

Kalra v Allstate Indem. Co.

2007 NY Slip Op 31554(U)

May 3, 2007

Supreme Court, Queens County

Docket Number: 0001171/2005

Judge: Patricia P. Satterfield

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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 19

	X	INDEX NO. 1171/05
DAVINDER K. KALRA, et al.,		MOTION SEQ. NOS.: 3 & 4
Plaintiff,		BY: SATTERFIELD, J.
- against -		DATED: May 3, 2007
ALLSTATE INDEMNITY COMPANY a/k/a		
ALLSTATE INSURANCE COMPANY,		
Defendants.		
	X	

Defendant Allstate Indemnity Company has moved for summary judgment dismissing the first, second, and third causes of action asserted against it. Defendant Allstate has also moved for, inter alia, an order pursuant to CPLR 3211(a)(7) dismissing the fourth cause of action asserted against it and for summary judgment pursuant to CPLR 3212 dismissing the fourth cause of action asserted against it. Plaintiff Davinder Kalra has cross-moved for summary judgment on her first, second, and third causes of action. Plaintiff Jagjit Kaur has cross-moved for summary judgment on her first, second, and third causes of action.

On or about July 31, 1996, plaintiff Davinder Kalra and her sister, plaintiff Jagjit Kaur, took title to property known as 146-45 Booth Memorial Avenue, Flushing, New York, which was improved by a two-family home. Plaintiff Kalra obtained a homeowner's policy from defendant Allstate with effective dates of

July 31, 2002 to July 31, 2003 covering the premises. A policy endorsement named plaintiff Kaur as an additional insured. The plaintiffs allege that on January 24, 2003, an electrical fire severely damaged the first floor of the house and completely destroyed the second floor. At the time of the fire, plaintiff Kaur, her husband, two sons, one daughter, and parents lived on the first floor, and plaintiff Kalra, her husband (plaintiff Permindar Chhabra), daughter, and niece lived on the second floor. Plaintiff Kalra alleges that flames, smoke, or water damaged every item of their personal property. Plaintiff Kalra immediately notified plaintiff Allstate of the fire, and two days later she hired a public adjuster to handle insurance claims. The public adjuster prepared a written inventory of the personal property destroyed by the fire, and he allegedly provided the insurer with a copy. Plaintiff Kalra moved out of the house and successively rented two apartments, the first located at 61-18 186th Street, Fresh Meadows, New York, and the second at 149-33 Hollywood Avenue, Flushing, New York. Plaintiff Kaur rented an apartment at 198-08 58th Avenue, Fresh Meadows, New York. The plaintiffs submitted a statement of proof of loss to their insurer, allegedly relying on values fixed by the public adjuster. In June, 2003, plaintiff Kalra and plaintiff Chhabra attended an examination under oath requested by defendant Allstate, testifying about the items on the inventory submitted by the public adjuster. In September, 2003, defendant

Allstate denied the plaintiffs' claim in its entirety, including for the structure, because the insurer had concluded that the insureds had "fraudulently inflated [their] claim arising out of the alleged loss of the contents of the insured premises, as well as [their] claim for additional living expenses." This action ensued. The first, second and third causes of action are for breach of contract, and the fourth is for, inter alia, punitive damages.

Defendant Allstate alleges that plaintiff Kalra and plaintiff Chhabra made false statements concerning the losses they sustained as supposedly shown by, inter alia, (1) the plaintiffs' inability to produce receipts for most of the items damaged in the fire, (2) the plaintiffs' conflicting testimony during their examinations under oath concerning the location of certain items of personal property, (3) the amount of debris after the fire, (4) the plaintiffs' conflicting testimony concerning the number of camcorders allegedly lost, (5) the plaintiffs' conflicting testimony at their examinations under oath concerning ownership of a forty-two inch plasma screen television allegedly worth \$4,999, (6) the plaintiffs' recanting of their testimony about ownership of the television at their subsequent examination before trial, (6) the plaintiffs' claim of paying \$4,000 per month during February, March, and April, 2003 for substitute housing, \$1,700 by check and the rest by cash, (7) the production of the lease for the

premises which called for rental payments of only \$1,700 per month, and (8) the plaintiffs' claim of paying \$4,000 per month in cash for rent from May, 2003 not evidenced by any receipts.

Plaintiff Kalra and plaintiff Chhabra reply that, inter alia, (1) they submitted "hundreds" of receipts for the damaged personal property, plus bank statements, tax returns, and credit card bills, (2) they believed that family members owned three camcorders, (3) they made an error in submitting a claim for a plasma television, (4) eleven people, including nine working adults, lived in the house and could afford the items claimed, (5) they recall paying \$4,000 per month for substitute housing, and (6) they allegedly provided receipts for the \$4,000 rent "on more than one occasion."

In regard to the motion by defendant Allstate for summary judgment dismissing the first, second, and third causes of action asserted against it, "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact ***." (Alvarez v Prospect Hospital, 68 NY2d 320, 324.) Defendant Allstate successfully carried this burden. The policy procured by the plaintiffs reads in relevant part: "We [Allstate] do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance." The defendant

insurer showed prima facie that plaintiff Kalra and plaintiff Chhabra made material misstatements of fact concerning, inter alia, their ownership of the plasma television and their payment of rent for substitute housing. The defendant insurer also showed prima facie that all of the plaintiffs exaggerated their claims for allegedly destroyed personal property. Where an insured willfully and fraudulently submits a false proof of loss statement to an insurer concerning, for example, property which he did not possess or the value of property which he did possess, the insurer has valid grounds for denying coverage. (See, Deitsch Textiles, Inc. v. New York Property Ins. Underwriting Ass'n, 62 NY2d 999; Saks & Co. v. Continental Ins. Co., 23 NY2d 161.) Moreover, an insured's refusal to supply requested information material to an insurer's investigation of a claimed loss amounts to a breach of the cooperation clause of the policy, providing grounds for a denial of coverage. (See, Latha Restaurant Corp. v Tower Ins. Co., 38 AD3d 321.) The burden on this motion shifted to the plaintiffs to produce evidence in admissible form showing that there is an issue of fact which must be tried. (See, Alvarez v Prospect Hospital, supra.) They successfully carried this burden.

