Iken-Murphy v State Farm Ins. Co.
2020 NY Slip Op 32866(U)
August 7, 2020
Supreme Court, New York County
Docket Number: 150094/2017
Judge: Francis A. Kahn III
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANCIS A. KAHN, III** *Justice* **PART** **IAS MOTION 14**

---X

MONICA IKEN-MURPHY, ROBERT MURPHY,

Plaintiff,

- v -

STATE FARM INSURANCE COMPANY,

Defendant.

---X

INDEX NO. 150094/2017

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents the motion and cross-motion are determined as follows:

This action arises out of two incidents of property damage at a co-operative apartment owned by Plaintiffs located at 444 East 86th Street, Apt. 37F, New York, New York. Plaintiff's contend their apartment sustained significant damage from water that allegedly leaked from the apartment directly above theirs' punctuated by two event that occurred on June 6, 2013 and November 11, 2014. In their complaint, Plaintiffs allege that a homeowner's policy issued by Defendant State Farm Insurance Company ("State Farm") was in effect at the time of both incidents (Policy No. 32-BC-X619-8). However, documentary evidence annexed to both parties' moving papers revealed that the subject policy expired on September 5, 2014 when Defendant refused to renew the policy. In their complaint, Plaintiffs plead two causes of action for declaratory judgment and breach of contract alleging Defendant has wrongfully denied coverage for the incidents. In the answer, Defendant pleads, *inter alia*, as affirmative defense, that this action is barred based upon a contractual limitations period of two years.

Now, Plaintiffs move for summary judgment on both causes of action and for an award of costs and expenses in this action. Defendant opposes the motion and cross-moves for summary judgment dismissing Plaintiffs' complaint based upon a contractual statute of limitations and expiration of the policy before one of the claimed events.

In a declaratory judgment action, the court may render a "judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed" (CPLR §3001). "The general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations" (*James v Alderton Dock Yards*, 256 NY 298, 305 [1931]; *see* Siegel, NY Prac §436, at 738 [4th ed]).

Generally, policies of insurance are contracts which protect an insured from the consequences of the happening of a fortuitous event which are "construed liberally in favor of the insured and strictly against the carrier" taking care apply existing law and afford words their ordinary meaning (*see State Farm Mut. Auto. Ins. Co. v Westlake*, 35 NY2d 587, 591 [1974]). Claims for breach of an insurance policy and awards of general and consequential damages are cognizable (*see Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 10 NY3d 187 [2008]).

As to Defendants' cross-motion, on a motion to dismiss a cause of action claiming it is barred by the statute of limitations, the movant bears the initial burden of making a *prima facie* showing that the time in which to sue has expired (*see* CPLR §3211[a][5]; *Benn v Benn*, 82 AD3d 548 [1st Dept 2011]). To meet its burden, "the defendant must establish, *inter alia*, when the plaintiff's cause of action accrued" (*Lebedev v Blavatnik*, 144 AD3d 24, 28 [1st Dept 2016], *quoting Cottone v Selective Surfaces, Inc.*, 68 AD3d 1038, 1041 [2nd Dept 2009]). Where the movant demonstrates preliminarily that a claim is barred by the statute of limitations, the petitioner must establish that a toll or stay is applicable or that an issue of fact exists (*see Matter of Schwartz*, 44 AD3d 779 [2nd Dept 2007]).

Generally, the statute of limitations for a breach of contract claim is six-years (CPLR §213[2]). However, parties are authorized to agree to shorten a statute of limitations provided it is contained in a written agreement and that the shortened period is reasonable (CPLR §201; *John v State Farm Mut. Auto. Ins. Co.*, 116 AD3d 1010 [2nd Dept 2014]). Here, the policy in question provided that "[n]o action shall be brought [against Defendant] unless there has been compliance with the policy provisions and the action is started within two years after the occurrence causing loss or damage".

The two-year period contained in the disputed policy is reasonable under the circumstances (*see Blitman Constr. Corp. v. Insurance Co. of North America*, 66 NY2d 820, 822 [1985]; *D'Angelo v Allstate Ins. Co.*, 126 AD3d 931 [2nd Dept 2015]). Further, "policies of insurance may specify a period of limitations running from the *occurrence* of a casualty or event insured against. When this language is clear it is given effect" [emphasis added] *Margulies v Quaker City Fire & Mar. Ins. Co.*, 276 AD 695, 700 [1st Dept 1950]; *see also* Mercedes-Benz Fin. Servs. USA, LLC v Allstate Ins. Co., 162 A.D.3d 1183 [3rd Dept 2018]["parties to an insurance contract may depart from the general rule [that a breach of contract claim accrues upon the breach] and stipulate that the *occurrence* of the underlying catastrophe starts the clock for the applicable limitations period"[emphasis added]). Here, the accrual date for the limitations period is distinctly labeled as the "occurrence" date and "occurrence" is defined in the policy as "an accident . . . which results in: . . . b. property damage". Accordingly, the provision here is unambiguous and enforceable (*see Blanar v State Farm Ins. Cos.*, 34 AD3d 1333 [4th Dept 2006]).

