

Brooks v Hartford Fire Ins. Co.

2007 NY Slip Op 31749(U)

May 18, 2007

Supreme Court, Wayne County

Docket Number: 0059724/2006

Judge: Dennis M. Kehoe

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

2006

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

RAYMOND BROOKS, as Administrator of the
Estate of ELAINE BROOKS, and RAYMOND
JAMES BROOKS, sole beneficiary of the
Estate of ELAINE BROOKS,

DECISION
AND
ORDER

Plaintiffs,

vs.

Index No. 59724

HARTFORD FIRE INSURANCE COMPANY
and THE HARTFORD FINANCIAL SERVICES
GROUP, INC.

Defendants

Andrew M. Burns, Esq.
Attorneys for Plaintiffs

Smith, Murphy & Schoepperle, LLP
Frank G. Godson, Esq.
Attorneys for Defendants

The above-named Defendants (hereinafter referred to as "Hartford")
have moved pursuant to CPLR §3212 for an order granting summary
judgment against the Plaintiffs and dismissing the Complaint, on the basis
that Hartford has no legal obligation to pay the Plaintiffs pursuant to the
money judgment rendered in the Plaintiffs' favor and against Harold F.

Packer. The Plaintiffs (hereinafter referred to as "Brooks") have opposed Hartford's motion, and have cross-moved for an order granting summary judgment against the Defendants.

This is an action brought by Brooks pursuant to Insurance Law §3420 against Hartford to collect insurance proceeds (up to the policy limits) under a homeowner's insurance policy issued by Hartford to Harold F. Packer. Packer was convicted on March 17, 2004 after a jury trial on the charge of Murder in the Second Degree, arising from the shooting death of Elaine Brooks on August 4, 2003. He was sentenced on April 13, 2004. Packer appealed the conviction, and on July 7, 2006, the Appellate Division, Fourth Department modified the conviction by reducing the charge to Manslaughter in the Second Degree. In the interim, Limited Letters of Administration in the Estate of Elaine Brooks were issued to Raymond Brooks by the Wayne County Surrogate's Court on December 10, 2003. A wrongful death action was subsequently commenced against Packer by the estate on April 14, 2004. On or about February 2, 2005, Packer commenced an action against Hartford for a declaratory judgment, seeking defense and indemnification by the insurer under the insurance policy. Numerous motions were made by the respective parties in both

lawsuits, and by Decision and Order dated October 14, 2005, this Court granted partial summary judgment as to liability on the negligence cause of action in the wrongful death action in favor of Brooks and against Packer. This Court also granted the cross-motion brought by Hartford against Packer in the declaratory judgment action, finding that Hartford had no duty to defend Packer in the wrongful death action, due to Packer's failure to give notice to Hartford regarding the incident "as soon as is practical" as required by the policy.

In March 2006, Brooks and Packer entered into a settlement agreement, in which the parties stipulated that a judgment be entered against Packer in the amount of \$1,500,000.00 on the negligence cause of action in the wrongful death action. Pursuant to said agreement, judgment was entered against Packer in the Wayne County Clerk's Office on April 11, 2006. Pursuant to Insurance Law §3420, a copy of the Notice of Entry with the Judgment was provided to Packer, Hartford and counsel for Hartford by letter dated April 14, 2006. Although demand has been made to Hartford for payment in accordance with §3420, the Judgment remains wholly unsatisfied.

The Defendants' motion for summary judgment is based on several

arguments:

1) the violation of the policy's notice requirement, as determined by this Court in the prior declaratory judgment action, constitutes a bar to the present action;

2) even if Hartford's disclaimer to Packer is not binding on Brooks, the Estate did not give timely notice to Hartford, in that the Plaintiff did not exercise the independent right afforded to an injured party under Insurance Law §3420(a)(3) to provide Hartford with timely notice of the shooting of the decedent, and further, that the Plaintiffs failed to demonstrate any reasonable explanation for such failure;

3) the personal liability coverage afforded by the policy does not apply to bodily injury "which is expected or intended by the insured" and therefore Packer's criminal conviction brings this case within the policy exclusion (an argument which, Hartford maintains, is valid notwithstanding the fact that the jury's verdict was modified by the Appellate Division);

4) the doctrine of collateral estoppel does not constitute a bar to relitigation by Hartford of the issue of liability based on Packer's negligence, as determined by this Court in the wrongful death action.

In response to the Defendants' motion, and in support of their own

motion, the Plaintiffs argue as follows:

1) Hartford had already obtained actual notice of the wrongful death action at the time that Plaintiffs first learned of the existence of the insurance policy, and said notice was timely under the circumstances of this case;

2) the death of Elaine Brooks was an “occurrence” as that term is utilized in the insurance policy;

3) the “expected or intended” exclusion in the policy regarding “bodily injury” does not apply, because Packer did not expect or intend to injure Elaine Brooks.

