

Glad v State Farm & Cas. Co.
2014 NY Slip Op 33770(U)
April 11, 2014
Supreme Court, New York County
Docket Number: 109117/10
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. JOAN A. MADDEN PART 11
Justice

JOHN GLAD,

Plaintiff,

- v -

STATE FARM AND CASUALTY COMPANY,

Defendant.

INDEX NO. 109117/10

MOTION DATE:

MOTION SEQ. NO.: 001

The following papers, numbered 1 to _____ were read on this motion to _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

APR 23 2014

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Cross-Motion: [] Yes [x] No
NEW YORK COUNTY CLERKS OFFICE

Plaintiff John Glad ("Glad") moves to amend its complaint to include allegations of bad faith in connection with the defendant insurance company's denial of coverage, and to compel certain discovery. Defendant State Farm Casualty Company ("State Farm") opposes the motion.

In this action, Glad alleges that State Farm was obligated to provide him with liability coverage in connection with a loss sustained in his cooperate apartment. Specifically, Glad alleges that in July 2008, a water leak from his bathroom caused damage to the building's lobby ceiling requiring repair. Glad alleges that the damage to the ceiling was covered under his policy with State Farm, and that State Farm should have provided coverage for the claim. Glad further alleges that, *inter alia*, as a result of the leak, the cooperative served him with a Notice of Objectionable Conduct and a Notice to Cure "to remediate the damage to the lobby ceiling and to

restore certain architectural elements¹ to their original place.” Glad alleges that he notified State Farm and sought coverage and representation with respect to litigation commenced as a result of the Notice to Cure. He further alleges that State Farm failed to properly investigate the claim and two months later, denied coverage. Glad now seeks to amend the complaint to add a claim for bad faith refusal of coverage.

“Leave to amend a pleading should be ‘freely given’ (CPLR 3025[b]) as a matter of discretion in the absence of prejudice or surprise.” Zaid Theatre Corp. v. Sona Realty Co., 18 AD3d 352, 355-356 (1st Dept 2005)(internal citations and quotations omitted). That being said, however, “in order to conserve judicial resources, an examination of the underlying merits of the proposed causes of action is warranted.” Eighth Ave. Garage Corp. v. H.K.L Realty Corp., 60 AD3d 404, 405 (1st Dept), lv dismissed, 12 NY3d 880 (2009). At the same time, leave to amend will be granted as long as the proponent submits sufficient support to show that proposed amendment is not “palpably insufficient or clearly devoid of merit.” MBIA Ins Corp. v. Greystone & Co., Inc., 74 AD3d 499 (1st Dept 2010)(citation omitted). In addition, “[o]nce a prima facie basis for the amendment has been established, that should end the inquiry, even in the face of a rebuttal that might provide a subsequent basis for a motion for summary judgment” Pier 59 Studios, L.P. v. Chelsea Piers, L.P., 40 AD3d 363, 365 (1st Dept 2007).

Here, the proposed amended complaint adequately alleges that State Farm’s denial of coverage was in bad faith as it denied the claim “without proper investigation and, acting solely in its interest, failed and refused to defend and protect Glad and failed to investigate Glad’s claim in good faith.” See Pavia v. State Mut. Auto Ins. Co., 82 NY2d 445 (1993)(to establish bad faith

¹The reference to “architectural elements” apparently refers to a mantle Glad had removed during renovation.

²The quote is taken plaintiff’s affidavit which refers to Notice of Objectionable Conduct which notice demands remediation.

it must be shown that the insurance acted “with gross regard,” to the insured’s interests).³ Of significance, there are notes in the claims file referencing damage to the ceiling as the result of the water leak. While there are also notes that characterize Glad’s statements as indicating there was no damage to the ceiling, these notes create issues of fact with respect to bad faith and do not preclude the amendment. Nor does State Farm’s argument that the decision to deny coverage was not in bad faith and was made after its investigation revealed that Glad’s claims were related to a breach of his proprietary lease for unauthorized work, which is not covered by the subject policy, preclude the amendment. Arguably, based on both the Notice of Objectionable Conduct and the Notice to Cure, the action taken by the cooperative apartment against Glad related not only to the alleged breach of the proprietary lease requirement, but also to the water leak, which allegedly caused damage to the lobby ceiling.

Glad also seeks to compel the deposition of Wanda Peterson, an employee of State Farm who investigated Glad’s claim, and Mala Sherman-Sullivan, a claims representative, and for certain documents relating to “claim guidelines” and “retention documents.” The motion is granted only to the extent of directing the deposition of Ms. Peterson. Although State Farm previously produced Dan Dolmen, the manager of a fire claim team in Maryland, it is apparent from his deposition testimony that the actual investigation was conducted by Ms. Peterson, and that Ms. Peterson spoke to Glad in connection with the investigation. Under these circumstances, it cannot be said that Ms. Peterson’s deposition would be cumulative.

In contrast, the deposition testimony of Ms. Sherman-Sullivan, who is responsible for handling the claim in connection with this action, but was not personally involved in handling

³While defendant’s counsel argues that as the policy was issued in the District of Columbia, and that there is an issue as to whether the law of Maryland, the District of Columbia, or New York governs, he does not claim that standard for a claim for bad faith is different under the laws of these jurisdictions.

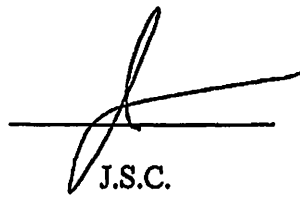
Glad's claim prior to the action, would not relevant to the issues in this action and/or would be cumulative. Likewise, Glad's request for further document discovery including "claim guidelines" or "retention documents" are irrelevant to the issues in this lawsuit.

In view of the above, it is

ORDERED that the motion to amend is granted, and Glad shall serve the proposed amended complaint attached to his memorandum of law within 10 days of this decision and order; and it is further

ORDERED that the motion to compel is granted only to the extent of requiring State Farm to produce Wanda Peterson for deposition within 60 days of the date of this order and counsel for Glad has agreed to conduct such deposition either by videotape or in Maryland where Ms. Peterson is located, and it is otherwise denied.

DATED: April 11/2014


J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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