

<b>Marzan v Liberty Mut. Ins. Co.</b>
2014 NY Slip Op 32145(U)
August 8, 2014
Supreme Court, New York County
Docket Number: 151184/13
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

JEROME MARZAN,  
Plaintiff,

Index No.: 151184/13

Motion Date: \_\_\_\_\_

- v -

Motion Seq. No.: 01

LIBERTY MUTUAL INSURANCE COMPANY,  
Defendant.

Motion Cal. No.: E-FILED

The following papers, numbered 1 to 9 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_

PAPERS NUMBERED	
	1 - 5
	8
	9

Cross-Motion:  Yes  No

Upon the foregoing papers,

The court shall grant defendant's motion to dismiss plaintiff's third, fourth and fifth causes of action and shall dismiss, as further requested by the defendant, plaintiff's claims for punitive damages and attorney's fees.

Plaintiff's first and second causes of action seek, respectively, a declaration of insurance coverage and damages for breach of contract stemming from the denial of insurance coverage. The third and fourth causes of action allege defendant's bad faith and failure to act according to the

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

standard of good faith and fair dealing and seek consequential and punitive damages resulting therefrom. The fifth cause of action alleges violation of General Business Law 349.

In opposition to the motion plaintiff relies upon Bi-Economy Mkt., Inc. v Harleystown Ins. Co. of New York (10 NY3d 187, 190 [2008]) and Panasia Estates, Inc. v Hudson Ins. Co. (10 NY3d 200, 202 [2008]) for the proposition that where a complaint alleges that an insurer breaches a duty to act in good faith when considering a claim under an insurance policy that includes benefits for business interruption insurance, a claim for consequential damages cannot be dismissed because the "claim for consequential damages including the demise of its business, was reasonably foreseeable and contemplated by the parties." Bi-Economy, 10 NY3d at 196. Thus the Court concluded that "consequential damages resulting from a breach of the covenant of good faith and fair dealing may be asserted in an insurance contract context, so long as the damages were within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting." Panasia, 10 NY3d at 203.

However, plaintiff's argument overlooks the fact that in those cases the Court held consequential damages available only because the claims asserted were foreseeable under the terms of the particular policies at issue there and the Court required

that in applying the exception to the consequential damages bar courts must consider "whether the specific damages sought by [the insured] were foreseeable damages as the result of [the insurer]'s breach." Panasia, 10 NY3d at 203.

As the factors present in Bi-Economy and Panasia are not asserted in the complaint here, the general rule as set forth by the Court applies, to wit

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. Only then does an alleged pattern of bad-faith conduct attain legal significance insofar as it demonstrates that a public wrong would be vindicated by the award of punitive damages.

Rocanova v Equit. Life Assur. Soc. of U.S., 83 NY2d 603, 615 (1994). The Court further held that "the law of this State does not currently recognize a private cause of action under Insurance Law §2601." Id. at 614. Thus plaintiff here is not entitled to maintain a cause of action under GBL 349 based upon the Insurance Law and that claim is also subject to dismissal.

Accordingly, it is

ORDERED that defendant's motion to dismiss plaintiff's third, fourth and fifth causes of action is GRANTED and the third, fourth and fifth causes of action in the complaint including plaintiff's claims for punitive damages and attorney's fees therefrom are DISMISSED; and it is further

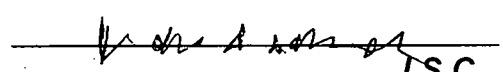
ORDERED that defendant is directed to answer the complaint pursuant to CPLR 3211 (f); and it is further

ORDERED that the parties are directed to attend a preliminary conference at IAS Part 59, Room 103, 71 Thomas Street, New York, NY 10013 on September 30, 2014 at 9:30 A.M.

This is the decision and order of the court.

Dated: August 8, 2014

ENTER:

  
J.S.C.  
**DEBRA A. JAMES**