

Circle Business Credit, Inc., Respondent,

v.

Lumberman's Mutual Casualty Company, Appellant.

Supreme Court, Appellate Division, Second Department,
New York

(June 27, 1994)

In an action to recover the proceeds of an insurance policy, the defendant appeals from a judgment of the Supreme Court, Nassau County (Hart, J.), entered October 19, 1992, which, *729 after a nonjury trial, is in favor of the plaintiff and against the defendant in the principal sum of \$250,000.

Ordered that the judgment is affirmed, with costs.

The evidence adduced at trial indicates that both parties to the insurance contract intended that the plaintiff be listed as an additional insured. The defendant's failure to do so is a scrivener's error which allows for a reformation of the policy so as to evidence the parties' intent (*see, Harris v Uhlendorf*, 24 NY2d 463, 467). Accordingly, the plaintiff was not merely a loss payee who was subject to any defenses which could be asserted against the named insured. Rather, the plaintiff was an additional insured who possessed an independent right to recovery. The Supreme Court therefore properly determined that the plaintiff was entitled to recover for the loss of the subject equipment.

Thompson, J. P., O'Brien, Ritter and Krausman, JJ., concur.

Copr. (c) 2004, Randy A. Daniels, Secretary of State, State of New York.

N.Y.A.D.,1994.

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