

Prince Seating Corp. v QBE Ins. Co.

2007 NY Slip Op 33134(U)

September 26, 2007

Supreme Court, Kings County

Docket Number: 0036150/2006

Judge: Laura Lee Jacobson

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At an IAS Term, Part 21 of the Supreme Court
of the State of New York, County of Kings
located at 360 Adams Street, Brooklyn
New York on the 26th day of September 2007

PRESENT:

HON. LAURA L. JACOBSON

Justice

PRINCE SEATING CORP.,

Plaintiff,

-against-

QBE INSURANCE COMPANY, FIRST CAPITAL
RISK SERVICES and CENTURY COVERAGE CORP.,

Defendants.

Decision/Order

Index No.:36150/2006

The following motions are consolidated for purposes of disposition.

The following papers numbered 1 to 10 read on this Motion:

Papers	Numbered
Notice of Motion and Affirmation Annexed	1-2
Amended Notice of Motion and Affirmation Annexed	3-4
Affirmation in Opposition	5-6
Reply Affirmation	7-8
Memoranda of Law	9-10

Defendant Century Coverage Corp. (hereinafter "Century") moves for an order pursuant to CPLR §3211 (a)(5) dismissing plaintiff's complaint against it based on the grounds that the statute of limitations has expired. Defendant QBE Insurance Company (hereinafter "QBE") moves for an order pursuant to CPLR § 3211, dismissing plaintiff's second cause of action asserted against defendant QBE which alleges fraud in the inducement, on the ground that it fails to set forth a cause of action. This is an action for

declaratory judgment and breach of an insurance contract. This action arises from an insurance claim involving an accident that occurred on April 28, 2001, at Logan's Roadhouse in Fairfax Virginia. Claimant Edward J. Rabideau, Jr. was allegedly injured when a barstool upon which he was sitting, allegedly collapsed. The barstool was allegedly manufactured by plaintiff Prince Seating Corp. (hereinafter "Prince"). Plaintiff claims that it was first notified of Mr. Rabideau's personal injury claim by Risk Enterprise Management (hereinafter "REM"), the entity that investigates claims for the bar, by letter dated July 31, 2001. Plaintiff claims that in August 2001, it notified its insurance broker Century of the incident. Plaintiff alleges that it was their practice to notify Century of a claim and that Century would then notify plaintiff's insurer QBE. Plaintiff claims that on November 11, 2001, it received another letter from REM regarding Mr. Rabideau's claim and that they contacted defendant Century and forwarded a copy of the November correspondence from REM. Plaintiff alleges that it contacted defendant Century again in mid December 2001 in order to follow-up on the claim and on December 18, 2001 they refaxed the claim letters from REM to defendant Century. Plaintiff claims that when they contacted defendant Century a few weeks later, they were asked to refax the letters again and they did so on January 22, 2002. Defendant Century reported the claim on February 21, 2002. Defendant QBE denied the claim based upon late notice on March 11, 2002. Claimant Rabideau brought a lawsuit in Fairfax County Virginia and in March of 2005, he was awarded a default judgment against plaintiff in the amount of \$1,340,187.79. Plaintiff commenced the instant action on November 27, 2006. Defendant Century served an answer on January 12, 2007. Defendant QBE moved to dismiss in lieu of serving an answer on January 18, 2007. Defendant Century moved to dismiss on January 19, 2007.

Defendant QBE alleges that plaintiff's second cause of action should be dismissed because it fails to properly plead a cause of action for fraud in the inducement. Plaintiff alleges in the second cause of action that defendant QBE entered into a contract with plaintiff "for the sole purpose of deceiving plaintiff and lulling it into a false sense of security that it would receive proper insurance coverage". Plaintiff further contends in the complaint that QBE "intended to collect premiums but it never intended on paying all sums which [plaintiff] would become legally obligated to pay for damages for bodily injury and property damage". Plaintiff further alleged "upon information and belief, defendant QBE accepted premiums from other customers and defrauded those customers since defendant never intended and in fact systematically denied claims that were presented to QBE". Plaintiff seeks punitive damages in the sum of at least \$100,000.00. Defendant QBE contends that plaintiff's claim is essentially a private contract dispute over policy coverage and the processing of a claim which is unique to these parties and does not rise to conduct which affects the consuming public at large, thereby giving plaintiff a right to punitive damages. Defendant QBE further contends that although plaintiff refers to other claims that were denied by defendant QBE, these were merely more private contract disputes and plaintiff's assertions regarding defendant QBE's denial

of other insureds' claims does not rise to the level of wrong-doing to the public.

