

Garcia v Batalla

2019 NY Slip Op 33861(U)

December 9, 2019

Supreme Court, Bronx County

Docket Number: 29184/2018

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seqs. # 1, 2

JUSTINO GARCIA,

Index No.: 29184/2018

Plaintiff,

- against -

DECISION and ORDER

PETER J. BATALLA JR. a/k/a PEDRO J. BATALLA JR.,
GEICO INSURANCE COMPANY,
LYNN GOLDER,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Defendants Geico Insurance Company’s and Lynn Golder’s, (collectively “Defendants”) motion is whether Plaintiff’s claim for “bad faith” and legal malpractice should be dismissed.¹ This court finds in the affirmative.

I. Bad Faith Claim

Defendants seek to dismiss Plaintiff’s bad faith claim wherein he claimed that Defendants engaged in “bad faith” because they did not conduct a forensic evaluation of his car. He claimed that if a forensic evaluation of his car was completed it would have vindicated him from any civil liability in the underlying civil lawsuit commenced against him in New York County as a result of a vehicular accident.

In New York, there is no separate cause of action in tort for an insurer’s bad faith failure to perform its obligations under an insurance policy. *Cont. Cas. Co. v. Nationwide Indem. Co.*,

¹ Defendant Peter J. Batalla Jr. a/k/a Pedro J. Batalla Jr.’s motion (Mtn. Seq. # 2) seeking to dismiss Plaintiff’s complaint for his failure to timely provide discovery, *inter alia*, is denied as it failed to comport with the published rules of the Labor Law, Products Liability, and Non-Medical Professional Malpractice (“LPM”) Part regarding discovery related motions.

16 A.D.3d 353, 792 N.Y.S.2d 434 (1st Dept 2005). Further, New York courts have held that “the duties and obligations of the parties to an insurance policy are contractual rather than fiduciary.” See *Acquista v. NY Life Ins. Co.*, 285 A.D.2d 73, 730 N.Y.S.2d 272 (1st Dep’t 2001). However, it is well settled that an insurer may be held liable for damages to its insured for the bad faith refusal of a settlement offer within the policy limits. See *Smith v. Gen. Acc. Ins. Co.*, 91 N.Y.2d 648, 697 N.E.2d 168, 674 N.Y.S.2d 267 (1998). This stems from the general principle that a covenant of good faith and fair dealing is implied in all contracts, including insurance policies, as well as a recognition of the control an insurer maintains over claims against an insured. *Id.*

Here, Defendants argued that Plaintiff’s bad faith claim should be dismissed because there is no cognizable claim for “bad faith” recognized in New York in the manner that it is currently plead. Defendants contended that ordinarily a “bad faith” claim arises against an insurance company when it declines to settle a claim within the policy limits, therefore, exposing the insured to personal liability in excess of the policy limits. Defendants posited that Plaintiff cannot allege a claim for bad faith as the underlying civil matter was settled within his policy limits. Moreover, Defendants argued that Plaintiff’s insurance policy expressly granted them discretion to investigate and settle claims as they saw fit. In opposition, Plaintiff contended that Defendants, in not conducting a forensic evaluation of his car as per his request, engaged in bad faith when they ultimately settled the underlying civil matter without the benefit of his purported defense.

This court finds that even accepting the facts as alleged in Plaintiff’s complaint as true, and according him the benefit of every possible favorable inference, the facts as alleged (i.e., failure to perform forensic evaluation of his car) does not fit within any cognizable legal theory

for “bad faith” as recognized in New York. This court further finds that Plaintiff conceded that the underlying civil matter was settled within his policy limits, and the documentary evidence submitted established that Plaintiff’s insurance policy expressly granted Defendants discretion to investigate and settle claims. Therefore, Plaintiff’s “bad faith” claim is dismissed pursuant to CPLR §3211(a)(1)(7).

II. Legal Malpractice

Defendants seek to dismiss Plaintiff’s legal malpractice claim wherein he alleged that Defendants impeded him from meaningfully participating in his defense of the underlying civil matter. Therefore, he claims that Defendant Lynn Golder, Geico’s assigned counsel, breached her fiduciary duties, thereby, causing him emotional distress.

A legal malpractice claim requires: (1) proof of the attorney’s negligence; (2) a showing that said negligence was the proximate cause of Plaintiff’s loss or injury; and (3) evidence of actual damages. *Pellegrino v. File*, 291 A.D.2d 60, 738 N.Y.S.2d 320 (1st Dep’t 2002). In order to survive dismissal, the complaint must show that but for counsel’s alleged malpractice, the plaintiff would not have sustained some actual ascertainable damages and speculative damages cannot be a basis for legal malpractice claim. *Id.*

Here, Defendants argued that Plaintiff does not set forth any act or omission on their part that proximately caused him to sustain any damages whatsoever. They further argued that Plaintiff cannot set forth a claim for actual damages where, as here, the claims against him were settled within his policy limits. In opposition, Plaintiff claims that his legal malpractice is based on Defendants lack of communication throughout the pendency of the underlying civil matter, and their intentional obstruction in not allowing him to meaningfully participate in his defense of said matter. Therefore, Plaintiff contended that Defendant Lynn Golder’s actions constituted

inadequate representation and as a result he was obligated to file a sperate lawsuit for emotional distress.

This court finds that Plaintiff failed to demonstrate a cognizable claim for legal malpractice. There was no showing made by Plaintiff that any acts or omission by Defendants proximately caused him to sustain any damages nor did he demonstrate any actual damages particularly when it was uncontroverted that the underlying civil matter was settled within his policy limits. Furthermore, this court finds that Plaintiff's claim of emotional distress is not an actual ascertainable damage within the context of a legal malpractice claim. Therefore, Plaintiff's legal malpractice claim is dismissed pursuant to CPLR §3211(a)(1)(7).

Accordingly, it is

ORDERED, that Defendants Geico Insurance Company's and Lynn Golder's motion (Mtn. Seq. # 1) to dismiss the complaint against them is granted; and it is further

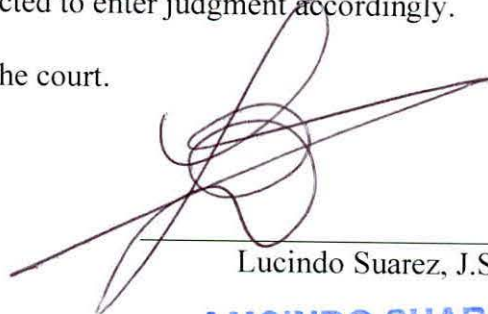
ORDERED, that Defendant Peter J. Batalla Jr. a/k/a Pedro J. Batalla Jr.'s, motion (Mtn. Seq. # 2) to dismiss Plaintiff's complaint for his failure to timely provide discovery, *inter alia*, is denied; and it is further

ORDERED, that Plaintiff and Defendant Peter J. Batalla Jr. a/k/a Pedro J. Batalla Jr.'s, shall appear for a preliminary conference on January 14, 2020, at the Bronx County Courthouse located 851 Grand Concourse Bronx, New York 10451, Part 19, Room 411, at 9:30 a.m.; and it is further

ORDERED, that the Clerk of Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: December 9, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.