IN THE SUPREME COURT OF TEXAS

NO. 06-0987

UNITED STATES FIDELITY AND GUARANTY COMPANY, PETITIONER,

V.

LOUIS GOUDEAU, RESPONDENT

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Argued December 6, 2007

JUSTICE GREEN, joined by CHIEF JUSTICE JEFFERSON and JUSTICE JOHNSON, dissenting.

Because I would not reach the issue of whether Louis Goudeau was occupying the vehicle when the accident occurred, I dissent. In the trial court, the insurer admitted to the claimant that he was insured under the policy. That admission binds the insurer even in an unusual case like this where the insurer made the admission while purporting to act not as defendant, but as intervenor. Because such an admission relieves the claimant's burden of proving insured status, and prevents the insurer from arguing otherwise, I would hold that the insurer's motion for summary judgment should have been denied.

I

United States Fidelity and Guaranty Company (USF&G) provided Advantage Motor, Inc.'s commercial auto insurance policy, which included underinsured motorist coverage for Advantage's automobiles and persons "occupying a covered auto," and also served as Advantage's workers' compensation insurer, which paid Goudeau more than $100,000 under the workers' compensation policy's indemnity provisions. After Goudeau and his wife filed lawsuits against Alex Rodriguez and USF&G, USF&G answered and denied that Goudeau was an insured under the auto policy. Then, through separate counsel, USF&G intervened as the Goudeaus' subrogee[1] to assert claims for reimbursement with respect to any amount recovered from Rodriguez or defendant USF&G. After intervention, the Goudeaus served intervenor USF&G with requests for admissions. In its responses, intervenor USF&G admitted that "Louis Goudeau is an insured for the purposes of underinsured motorist benefits under USF&G Policy No. DRE3847700." The trial court later granted defendant USF&G's motion for partial summary judgment against the Goudeaus, rejecting their argument that one of the policy exclusions applied, but accepting their argument that the auto policy did not insure Goudeau in the first place because Goudeau, who was outside of the vehicle at the time of the collision, was not "occupying" a covered vehicle. The Goudeaus settled with Rodriguez for his policy's $20,000 limit, and the trial court entered an order apportioning the settlement between the Goudeaus and intervenor USF&G.

---

[1] *See* TEX. LAB. CODE § 417.001(b) ("If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary.").

The Goudeaus appealed, arguing that defendant USF&G's summary judgment evidence failed to prove that Goudeau was not "occupying" the covered vehicle, that defendant USF&G failed to properly authenticate its summary judgment evidence, and that intervenor USF&G's responses to the requests for admission defeated defendant USF&G's motion. Defendant USF&G reurged its insured-status argument, as well as the policy exclusion argument. With respect to Louis Goudeau, the court of appeals reversed, concluding that, "[v]iewing the evidence in the light most favorable to Louis, USF & G—Defendant did not establish conclusively that Louis was not occupying a covered vehicle." 243 S.W.3d at 9–10.[2]

II

Texas Rule of Civil Procedure 198 allows a party to request "that the other party admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact." TEX. R. CIV. P. 198.1. Admissions produce two results: they relieve the requesting party's burden of proving the admitted matter and prevent the admitting party from disputing the same. *See Marshall v. Vise*, 767 S.W.2d 699, 700 (Tex. 1989); *Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980); *U.S. Fid. & Guar. Co. v. Carr*, 242 S.W.2d 224, 228–29 (Tex. Civ. App.—San Antonio 1951, writ ref'd). As intervenor, USF&G unequivocally admitted that the USF&G auto policy insured Goudeau. Because no effort was made

[2] The court of appeals affirmed the trial court's grant of summary judgment as to Tasha Goudeau, 243 S.W.3d at 5–6, and she does not appeal that decision.

to withdraw or limit that admission, Goudeau should prevail against the intervenor on this question of insured status.[3]

The operation of the relatively simple admissions rule is complicated by the fact that USF&G was named as *both* the intervenor and the defendant, and now the defendant is being charged with the intervenor's admission. Although the intervenor and defendant were represented by separate counsel, neither has ever attempted—either in the trial court or in these appellate proceedings—to clarify this oddity of identification. Defendant USF&G's motion for summary judgment noted that Goudeau had received benefits from "the Intervenor in the case, also United States Fidelity and Guaranty Company." Throughout the appellate proceedings, defendant USF&G did not dispute that the same company was litigating as both defendant and intervenor. USF&G's only argument is that the intervenor's admissions cannot bind the defendant because the intervenor is not the same party as the defendant. At trial, the Goudeaus did not formally challenge the propriety of USF&G's intervention,[4] but the Goudeaus did argue that the intervenor and the defendant are the same company, and that the admissions of USF&G while acting as intervenor bind USF&G while acting as defendant. I agree.

No person may sue himself. *United States v. Interstate Commerce Comm'n*, 337 U.S. 426, 430 (1949).

---

[3] "[A] party relying upon an opponent's pleadings as judicial admissions of fact must protect the record by objecting to the introduction of controverting evidence and to the submission of any issue bearing on the facts admitted." *Marshall*, 767 S.W.2d at 700. The Goudeaus did just that in their reply to defendant USF&G's motion for summary judgment, arguing that USF&G was precluded from introducing evidence contrary to the admission, and that the admission, at minimum, created a material issue of fact.

