

Bliss v Farm Family Cas. Ins. Co.
2014 NY Slip Op 31921(U)
July 23, 2014
Supreme Court, Wyoming County
Docket Number: 45445
Judge: Michael M. Mohun
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At a term of the Supreme Court
held in and for the County of
Wyoming, at the Courthouse in
Warsaw, New York, on the 23rd day
of July, 2014.

PRESENT: **HONORABLE MICHAEL M. MOHUN**
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT: COUNTY OF WYOMING

ROBERT E. BLISS AND ROLANDA BLISS,

Plaintiffs,

v.

DECISION AND ORDER
Index No. 45445

FARM FAMILY CASUALTY INSURANCE COMPANY,

Defendant.

The defendant, having moved for an order pursuant to CPLR §3212 directing that judgment be entered herein in its favor on the grounds that the plaintiffs' action is without merit, and said motion having duly come on to be heard.

NOW, on reading the complaint; and on reading and filing the notice of motion dated October 7, 2014, supported by the affidavit of Patrick Manning, Claims Adjuster for the defendant, sworn to on September 26, 2013, together with the annexed exhibits, and the affidavit of Dan D. Kohane, Esq., sworn to on October 11, 2013, together with the annexed

exhibits and the accompanying memorandum of law; the opposing affidavit of Robert E. Bliss, plaintiff, sworn to on December 10, 2013, together with the annexed exhibits; the opposing affirmation of Maura C. Seibold, Esq., attorney for the plaintiffs, sworn to on February 19, 2014, together with the annexed exhibits and accompanying memorandum of law; the reply memorandum of law submitted by Dan D. Kohane, Esq.; and after hearing Dan D. Kohane, Esq., in support of the motion and Maura C. Seibold, Esq., in opposition thereto, due deliberation having been had, the following decision is rendered.

The plaintiffs operate a farm on land leased from two brothers, Donald J. Keicher and Robert Keicher. On May 13, 2011, runoff from a heavy rainstorm allegedly caused manure that the plaintiffs had spread on their fields to contaminate several ponds on adjoining land. It is undisputed that Donald and Robert Keicher also own the land where the ponds are located. The record does not disclose the nature of the brothers' ownership of the land.

At the time that the ponds were allegedly contaminated, the plaintiffs had in effect an insurance policy with the defendant. The policy included coverage for property damage caused by farm pollutants. In the copy of the policy submitted by the defendant, the coverage is found within endorsement SF 0501 0709 at "Section E," "Limited Farm Pollution Liability

Coverage.” The farm pollution coverage is subject to an aggregate annual liability limit of \$50,000.00 pursuant to endorsement SF 0707 1110 and the policy’s liability schedule.

Following the rainstorm, Robert Keicher notified Robert Bliss of the damage to the ponds, and, on May 19, 2011, Robert Bliss contacted the defendant to request coverage under the policy. According to the affidavit of Patrick Manning, Mr. Bliss reported to him that “Robert Keicher’s [. . .] ponds and fish were damaged” by the manure runoff. Thereafter, Manning met with Robert Keicher and personally examined the site. He also examined certain “damage estimates” provided by Robert Keicher. From the damage estimates and his site investigation, Manning concluded “that the damages sustained by Robert [Keicher] were in excess of the \$50,000 coverage limit.” Manning made an offer to settle with Robert Keicher for the policy limit – an offer which Robert Keicher eventually accepted. On September 7, 2011, in exchange for \$50,000.00, Robert Keicher signed a release discharging all property damage claims that he might have against the plaintiffs arising out of the May 13 manure runoff. Robert Keicher’s brother, Donald, signed the release as a witness.

On January 11, 2012, Donald Keicher made his own claim for damage to the ponds, using in support the same damage estimates that Robert had used. The defendant disclaimed coverage on the grounds that it

had already fulfilled its obligations under the policy for the May 13 pollution of the ponds by paying to Robert Keicher the full annual liability limit. The Court observes that the applicable limiting language appears in the copy of the policy provided by the defendant in endorsement SF 0707 1110, on page 8. That endorsement obliges the defendant to defend the insured and pay valid claims falling within the Limited Farm Pollution Coverage only "up to OUR limit of Liability." The endorsement also states that "OUR duty to defend ends when WE have exhausted the applicable limit of liability by the payment of judgments or settlements."