The first matter to be determined is Hartford’s argument that it did not receive timely notice of the injured’s claim, and therefore, the Complaint must be dismissed. This Court previously held in the prior declaratory judgment action that Packer’s failure to give timely notice to Hartford, as required by insurance policy, nullified the coverage and barred his claims for a defense and indemnification. Hartford initially maintains that Hartford’s disclaimer, based in part on the untimely notice, is binding on Brooks. However, the Court agrees with the Plaintiffs’ argument that case law supports their position that an injured third-party cannot be adversely

impacted by the failure of the insured to provide timely notice of a claim to his insurer. (See, e.g., Aetna Casualty & Surety Co. v National Union Fire Insurance Co., 281 AD2d 216 (1st Dept, 1998)).

In response, Hartford argues that, even if their disclaimer is not binding on Brooks, the action should nonetheless be dismissed based on the estate's failure to give timely notice in accordance with the requirements of Insurance Law §3420(a)(3). While §3420 gives the insured an independent right to give notice to the insurer, that notice must be given as soon as reasonably possible, and the injured party must demonstrate that he or she acted diligently in ascertaining the identity of the insurer. Both parties agree that the courts have interpreted the notice requirement more liberally on behalf of the injured party than the insured. (See, e.g. James v Allstate Insurance Co., (177 AD2d 998 (4th Dept, 1991)).

There appears to be no disagreement between the parties that the first written notice to Hartford regarding the claim was given by Packer's attorney by letter dated May 19, 2004. The Plaintiffs do not contend that the Estate gave formal written notice of the wrongful death claim to Hartford, (although, parenthetically, the Court queries whether the mailing

of the Notice of Entry to Hartford might be considered as some evidence of notice). Rather, Brooks' first effort to ascertain the name of Packer's insurer appears to have been a formal Demand for Insurance Coverage, made subsequent to the commencement of the wrongful death action.

Hartford cites numerous cases in which the courts have held that an injured party's failure to provide any explanation for an unreasonable delay in ascertaining the identity of the insurer, or in notifying the insurer of an accident, will result in the dismissal of the judgment creditor's action. (See, e.g., Trepel v Asian Pacific Express Corp., 16 AD3d 405 (2nd Dept, 2005)).

However, there have also been a number of cases in which the courts have acknowledged that there may exist factual issues regarding the reason for the injured party's delay in giving notice which would require determination at trial. In James, supra, the Fourth Department stated that "(r)esolution of that (notice) issue requires consideration of when the injured party knew or should have known of the fact of coverage and the identity of the insurer", thus precluding summary judgment. Other courts have also found material triable issues of fact as to whether a judgment creditor acted diligently in ascertaining the existence of coverage when considering the adequacy of notice. (See, e.g. Appel v Allstate Insurance

Co., 20 AD3d 367 (1st Dept, 2005); Kiladze v Country-Wide Insurance Co., 2007 WL1247110 (N.Y.A.D. 1st Dept)). “The sufficiency of notice by an injured party is governed not by mere passage of time, but by the means available for such notice”. (Appel, supra at 369). Based on the series of events which occurred between the death of Elaine Brooks on August 4, 2003 and the letter to Hartford from Packer’s counsel on May 19, 2004, the Court finds that there are material issues of fact regarding notice which must await trial.

As to the remaining arguments, the Court agrees with Hartford’s position that it is not collaterally estopped from a re-determination regarding Packer’s negligence in the wrongful death action. However, having so held, the Court further finds that there are factual issues which preclude the award of summary judgment to either party.

The insurance policy requires Hartford to pay up to policy limits for damages for which Packer is legally liable “because of bodily injury or property damage caused by an occurrence to which the coverage applies.” An “occurrence” is defined as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results during the policy period in : (a) bodily injury; or (b) property

damage.” The policy excludes from coverage a “bodily injury” “(w)hich is expected or intended by the insured”.

In Slayko v Security Mutual Insurance Co., 98 NY2d 289 (2002), the Court of Appeals stated that it has long recognized that “insurable ‘accidental results’ may flow from intentional causes.” It concluded that “(t)he general rule remains that more than a causal connection between the intentional act and the resultant harm is required to prove that the harm was intended.” (quoting McGroarty v Great America Insurance Co., 36 NY 2d 358, 364 (1975)). The Fourth Department has also held that accidental results can flow from intentional acts. (See, e.g. Allegany Co-Op Insurance Co. V Kohorst, 254 AD2d 744 (4th Dept, 1998)).

In view of the reduction of Packer’s conviction to Manslaughter in the Second Degree, and having given consideration to the Plaintiff’s argument that Packer was psychologically impaired at the time of the shooting, as supported by voluminous exhibits, this Court is of the opinion that the Defendants have not established as a matter of law that Elaine Brooks’ death was expected or intended by Packer. The Court also notes that the Fourth Department has held that conduct found to be negligent may fall within a policy’s coverage for accidental injury (see, e.g., Aetna Casualty

and Surety Co. v Gigante, 229 AD2d 975 (4th Dept, 1996) and therefore, the Court finds that an issue of fact also exists as to whether the events of August 4, 2003 constitutes an “occurrence” under the policy.

Therefore, both the Plaintiffs’ motion and the Defendants’ motion for Summary Judgment are denied.

This Decision constitutes the Order of the Court.

Dated: May 18, 2007
Lyons, New York



Honorable Dennis M. Kehoe
Acting Supreme Court Justice