Sobiech v Allstate Ins. Co.
2016 NY Slip Op 30873(U)
May 11, 2016
Supreme Court, Tioga County
Docket Number: 46172
Judge: Eugene D. Faughnan
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tioga County Courthouse, Owego, New York, on the 1st day of APRIL, 2016.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TIOGA COUNTY

JOSEPH S. SOBIECH,

Plaintiff,

DECISION

-vs-

Index No. 46172
RJI No. 2016-0064-M

ALLSTATE INSURANCE COMPANY

Defendant.

APPEARANCES:

COUNSEL FOR PLAINTIFF:

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COUNSEL FOR DEFENDANT:

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon a motion of Allstate Insurance Company ("Defendant") for Dismissal and Summary Judgment pursuant to CPLR §§ 3211 and 3212 with regard to Joseph Sobiech's (Plaintiff's) second cause of action alleging Defendant acted in bad faith and claims for attorney fees, punitive damages and extra-contractual damages.

Defendant submitted a Notice of Motion, Attorney Affidavit by Joshua M. Gillette dated February 26, 2016 (with exhibits), and Memorandum of Law dated February 26, 2016. Plaintiff submitted a Reply Affidavit (with exhibits) and Memorandum of Law dated March 25, 2016. Defendant filed a Reply Affidavit dated March 30, 2016.

The underlying action arises out of Plaintiff's claim for insurance benefits from Defendant for damage to his 2000 Wellcraft Excalibur boat occurring on July 4, 2015. Plaintiff secured an insurance policy for the boat from defendant covering the period May 18, 2015 to May 18, 2016 which included coverage for damage arising from collisions with obstructions in, or on, the water. Under Section I - Coverage TT, wear and tear, latent physical defect and structural, electrical or mechanical breakdown are all excluded from coverage. On July 4, 2015, Plaintiff was operating his boat when he alleges that the boat "struck an object in the water" causing damage to the propeller and upper gears of the boat's outboard motor.

Plaintiff submitted a timely claim with Defendant. On July 16, 2015, Defendant's marine surveyor, Frank J. Saulle ("Saulle"), inspected the boat and issued a report in which he opined that the damage to the boat was due to normal wear and tear. Saulle also noted that the drive system on the boat has a maximum horsepower rating of 400hp and that there have been modifications to the boat which result in the horsepower exceeding the rating.

Plaintiff submitted a letter from Hanafin Marine, in which a representative opined that the damage to the propeller occurred from an impact and that such an impact can, and did, cause internal failure of the motor.

Defendant provided the Hanafin letter to Saulle for review and comment. In a report dated July 30, 2015, Saulle acknowledged review of the Hanafin letter. Saulle again opines that the failure and resulting damage occurred due to normal wear and tear and the fact that the drive system was rated for 400hp when the engine output was modified to 575hp. On August 5, 2015, Defendant issued a denial of coverage citing, *inter alia,* exclusions under the policy for wear and tear and latent defects.

Plaintiff submitted to Defendant a letter dated August 9, 2015 from Michael J Yorks ("Yorks"), President of The Propeller Works, Inc. Yorks opines that the "stainless steel propeller caused damage to the lower unit". Defendant also submitted an undated letter from Larry Foster ("Foster"), General Manager of Schermerhorn Harbor, LLC. Foster observes that "there is visible damage to the steel prop, which has no give to it." He concludes that the propeller damage is what caused the damage to the weakest part of the upper gear case.

Thereafter, Defendant consented to obtaining a second review from Marine Surveyor Stephen Bielenda ("Bielenda"). On August 18, 2015, Bielenda inspected the motor. Bielenda concluded that there was nothing revealed in his inspection that was consistent with a hard impact resulting in damage to the upper gears. Rather, Bielenda concluded that the damage to the upper gears was consistent with fatigue failure resulting from excessive horsepower and not consistent with a hard impact. On August 28, 2015, Defendant again sent a letter denying coverage for largely the same reasons noted in the prior denial.

Plaintiff commenced this action with the filing of a Complaint on November 18, 2015 alleging breach of contract and bad faith. The Complaint alleges that "plaintiff has been financially damaged by the delay in payment and by the costs he has been forced to incur in bringing this lawsuit. As part of the relief, Plaintiff seeks costs and disbursements including attorneys fees.[1]

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[1]Defendant's motion to dismiss infers that the Complaint alleges a claim for attorney's fees, punitive damages and claims for extra-contractual damages. Although the Complaint is vague with respect to its claims and theories, and does not specifically use the terms "punitive damages" or "extra contractual damages", the Court will address the motion as framed by the Defendant.