Here, the court agrees that plaintiff has failed to properly plead a cause of action for fraud in the inducement entitling it to punitive damages. Plaintiff's allegations failed to demonstrate that defendant QBE, in dealing with the general public, engaged in egregious or fraudulent conduct evincing such wanton dishonesty as to imply a criminal indifference to civil obligations (*Alexander v. GEICO Insurance Company*, 35 AD3d 989, 990 [3rd Dept. 2006]). Moreover, the allegations of fraud made in plaintiff's amended complaint are also insufficient since the complaint fails to allege any egregious tortious conduct on the part of defendant QBE. A complaint does not state a claim for compensatory or punitive damages by alleging merely that the insurer engaged in a pattern of bad-faith conduct. The complaint must first state a claim of egregious tortious conduct directed at the insured claimant (*Rocanova v. Equitable Life Assurance of the United States of America*, 83 NY2d 603, 615 [1994]) Consequently, defendant QBE is entitled to dismissal of plaintiff's second cause of action.

Plaintiff's insurance broker defendant Century alleges that it first received notice of the claim on or about February 19, 2002, when an adjuster for the third-party administrator representing the bar's insurer contacted defendant Century. Century alleges that on February 20, 2002, the adjuster from REM, forwarded a letter dated November 9, 2001 sent to plaintiff, that referred to a letter dated July 31, 2001, also sent to plaintiff, advising plaintiff to put its insurance carrier on notice. Century alleges that upon receipt of the information from REM, it promptly forwarded the notice of claim to an intermediary, Tri-City on February 21, 2002. Century stated that Tri-City presumably forwarded the notice of claim to defendant QBE. Century alleges that on March 11, 2002, the third-party administrator for QBE, defendant First Capital Risk Services (hereinafter "First Capital"), denied coverage on the grounds of late notice and advised that QBE would not provide a defense or indemnification. Defendant Century contends that plaintiff's action against it sounds in negligence and as such the three year statute of limitations applies. Defendant Century contends that plaintiff's cause of action against it allegedly accrued when defendant QBE denied coverage on March 11, 2002. Defendant Century argues that since the action was not commenced until November 26, 2006, more than four years after the cause of action arose, plaintiff's claim against defendant Century is time-barred.

Plaintiff alleges that its claim against defendant Century is actually a claim for breach of contract and as such, the six year statute of limitations applies. Plaintiff contends that its cause of action against defendant Century as plead in the complaint makes out a cause of action in contract. However, plaintiff also submitted an amended complaint which alleges that defendant Century breached its contractual duty to plaintiff. Plaintiff contends that there is no prejudice to defendant Century in allowing plaintiff to amend the complaint because the amended complaint merely amplifies and delineates the causes of action.

Generally, on a motion to dismiss for failure to state a cause of action, the court must accept the factual allegations made in the complaint to be true and in order for the claim to survive, the court must find from the four corners of the complaint that those factual allegations manifest a cause of action cognizable at law (see *Davis v. CCF Capital Corp.*, 277 AD2d 342 [2nd Dept. 2000]). In ruling on a motion to dismiss, the court affords the claimant every possible favorable inference and accepts as true not only the facts alleged in the complaint but also any submission in opposition to the motion (see *511 West 232nd Owners Corp. v. Jennifer Realty Co.*, 98 NY2d 144 [2002]). Where a complaint, however, sets forth a cause of action for breach of contract the provisions of the contract must be alleged (*Stabulus v. Brooks Piece Dye Works Corporation et al.*, 111 AD2d 803, 804 [2nd Dept. 1985]). Here the allegations in plaintiff's original complaint against defendant Century failed to allege with enough specificity a claim for breach of contract. Instead, plaintiff's claim in the original complaint sounds in negligence. Furthermore, plaintiff's negligence claim against Century accrued at the time of plaintiff's injury which was on March 11, 2002, which is the date when defendant QBE disclaimed (see *Lavandier v. Landmark Ins. Co.*, 26 AD3d 264 [1st Dept. 2006]). Consequently, plaintiff's claim for negligence asserted against defendant Century in its original complaint is time-barred. However, plaintiff has submitted an amended complaint alleging a cause of action against defendant Century for breach of contract. Defendant Century alleges that the amended complaint is not properly before the court since plaintiff failed to move for leave to amend the complaint. However, since defendant QBE moved to dismiss in lieu of serving an answer, it extended plaintiff's time to serve an amended complaint as of right (see *Johnson v. Spence*, 286 AD2d 481 [2nd Dept. 2001]). In viewing the allegations of the amended complaint and allowing every inference, plaintiff has sufficiently plead a cause of action against defendant Century for breach of contract.

Accordingly, defendant QBE's motion to dismiss plaintiff's second cause of action for fraud is granted and the cause of action for fraud is severed and dismissed. Defendant Century's motion to dismiss is granted only as to plaintiff's cause of action for negligence pled in the original complaint but denied as to plaintiff's cause of action for breach of contract as pled in the amended complaint.

This constitutes the decision and Order of the Court.

ENTER:

LAURA L. JACOBSON, JSC

HON. LAURA JACOBSON