[4] *See* TEX. R. CIV. P. 60 ("Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.").

> There is much argument with citation of many cases to establish the long-recognized general principle that no person may sue himself. Properly understood the general principle is sound, for courts only adjudicate justiciable controversies. They do not engage in the academic pastime of rendering judgments in favor of persons against themselves.

Id. This rule stems from the well-established standing requirement of concrete adversity. *See United States v. Nixon*, 418 U.S. 683, 692–97 (1974); *United States v. Fed. Mar. Comm'n*, 694 F.2d 793, 810 (D.C. Cir. 1982).[5] As a result, "courts must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented." *Interstate Commerce Comm'n*, 377 U.S. at 430; *accord United States v. Providence Journal Co.*, 485 U.S. 693, 708 n.11 (1988); *Nixon*, 418 U.S. at 693. Although our admissions rule speaks in terms of each "party," *see* TEX. R. CIV. P. 198.1, our procedural rules as a whole are predicated on the assumption that a person can serve only as one party in each lawsuit. To hold otherwise would invite our courts to decide cases without the truly adverse litigants who are necessary to "sharpen[] the presentation of issues upon which the [C]ourt so largely depends for illumination." *Massachusetts v. EPA*, 127 S. Ct. 1438, 1453 (2007). Moreover, such an interpretation would disrupt the rules' careful allotment of litigation procedures and stand as an obstacle to a "just, fair, equitable and impartial adjudication." TEX. R. CIV. P. 1.

For the same reason that courts must "look behind names" to establish justiciability, *Interstate Commerce Comm'n*, 377 U.S. at 430; *accord Providence Journal Co.*, 485 U.S. at 708 n.11; *Nixon*, 418 U.S. at 693, the trial court here should have looked behind the party designations

[5] Texas courts look to federal jurisprudence on issues of justiciability. *See Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 774 (Tex. 2005).

of "defendant" and "intervenor" when it applied the admissions rule. We have consistently applied our rules of procedure to discourage tactical gamesmanship, *see State v. Lowry*, 802 S.W.2d 669, 671 (Tex. 1991); *Gutierrez v. Dallas Indep. Sch. Dist.*, 729 S.W.2d 691, 693 (Tex. 1987), and our admissions rule is no exception, *see County of Dallas v. Wiland*, 216 S.W.3d 344, 355 n.46 (Tex. 2007). Our goal in barring parties from introducing proof that contradicts an earlier admission is fairness: "[T]he courts sense the fact that it would be as absurd, as it manifestly would be unjust, to allow a party to recover after he has clearly and unequivocally sworn himself out of court." *Carr*, 242 S.W.2d at 229 (quoting *Westbrook v. Landa*, 160 S.W.2d 232, 233 (Tex. Civ. App.—San Antonio 1942, no writ)) (italics and quotations omitted); *see also Mendoza*, 606 S.W.2d at 694.

The record here reflects just such a case. The pleadings of both the intervenor and the defendant are consistently attributed to USF&G, and there is no indication of any real separation between the USF&G that administers the auto policy and the USF&G that administers the workers' compensation policy. Although, as the Court points out, insurers may stand in different shoes or act in different capacities, there is no indication that USF&G in this case is anything but a single entity with the power to sue and be sued only in the name of USF&G. USF&G never made any attempt to distinguish the identity or capacity of USF&G as defendant from USF&G as intervenor, even after the Goudeaus specifically argued that the defendant and intervenor are the same company and that the admissions of one bind the other. As a result, the only conclusion to be had is that behind this intervenor and defendant lies only one person with one interest: USF&G.[6] Whatever dispute there

[6] If the record were unclear, summary judgment for a movant in USF&G's position would nonetheless be improper because the litigant's true identity is certainly a "material fact" under our summary judgment jurisprudence. *See Browning v. Prostok*, 165 S.W.3d 336, 344 (Tex. 2005) ("In a summary judgment motion brought under Texas Rule

is between these two USF&G factions lies entirely within USF&G, and is not deserving of individualized adjudication in our courts. The principles of fairness inherent in our rules would not be promoted by allowing USF&G to litigate on summary judgment a question that it had unequivocally admitted eleven months earlier, albeit under a different fictional label. Thus, the admission extracted by the Goudeaus should bind USF&G as both intervenor and defendant. Having admitted that Goudeau was insured under the auto policy, I would affirm the judgment of the court of appeals and hold that USF&G could not succeed on its motion for summary judgment. *See Marshall*, 767 S.W.2d at 700; *Mendoza*, 606 S.W.2d at 694; *Carr*, 242 S.W.2d at 228–29.

III

Because USF&G is bound by its admission of Louis Goudeau's insured status, I would not reach the issue of whether Goudeau was "occupying" the vehicle within the meaning of the USF&G policy. I therefore dissent from the Court's judgment.

_____
Paul W. Green
Justice

OPINION DELIVERED: December 19, 2008

---

of Civil Procedure 166a(c), the moving party has the burden of showing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law."); *see also City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005) (instructing that, to review a trial court's grant of summary judgment, we "examine the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion").