

**Saunders-Gomez v HNJ Ins. Agency**

2014 NY Slip Op 32938(U)

November 17, 2014

Supreme Court, New York County

Docket Number: 151887/2014

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

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TIBY J. SAUNDERS-GOMEZ,  
Plaintiff,

DECISION AND  
ORDER

-against-

Index No. 151887/2014

HNJ INSURANCE AGENCY and ALLSTATE  
INSURANCE COMPANY,

Defendant.

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HON. ANIL C. SINGH, J.:

In this action arising from an insurance contract, defendant HNJ Insurance Agency (“HNJ”) moves (mot. seq. 002) for an order dismissing plaintiff’s complaint in its entirety pursuant to CPLR §§ 3211(a)(1), (a)(8), (a)(7) and 311(a)(1). Plaintiff opposes the motion pro se.

Plaintiff commenced this action against HNJ and Allstate Insurance Company (“Allstate”), as a result of Allstate’s denial of coverage for water damage sustained from a kitchen sink on March 3, 2012 at the property owned by plaintiff located at 247 West 137 Street New York, NY (the “premises”). Plaintiff contends the premises was insured by Allstate under a Landlord Policy of insurance bearing number 033109857. Plaintiff alleges she contacted defendant HNJ, plaintiff’s insurance broker, regarding the claim on March 6, 2012 by phone. Plaintiff sent an email to defendant HNJ regarding the claim on March 23, 2012. Subsequently HNJ stated in an email dated May 31, 2012 “your loss is covered minus your deductible . . . please call our claims department . . . to file the claim. This must be done ASAP.” Ultimately, however, defendant Allstate denied coverage on July 25, 2012 stating the “claim was reported to Allstate for the first time on May 31, 2012. Your failure to notify Allstate of this loss for more than 89 days after the occurrence violates the notice requirements of your policy.”

Defendant HNJ argues plaintiff does not have personal jurisdiction over it due to defective service of process. Service of process to a domestic corporation must be made either on an authorized agent of the corporation or on the Secretary of State pursuant to CPLR §311 and Business Corporation Law §306 (b)(1) respectively (see CPLR 311) (“Personal service upon a corporation . . . shall be made by delivering the summons [on] . . . any other agent authorized by appointment or by law to receive service”); Claudio v Show Piers on Hudson, 82 AD3d 432, 432 [1st Dept 2011] (“Service of process [on the domestic corporation] was ‘complete’ when the summons and complaint were personally served upon an authorized agent of the Secretary of State on that date”).

HNJ is a domestic corporation and it was not served through the New York Secretary of State nor was it served on HNJ personally. Therefore, plaintiff has failed to properly effectuate service through CPLR §311 or BCL 306(b)(1) (see Bletas v Subway Intern. BV, 96 AD3d 442 [1st Dept 2012] (finding petitioners failed to show that the petition was served on a person authorized to receive service of process pursuant to CPLR 311(a)(1))).

Alternatively, plaintiff’s affidavit of service states that she served the summons and complaint via first class mail addressed to the last known address of the defendants HNJ and Allstate through the New York Dept. of Financial Services Corporate Affairs Unit. In order to effectuate service by first class mail, plaintiff must include:

postage prepaid, a copy of the summons and complaint . . . together with two copies of a statement of service by mail and acknowledgement of receipt in the form set forth in subdivision (d) of this section, with a return envelope, postage prepaid, addressed to the sender.

Civil Practice Law and Rules 312-a

Defendant HNJ argues that plaintiff failed to alternatively effectuate service pursuant to CPLR 312-a by first class mail since she failed to include an “acknowledgement of receipt” as required by CPLR 312-a (a) and as outlined in CPLR-a (d). Thus, defendant HNJ argues that this court lacks personal jurisdiction and the complaint should be dismissed as against defendant HNJ. This court agrees. Plaintiff “also failed to properly effectuate service of process by mail. Although [s]he mailed the summons and petition to [defendant], [s]he did not include . . . an “acknowledgement of receipt” as required by CPLR 312-a.” (Jiggetts v MTA Metro-N. R.R., 121 AD3d 414 [1st Dept 2014]).

Were the court not to dismiss plaintiff’s complaint based on jurisdictional grounds, the cause of action for breach of contract would be dismissed for failure to state a claim. Here, plaintiff has failed to point to an existing contract between herself and defendant HNJ. The insurance policy in question was issued by Allstate requiring Allstate to provide coverage under the policy not HNJ (see 767 Third Ave. LLC v Greble & Finger, LLP, 8 AD3d 75, 75 [1st Dept 2004] (“Plaintiff’s failure to identify any portion of the lease allegedly breached was fatal to its cause of action for breach of contract.”). Similarly the second cause of action for unfair settlement and deceptive business practices pursuant to McKinney’s Insurance Law §2601 would be dismissed since no private cause of action can be maintained for unfair insurance settlement practices. (Rocanova v Equit. Life Assur. Soc. of U.S., 83 NY2d 603, 615 [1994]; New York Univ. v Cont. Ins. Co., 87 NY2d 308, 318 [1995]).

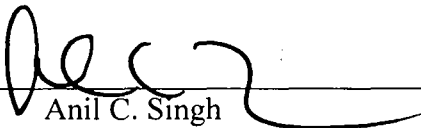
Lastly, it is unclear whether plaintiff’s third cause of action sounds in negligence or something else whereby plaintiff’s complaint states that defendants “failed to acknowledge and act reasonably promptly upon communication with respect to claims arising under insurance

policies” Comp at ¶ 26. Therefore, the court grants defendant HNJ’s motion to dismiss with leave to re-plead. Accordingly it is

ORDERED that the defendant HNJ Insurance Agency’s motion to dismiss is granted and the complaint is dismissed as to defendant HNJ Insurance Agency; and it is further

ORDERED that plaintiff is granted leave to serve to replead the complaint pursuant to the above decision and order.

Date: November 17, 2014  
New York, New York

  
Anil C. Singh

HON. ANIL C. SINGH  
SUPREME COURT JUSTICE