An insured's unintentionally false statements or the statements of opinion mistakenly held do not give the insurer grounds to deny coverage. (See, Christophersen v Allstate Ins.

Co., ___ AD2d ___, 824 NYS2d 171; Sunbright Fashions v Greater N.Y. Mut. Ins. Co., 34 AD2d 235, affd 28 NY2d 563.) In the case at bar, there are triable issues of fact concerning whether the insureds intentionally made false statements to the insurer (see, Christophersen v Allstate Ins. Co., supra; St. Irene Chrisovalantou Greek Orthodox Monastery, Inc. v Cigna Ins. Co., 226 AD2d 624; Orr v Continental Cas. Co., 205 AD2d 599; Chang v General Acc. Ins. Co. of America, 193 AD2d 521) or failed to cooperate in the insurer's investigation of the loss. (See, Latha Restaurant Corp. v Tower Ins. Co., supra; V.M.V. Management Co., Inc. v Peerless Ins., 15 AD3d 647; Ingarra v General Accident/PG Ins. Co. of New York, 273 AD2d 766.) There are issues of fact and credibility in this case which are inappropriate for summary judgment treatment. (See, Dayan v Yurkowski, 238 AD2d 541; T&L Redemption Center Corp. v Phoenix Beverages, Inc., 238 AD2d 504; First New York Realty Co., Inc. v DeSetto, 237 AD2d 219.)

Accordingly, the motion by defendant Allstate for summary judgment dismissing the first, second, and third causes of action asserted against it is denied.

In regard to the cross motion by plaintiff Davinder Kalra for summary judgment on her first, second, and third causes of action in her complaint, there are triable issues of fact concerning whether she intentionally made false statements to the insurer (see, Christophersen v Allstate Ins. Co., supra; St. Irene

Chrisovalantou Greek Orthodox Monastery, Inc. v Cigna Ins. Co., supra; Orr v Continental Cas. Co., supra; Chang v General Acc. Ins. Co. of America, supra) or failed to cooperate in the insurer's investigation of the loss. (See, Latha Restaurant Corp. v Tower Ins. Co., supra; V.M.V. Management Co., Inc. v Peerless Ins., supra; Ingarra v General Accident/PG Ins. Co. of New York, supra.)

Accordingly, the cross motion by plaintiff Davinder Kalra for summary judgment on her first, second, and third causes of action in her complaint is denied.

In regard to the cross motion by plaintiff Jagjit Kaur for summary judgment on her first, second, and third causes of action in her complaint, it is true that the papers submitted by the defendant insurer do not clearly distinguish between the fraud, if any, committed by plaintiff Kaur and the fraud, if any, committed by the other plaintiffs. A homeowners' policy covers the interests of each insured party separately, and, thus, an innocent insured party can recover on the policy despite the wrongful conduct of another insured party. (See, Reed v Federal Ins. Co., 71 NY2d 581; Krupp v Aetna Life & Cas. Co., 103 AD2d 252.) Nevertheless, in view of the allegations by defendant Allstate that, inter alia, "the claimants" failed to submit receipts for most of the personal property allegedly lost in the fire and that the public adjuster supposedly discarded many of the claimed lost items, and in view of plaintiff Kaur's statement that she rented a

substitute house from her sister, Manjit Uberoi, which statement was unaccompanied by proof of rental payments, the court finds that summary judgment in plaintiff Kaur's favor is not warranted. Moreover, summary judgment in the case at bar would serve no purpose because the factual issues pertaining to damages are so closely related to that of liability. (See, John Treiber Agency, Inc. v Spartan Concrete Corp., 268 AD2d 506; McManus-Tessitore Agency v Albin Const. Corp., 63 AD2d 1067; Garvey v St. Paul Fire and Marine Insurance Co., 58 AD2d 992; Harold Ohringer, Inc. v Kass, 28 AD2d 1117.)

Accordingly, the cross motion by plaintiff Kaur for summary judgment on her first, second, and third causes of action is denied.

In regard to those branches of defendant Allstate's motion which are for an order dismissing the fourth cause of action asserted against it pursuant to CPLR 3211(a)(7) and for summary judgment dismissing the fourth cause of action asserted against it pursuant to CPLR 3212, the plaintiffs did not adequately state a claim pursuant to General Business Law § 349 (deceptive business practices) or Insurance Law § 2601 (unfair claim settlement practices). A cause of action asserted under General Business Law § 349 must allege a wrong directed at the public at large (see, Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, 85 NY2d 20; Zawahir v Berkshire Life Ins. Co., 22 AD3d 841), and a

private cause of action cannot be asserted under Insurance Law § 2601. (See, Rocanova v Equitable Life Assur. Society of U.S., 83 NY2d 603; Zawahir v Berkshire Life Ins. Co., supra.) The plaintiffs also did not adequately state a claim for punitive damages. "Punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights ***." (Rocanova v Equitable Life Assur. Soc. of U.S., supra, 613; see, New York University v Continental Ins. Co., 87 NY2d 308.)

Accordingly, those branches of defendant Allstate's motion which are for an order dismissing the fourth cause of action asserted against it pursuant to CPLR 3211(a)(7) and for summary judgment dismissing the fourth cause of action asserted against it pursuant to CPLR 3212 are granted. The motion is otherwise denied.

Short form order signed herewith.

J.S.C.