Plaintiffs' reliance on *Bennett v State Farm Fire & Cas. Co.*, 137 AD3d 727 [2nd Dept 2016] for authority that the subject provision is ambiguous is misplaced. That court did not hold the accrual provision was ambiguous, rather the scope of its applicability was found unclear. The court therein held that the provision applied only to breach of contract claims against the insurer, not the negligence claim pled in that case (*id* at 730). Plaintiff's reliance on *Executive Plaza, LLC v. Peerless Ins. Co.*, 22 NY3d 511 [2014] is also unavailing. That case stands for the

proposition that imposing a condition precedent to commencement of an action that was not within the plaintiff's control rendered the shortened limitations period unenforceable since it nullified the claim (*id* at 518). In this case, Plaintiffs failed to identify what provision of the policy prohibited it from suing earlier. That Defendant allegedly delayed its investigation of the loss was not a contractual impediment as the section of the policy defining Plaintiff's duties after a loss contains no requirement that an insured permit the insurer to compete an investigation. Any delay by Defendant in its investigation does not render the provision unenforceable or excuse Plaintiffs from timely commencement of an action (*see Blitman Constr. Corp. v Insurance Co. of North America*, 66 NY2d 820, 822 [1985]; *Phillips v Dweck*, 300 AD2d 969 [3rd Dept 2002]; *Brown v. Royal Ins. Co. of Am.*, 210 AD2d 279 [2nd Dept 1994]).

The deposition testimony of Plaintiff Monica Iken-Murphy and the documentary evidence, including the insurance policy, established that the occurrences for which Plaintiffs sought to recover transpired on June 6, 2013 and November 11, 2014 which are both more than two years before this action was commenced on January 7, 2017 (*see Hohwald v Farm Family Cas. Ins. Co.*, 155 AD3d 1009 [2nd Dept 2017]; *see also Bachir v Lloyds of London*, 157 AD3d 847 [2nd Dept 2018]; *Vaccaro v New York Cent. Mut. Fire Ins. Co.*, 116 AD3d 839 [2nd Dept 2014]).

Accordingly, "the burden shifted 'to the plaintiffs to aver evidentiary facts establishing that the case at hand falls within [an exception to the limitations period]'" (*Minichello v Northern Assur. Co. of Am.*, 304 AD2d 731, 732 [2nd Dept 2003], *citing Hoosac Valley Farmers Exchange, Inc. v. AG Assets, Inc.*, 168 AD2d 822 [3rd Dept 1990]; *see also Snyder v. Allstate Ins. Co.*, 70 AD3d 670 [2nd Dept 2010]).

Plaintiffs' reliance on Insurance Law §3420[d] and its heightened requirements of notice to the insured before disclaiming is misplaced as that section applies only to claims for death or bodily injury, not property damage (see *Travelers Indem. Co. v Orange & Rockland Utils., Inc*, 73 AD3d 576, 577 [1st Dept 2010]; *Fairmont Funding v Utica Mutual Ins. Co.*, 264 AD2d 581, 694 NYS2d 389 [1st Dept 1999]; *State Farm Ins. v O'Brien*, 242 AD2d 381 [2nd Dept 1997]). Instead, this case is governed by common law principles (*Topliffe v U.S. Art Co.*, Inc., 40 AD3d 967 [2nd Dept 2007]; *see also Ira Stier, DDS, P.C. v Merchants Ins. Group*, 127 AD3d 922 [2nd Dept 2015]).

Plaintiffs' claim Defendant waived the contract statute of limitations defenses is unavailing as there is no proof "from which a clear manifestation of intent by the defendant to relinquish the protection of the contractual limitations period could be reasonably inferred" (*Culinary Institute of America v. Aetna Casualty & Surety Co.*, 151 AD2d 638 [2nd Dept 1989]). The evidence adduced reveals Defendants' consistent reliance on the contractual limitations period. In Defendant's correspondence dated December 9, 2014, which accompanied its cash value settlement payment to Plaintiffs, it notes that any request for actual replacement recompense would require repairs to be completed within two years of date of loss. Further, Defendant's denial of claim letter dated May 13, 2015 clearly contains a notification to Plaintiffs of their obligation to commence any action within two years of the date of the occurrence.

