

State Farm Mut. Auto. Ins. Co. v Santiago

2008 NY Slip Op 30365(U)

January 31, 2008

Supreme Court, New York County

Docket Number: 0109384/2007

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

JUDITH J. GISCHE, J.S.C.

PRESENT:

PART 10

Index Number : 109384/2007

STATE FARM MUTUAL AUTOMOBILE INS. CO

vs.

SANTIAGO, NOEL

SEQUENCE NUMBER : # 001

DEFAULT JUDGMENT

Justice

INDEX NO.

109384-07

MOTION DATE

MOTION SEQ. NO.

#001

MOTION CAL. NO.

read on this motion to/for

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

FILED

FEB 07 2008

NEW YORK COUNTY CLERK'S OFFICE

Dated:

1/31/08

JUDITH J. GISCHE, J.S.C. J.S.C.

Check one:



FINAL DISPOSITION



NON-FINAL DISPOSITION

Check if appropriate



DO NOT POST



REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

-against-

NOEL SANTIAGO, DARIO VASQUEZ,
ROY WILLIAMS and RYDER TRUCK RENTAL,

Defendants.
-----X

Decision/Order

Index No.: 109384/07

Seq. No. : 001

Present:

Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

FILED

FEB 07 2008

Papers

Pltf's motion [d j/mt] w/RC affid in support, exhs

NEW YORK
COUNTY OF ORANGES OFFICE
Numbered 1

Upon the foregoing papers, the decision and order of the court is as follows:

This action has been brought by plaintiff insurer arising from a motor vehicle accident which occurred on September 5, 2003. Plaintiff has provided proof of service of the underlying summons and complaint on defendants. Defenants are Dario Vasquez (Vasquez); Noel Santiago ("Santiago") Roy Williams ("Williams") and Ryder Truck Rental (Ryder).

Plaintiff insurer now seeks a default judgment containing the following declarations: [1] that the State Farm policy of insurance (#0724-427-32) (the "insurance policy") covering a motor vehicle accident which occurred on September 5, 2003 (the "underlying incident"), be void *ab initio*; [2] that the underlying incident was the result of

an intentional act and therefore not covered by the insurance policy; [3] that Vasquez materially breached the insurance policy by failing to cooperate with plaintiff with its investigation of the underlying incident; [4] that Santiago breached the policy of insurance by making fraudulent statements to plaintiff; [5] that plaintiff has no duty to provide first party or other insurance related benefits to Vasquez or Santiago or their assigns; [6] that Santiago, Vasquez and Williams engaged in fraudulent and intentional conduct in connection with the underlying incident; and [7] that plaintiff has no duty to defend Santiago for any claims presented in the action entitled Vasquez v. Santiago, Index No. 054974CV2006 (Civil Court, New York County). Plaintiff also seeks its attorneys fees, costs and disbursements incurred in prosecuting this action. The motion has been submitted to the court on default.

The insurance policy had an origination date of July 19, 2003. The underlying incident involved a rear-end motor vehicle collision with plaintiff's insured's vehicle. The adverse vehicle was a rental truck. The insured vehicle was occupied by Santiago and Vasquez, who refused medical attention while at the scene of the incident. The operator of the adverse vehicle was Williams, who had four prior losses on March 11, 1990, February 10, 1993, April 14, 1998 and June 13, 2003. Santiago executed and filed two different MV-104, which is a form required to be filed with the New York State Department of Motor Vehicles ("DMV") by all drivers involved in reportable motor vehicle accidents. On the first MV-104, no injuries were listed for Santiago and Vasquez, but on the second MV-104, injuries were in fact listed for Santiago and Vasquez. After further investigation, plaintiff states that it learned the underlying incident is directly linked to two additional accidents on February 10, 2003 and

September 1, 2003 (the "related incidents"). Vasquez was the owner of an automobile involved in an accident on September 2003 with an automobile being operated by Margaret DeJesus ("DeJesus"). DeJesus was the owner and operator of a vehicle involved in another motor vehicle accident on February 10, 2003. Plaintiff has alleged many similar facts between the underlying incident and each of the related incidents.

Plaintiff requested that Vasquez appear at examinations under oath. Vasquez failed to appear for such examinations. Plaintiff has provided to the court copies of letters and notices requesting Vasquez' appearance.