Discussion

"As in all contracts, implicit in contracts of insurance is a covenant of good faith and fair dealing, such that 'a reasonable insured would understand that the insurer promises to investigate in good faith and pay covered claims'". *Bi-Economy Mkt., Inc. v. Harleysville Insurance Company of N.Y.*, 10 NY3d 187, 194 (2008); *citing New York Univ. v. Continental Ins. Co.*, 87 NY2d 308, 318, 662 NE2d 763, 639 NYS2d 283 (1995). "[D]amages arising from the breach of a contract will ordinarily be limited to the contract damages necessary to redress the private wrong, . . . punitive damages may be recoverable if necessary to vindicate a public right" *New York Univ.* at 315. "Where a lawsuit has its genesis in the contractual relationship between the parties, the threshold task for a court considering [a] defendant's motion to dismiss a cause of action for punitive damages is to identify a tort independent of the contract" *New York Univ.* at 316.

Here, the Plaintiff seeks punitive damages based upon Defendant's bad faith in denying the claim. However, Plaintiff offers little more to support this theory than its disagreement with the Defendant's conclusion as to the cause of the damage. The Defendant had the propeller and upper gears inspected by two separate[2] marine surveyors, who concluded that the cause of the propeller and gear failure was wear and tear, possibly occasioned by, or accelerated by, the fact that the drive system was rated for 400hp when the engine output was modified to 575hp. Plaintiff has different opinions from different "experts". However, such a disagreement does not rise to the level of bad faith but rather, represents a triable issue of fact as to the cause of the propeller and gear failure and by extension, whether coverage by the Defendant is required. This is particularly true since if the Defendant's experts are to be believed, the claim would arguably come within the exclusions of Section I-Coverage TT of the policy. The Court is unable to discern any tort claim independent from the breach of contract claim.

The Court is unable to discern and cognizable claim for punitive damages. "Punitive damages are available only in those limited circumstances where it is necessary to deter defendant and

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[2]Defendant used the same company, Davis & Company Limited, for both inspections. However, different inspectors were utilized.

others like it from engaging in conduct that may be characterized as 'gross' and 'morally reprehensible'" (*New York University at* 315-16) and of "'such wanton dishonesty as to imply a criminal indifference to civil obligations' " *Rocanova v. Equitable Life Assur. Soc'y*, 83 NY2d 603, 614 (1994), *quoting Walker v. Sheldon*, 10 NY2d 401 (1961). No such conduct has even been alleged by the Plaintiff. Rather, each party has submitted opinions from individuals who reach divergent conclusions. And each party has relied upon those opinions in formulating their litigation strategy. Again, these differences raise triable issues of fact which will be decided at trial.

Plaintiff argues that Defendant knew of the 575hp engine and the limits of the drive system at the time it issued its policy, and as such should be estopped from denying coverage. However, Plaintiff has provided no basis for the Court to conclude that even with such knowledge, the Defendant agreed to insure for this risk. Put another way, if Defendant is correct, and the cause of the failure was the fact that the drive system on the boat was insufficient to handle a motor with 575hp capacity, there is no evidence that a failure under these circumstances would fall within the policy. Suffice it to say that the opinions obtained by its marine surveyors provide a good faith basis to deny the claim.

When seeking summary judgment, the movant must make a *prima facie* case showing its entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. *Amedure v. Standard Furniture Co.*, 125 AD2d 170 (3rd Dept. 1987); *Bulger v. Tri-Town Agency*, 148 AD2d 44 (3rd Dept. 1989). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. *Dugan v. Sprung*, 280 AD2d 736 (3rd Dept. 2001); *Sheppard-Mobley v. King*, 10 AD3d 70, 74 (2nd Dept. 2004) *aff'd as mod.* 4 NY3d 627 (2005); *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Winegrad v. N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985).

In the present case, the Defendant has submitted evidence of the basis for its good faith determination to deny Plaintiff's claim. Defendant relied on the opinions of two separate marine surveyors to reach the conclusion that Plaintiff's claim did not fall within a policy coverage. The

Court finds that Defendant has established a *prima facie* case for summary judgment with regard to any claim for bad faith. In opposition, Plaintiff merely recites the opinions of individuals who believe that the claim should be covered by Defendant. The Court finds that the existence of divergent opinions as to the cause of the propeller and gear failures, and the fact that defendant had the opinions prior to issuing a denial supports the conclusion the defendant, as a matter of law, did not act in bad faith. Plaintiff has failed to rebut the Defendant's *prima facie* case for summary judgment. Plaintiff offered no evidence to suggest that the Defendant's reliance upon the opinions of the marine surveyor's was inappropriate. Rather, they argue that their "expert's" opinions should have been controlling.

Therefore, Defendant's motion for summary judgment with regard to the bad faith claim is **GRANTED**. The Court likewise concludes that to the extent that Plaintiff is claiming extra-contractual or punitive damages as the result of any claim for bad faith, the Defendant's motion is **GRANTED**.

THIS CONSTITUTES THE DECISION OF THIS COURT.

Parties to settle order on notice within 20 days.

Dated: May 11, 2016
Owego, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice