability lawsuit in the Iowa district court against two nonresident corporations. During the course of this litigation one defendant's insurer, also a nonresident corporation, filed the present declaratory judgment action in the Iowa district court seeking a determination that its policy did not apply to this case. Liska filed a special appearance in this declaratory judgment action, contending that neither the insurer nor its insured had sufficient minimum contacts with Iowa to give Iowa courts jurisdiction over the declaratory judgment action. The district court sustained Liska's special appearance, and the insurer (plaintiff in the declaratory judgment action) has appealed. The insurer contends that the Iowa district court does have jurisdiction over this declaratory judgment action. Our scope of review is for correction of errors at law. Iowa R. App. P. 4. We reverse and remand.

In 1983 Louis Liska, an Iowa resident, filed a tort action in the Iowa district court against Chandler Manufacturing Company (hereinafter Chandler) and Maxwell City, Inc. (hereinafter Maxwell). The suit was a product liability action contending that a battery charger manufactured by Chandler and sold by Maxwell had caused a fire at Liska's Iowa residence. As part of this tort suit, Maxwell filed a cross-claim against Chandler seeking indemnity or contribution.

Chandler's insurer, American Guarantee and Liability Insurance Company (hereinafter American), a New York corporation, became convinced that Chandler was failing or refusing to cooperate in American's efforts to defend Chandler against the Liska lawsuit and the related cross-claim. American therefore filed the present declaratory judgment action against Chandler in the Iowa district court. American asked the court to declare the insurance policy void and to declare that American had no further responsibility to defend Chandler. Liska and Maxwell were named as additional defendants in the declaratory judg-

ment action. The district court entered a default judgment against Chandler in the declaratory judgment action due to Chandler's failure to answer or appear.

Liska filed a special appearance in American's declaratory judgment action against Chandler. Liska challenged the personal and subject matter jurisdiction of the Iowa court. The district court sustained Liska's special appearance and held that neither American nor Chandler is an Iowa resident or has sufficient minimum contacts with Iowa to give Iowa courts jurisdiction over this declaratory judgment action.

American has appealed the district court's order sustaining Liska's special appearance. American contends that the Iowa district court does have jurisdiction over the subject matter and the parties of this declaratory judgment action.

In deciding this case, the threshold issue is whether Liska was a proper party to raise the defense of lack of jurisdiction in the Iowa district court over the declaratory judgment action. If Liska is found to be a proper party to raise that defense, we must then determine whether the district court had jurisdiction over the action.

On the initial question, we are guided by Farm and City Ins. Co. v. Coover, 225 N.W.2d 335 (Iowa 1975). In Coover, the Iowa Supreme Court stated an "injured person's interest in the liability insurance policy of the insured arising at the time of the injury [under this kind of direct action statute] is sufficient to make a coverage dispute between the insurer and insured a justiciable controversy between the insurer and the injured person." Id. at 337. Furthermore, several federal courts have also addressed this issue and held that where an actual controversy exists between an insurer denying coverage under a liability policy and an injured party suing the alleged insureds, the injured party has a right to participate in the insurer's declaratory judgment action as to coverage, and to raise any proper defense. See Fed. Kemper Ins. Co. v. Reuscher, 807

F.2d 345, 352-53 (3d Cir. 1986); Auto. Underwriters Corp. v. Graves, 489 F.2d 625, 627-28 (8th Cir. 1973); Hawkeye-Sec. Ins. Co. v. Schulte, 302 F.2d 174, 177 (7th Cir. 1962). Applying these principles to the present case, we hold that Liska was a proper party to raise the defense of lack of jurisdiction in the Iowa district court over the declaratory judgment action. First, Liska had an interest in the coverage dispute between American and Chandler since, under Iowa's direct action statute, see Iowa Code section 516.1 (1985), Liska would have a right to proceed against American in the event that Chandler did not satisfy a judgment rendered against it. Also, Liska was a named defendant in American's declaratory judgment action. As noted by the court in Hawkeye Sec. Ins. Co. v. Schulte, it would be anomalous to hold that an actual controversy exists between the injured party and the insurer and yet deny the injured party the right to participate in the controversy. Hawkeye-Sec. Ins. Co., 302 F.2d at 177. Since Liska was a proper party in the declaratory judgment action, the default of Chandler does not preclude Liska's right to raise the jurisdiction issue. See id.

Having determined that Liska was a proper party to assert lack of jurisdiction, we must now address the merits of the jurisdiction issue. First, we conclude that the Iowa district court does have subject matter jurisdiction to decide declaratory judgment actions. Iowa R. Civ. P. 261; Gospel Assembly Church v. Iowa Dep't of Revenue, 368 N.W.2d 158, 159 (Iowa 1985). The question then narrows to whether the Iowa district court had proper jurisdiction over the parties to the declaratory judgment action. American, having brought the action in Iowa, has submitted to the Iowa court's jurisdiction. Liska's special appearance pleading never challenged the Iowa district court's personal jurisdiction over himself. Having found personal jurisdiction over American and

Liska, we are left with an analysis of whether the district court properly asserted jurisdiction over Chandler.

The analytic framework for deciding questions of personal jurisdiction was set forth in Larsen v. Scholl, 296 N.W.2d 785 (Iowa 1980). In Larsen, the Iowa Supreme Court stated:

[W]e examine whether the assertion of in personam jurisdiction over the nonresident defendant satisfies the requirement of fair play and substantial justice. The "minimum contacts" test ... is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. We recognize that this determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable."

We apply the above standard in light of five factors ..., the first three being most important:

- (1) the quantity of the contacts;
- (2) the nature and quality of the contacts;
- (3) the source and connection of the cause of action with those contacts;
- (4) the interest of the forum state; and
- (5) the convenience of the parties.

Id. at 788 (citations omitted).

Applying the above factors, we hold that the Iowa district court had proper personal jurisdiction over Chandler in the declaratory judgment action. The United States Supreme Court has stated that a nonresident may be sued on a contract which had "substantial connection with [the forum] state." McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L. Ed. 2d 223, 226 (1957). Chandler manufactured a product which Liska, an Iowa resident, purchased. The product was allegedly defective and Liska sued Chandler in Iowa. Chandler was insured by American for product liability claims. Under the terms of the insurance policy between American and Chandler, American was to provide coverage to Chandler for any liability incurred by Chandler in the Liska lawsuit. Thus, the terms of the American-Chandler insurance policy

are an integral part of the Iowa lawsuit between Liska and Chandler. Because the terms of the American-Chandler insurance policy are an integral part of an Iowa lawsuit, Chandler, as the insured in the policy, has a significant contact with the State of Iowa. Furthermore, since Iowa has a direct right of action statute, which allows Liska to proceed directly against the insurer, American, if the insured, Chandler, fails to pay any judgment rendered in the Iowa product liability suit, the Iowa district court has a strong interest in the declaratory judgment action.

Thus, in the declaratory judgment action brought by American in Iowa, the Iowa district court does have in personam, as well as subject matter jurisdiction over Chandler. Therefore, we reverse and remand to the Iowa District Court for Webster County for a trial on the merits of American's petition for declaratory judgment.

REVERSED AND REMANDED.