Discussion

Plaintiff is entitled to a default judgment in its favor and against Cappellan, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 A.D.2d 844 (3rd dept. 2001). Cappellan's default in answering the complaint constitutes an admission of the factual allegations therein and the reasonable inferences which may be made therefrom. Rokina Optical Co., Inc. v. Camera King, Inc., 63 N.Y.2d 728 (1984).

The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendants' failure to perform; and (4) resulting damage. Furia v. Furia, 166 A.D.2d 694 (2nd Dept. 1990). "To create a binding contract, there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms." Express Industries and Terminal Corp. v. New York State Dept. Of Transportation, 93 N.Y.2d 584 (1999).

An insured's failure to comply with the provisions of an insurance policy requiring

the insured to appear at an examination under oath and provide relevant information and documents is a material breach of the insurance policy, which precludes recovery of the policy proceeds. See Levy v. Chubb Ins., 240 A.D.2d 336 (1st Dept. 1997). The insurance policy provides that any person seeking coverage must cooperate with the investigation and reasonably submit to examination under oath. Vasquez failed to submit to an examination under oath. Accordingly, plaintiff is entitled to a declaration that Vasquez materially breached the insurance policy by failing to cooperate with plaintiff with its investigation of the underlying incident.

Plaintiff claims that Santiago made numerous false statements to plaintiff in connection with its investigation of the underlying incident during his examination under oath. The insurance policy disclaims coverage for any insured who has made a fraudulent statement in connection with any loss for which coverage is sought under the policy. To the extent that Santiago's failure to oppose the instant motion constitutes an admission of the factual allegations made therein, plaintiff is therefore entitled to a declaration that Santiago breached the policy of insurance by making fraudulent statements to plaintiff.

In the instant matter, plaintiff has highlighted for the court circumstantial evidence, to wit: [1] prior loss history of involved parties; [2] involvement of a rental vehicle; [3] that Vasquez and Santiago refused medical attention at the scene of the underlying incident but sought medical treatment thereafter; [4] that the underlying incident involved a minor impact; and [5] that the insured refused to cooperate with State Farm in its investigations. Given defendants' respective defaults in this action, plaintiff need only allege enough facts to enable the court to determine that a viable

cause of action exists. Rokina Optical Co. v. Camera King, Inc., *supra*. An insurance company is not responsible to provide coverage for an intentional or staged "accident" to even innocent parties, regardless of whether the incident was motivated by fraud or malice. Travelers Indem. Co. v. Cruz, 40 A.D.3d 362 (1st Dept. 2007). Accordingly, plaintiff is entitled to a declaration that the policy is null and void with regard to the underlying incident and plaintiff has no contractual duty to defend or indemnify Santiago for any claims that arise from the underlying incident.

Plaintiff also claims that the underlying incident was caused by the intentional acts of some or all of the defendants. Plaintiff argues that intentional acts by Santiago, Vasquez and Williams constitute a violation of the insurance policy provisions. The insurance policy disclaims liability, personal injury and uninsured motorist coverage for damages and personal injuries sustained by any person who intentionally causes his own personal injury. Accordingly, plaintiff is entitled to a declaration that the policy is null and void in connection with the underlying incident and plaintiff has no duty to provide coverage for any claims for No Fault, Uninsured Motorist Benefits or Underinsured Motorist Benefits made by Santiago and Vasquez.

Plaintiff also seeks its attorneys fees, costs and disbursements incurred in prosecuting this action. However, no basis for attorneys fees has been established, and therefore none are awarded.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion is granted to the extent that plaintiff is entitled to the following declarations: [1] that the State Farm policy of insurance (#0724-427-32)

[* 7]

(the "insurance policy") covering a motor vehicle accident which occurred on September 5, 2003 (the "underlying incident"), be void *ab initio*; [2] that the underlying incident was the result of an intentional act and therefore not covered by the insurance policy; [3] that Vasquez materially breached the insurance policy by failing to cooperate with plaintiff with its investigation of the underlying incident; [4] that Santiago breached the policy of insurance by making fraudulent statements to plaintiff; [5] that plaintiff has no duty to provide first party or other insurance related benefits to Vasquez or Santiago or their assigns; [6] that Santiago, Vasquez and Williams engaged in fraudulent and intentional conduct in connection with the underlying incident; and [7] that plaintiff has no duty to defend Santiago for any claims presented in the action entitled Vasquez v. Santiago, Index No. 054974CV2006 (Civil Court, New York County); and it is further


ORDERED that plaintiff's motion is otherwise denied.

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
January 31, 2008

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
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NEW YORK
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