After Donald filed suit against the plaintiffs (the underlying action, Wyoming County Index No. 44756), the plaintiffs instituted this action against the defendants alleging that the defendant "carelessly, negligently and recklessly investigated, handled and settled the claim with Robert Keicher" and "carelessly, negligently and recklessly failed to obtain releases from all owners of the subject damaged property prior to settling the claim." The defendant now moves for summary judgment.

The Court finds that the defendant's submissions are sufficient to establish, prima facie, that the defendant is entitled to judgment as a matter of law. Pursuant to its contractual obligations under the policy, the defendant promptly settled an apparently valid claim for damage to the ponds. Thereafter, under the policy, it disclaimed coverage with respect to

Donald's claim because the policy limits had already been exhausted. Thus, the defendant has sufficiently shown that it did not breach the explicit terms of the insurance contract. Furthermore, the defendant's submissions sufficiently establish that it did not breach the policy's implied covenant of good faith and fair dealing in handling the claims arising from the manure runoff into the ponds. Although the plaintiff questions the defendant's conclusion that the damage to the ponds exceeded the policy limits, and asserts that the defendant's investigation of Robert Keicher's claim was negligently done, it must be noted that "[a]n insurer does not breach its duty of good faith when it makes a mistake in judgment or behaves negligently" (Federal Insurance Company v. North American Specialty Insurance Company, 83 A.D.3d 401, 402 [1st Dept., 2011]). A cause of action for bad faith must be founded upon conduct on the part of the insurer which "evinces a conscious or knowing indifference" or a "gross disregard" of the insured's interests (Pavia v. State Farm Mutual Auto. Ins. Co., 82 N.Y.2d 445, 453 [1993]). Here, the defendant's submissions sufficiently establish that it had, at a minimum, an "arguable basis" for its determination that Robert Keicher's claim should be settled for the policy limit (Bennion v. Allstate Insurance Company, 284 A.D.2d 924, 925 [4th Dept., 2001]). Accordingly, the Court finds that the defendant has met its burden upon the motion to show that it did not act in bad faith.

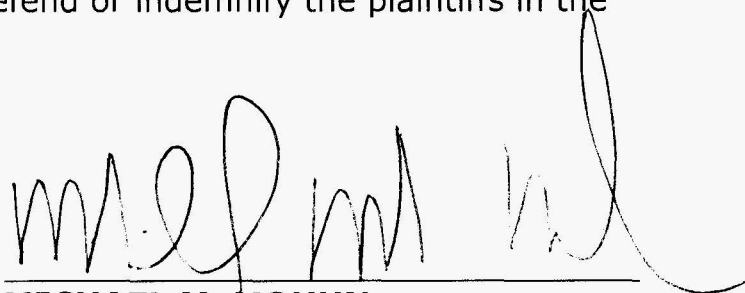
In responding to the defendant's submissions, the plaintiffs have failed to show that material questions of fact remain to be determined. The supposition that the defendant could have also settled Donald's claim within the policy limits had it delayed or handled differently the settlement of Robert's claim is entirely speculative. Therefore, since the plaintiffs have failed to counter the defendant's prima facie showing, the motion must be granted (see, Doherty v. Merchants Mutual Insurance Company, 74 A.D.3d 1870, 1872 [4th Dept., 2010], motion to dismiss appeal denied by 15 N.Y.3d 866 [2010], appeal withdrawn by 17 N.Y.3d 812 [2011] ; Zuckerman v. City of New York, 49 N.Y.2d 557 [1980]).

NOW, THEREFORE, it is hereby

ORDERED that the defendant's motion is granted; and it is further

DECLARED that the defendant did not breach the insurance contract and has no obligation to defend or indemnify the plaintiffs in the underlying action.

DATED: July 23, 2014
Warsaw, New York



MICHAEL M. MOHUN
Acting Supreme Court Justice