Plaintiff's reliance of the theory of estoppel is also not established. An insurer may be estopped from relying on a shortened contractual limitations period where the insurer has "engaged in a course of conduct which lulled [the plaintiffs] into inactivity in the belief that their claim would ultimately be processed" or induced the plaintiffs "by fraud, misrepresentation or deception to refrain from commencing a timely action" (*Snyder v Allstate Ins. Co.*, 70 AD3d 670 [2nd Dept 2010], *citing Minichello v Northern Assur. Co. of Am.*, supra at 732).

As to the latter standard, there is no proof of any false statement or misrepresentation made by Defendant which induced Plaintiffs not to file suit sooner. Also, the Defendant's course of conduct was not such that it can be concluded Plaintiffs were "lulled into inactivity by conduct which [they] believed indicated that the time limitation would not be invoked" (*Graziane v Firemen's Ins. Co. of Newark*, 63 AD2d 1087 [3rd Dept 1987]). Plaintiff Monica Iken-Murphy testified that she reported the June 6, 2013 incident to Defendant soon after it occurred, and she further claims Defendant's appraiser informed her a determination had to be made whether the leak was from the penthouse bathroom before moving forward. She also acknowledged that the source of the leak was not found until November 2014 when the building maintenance personnel gained access to the penthouse apartment. Defendant's requests for further information cannot be construed as actions that misled the Plaintiffs (*see Blitman Constr. Corp. v. Insurance Co. of North America*, 66 NY2d 820, 823 [1985]). Moreover, any investigative delays or neglect in responding to Plaintiff's inquires that occurred between the November 11, 2014 incident and the denial letter of May 13, 2015 are not the basis for estoppel as there is no proof of any affirmative misrepresentation of the status of the investigation (*see Blitman Constr. Corp. v. Insurance Co. of North America*, supra; *Minichello v Northern Assur. Co. of Am.*, supra *Phillips v Dweck*, 300 AD2d 969, 970 [3rd Dept 2002]; *McGoey v. Insurance Co. of North America*, 57 AD2d 945 [2nd Dept 1977]).

Plaintiff's statement in her affidavit that it was her "impression" the December 9, 2014 payment by Defendant was just a "preliminary" estimate and payment is not supported by any fair reading of the correspondence and such a cash offer with a proposition to pay replacement costs if work was completed within the limitations period cannot form the basis of an estoppel (*see Cushing v Allstate Fire & Cas. Ins. Co.*, 173 AD3d 1819 [4th Dept 2019]). Furthermore, settlement negotiations or communications either before or after the expiration of the limitations period again do not establish grounds for estoppel (*see Stubbs v Pirzada*, 55 AD3d 597, 598 [2nd Dept 2008]; *Grumman Corp. v Travelers Indem. Co.*, 288 AD2d 344 [2nd Dept 2001]).

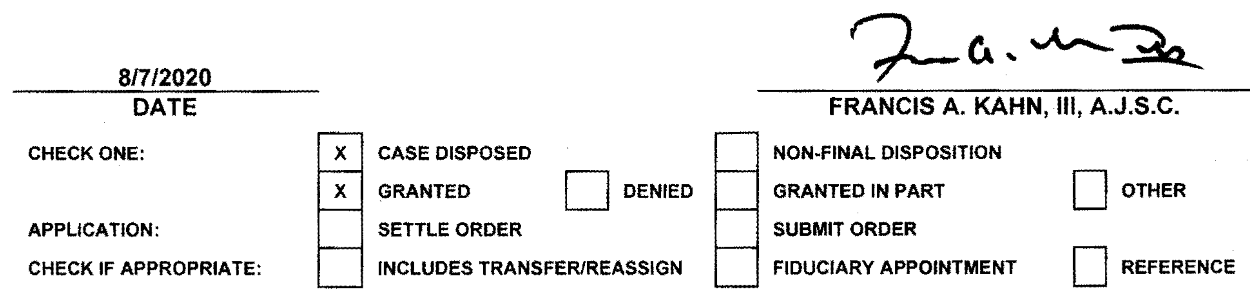
In any event, in order for Plaintiff to obtain the benefit of the doctrine of equitable estoppel, it must be shown that their reliance on the alleged deception was reasonably related to their delay in commencing this action (*see Putter v North Shore Univ. Hosp.*, 7 NY3d 548, 552-553 [2006]). Here, the last salient contact between Plaintiff and Defendant occurred with the May 13, 2015 letter and Plaintiff's have not explained the near twenty-month delay from that date to the commencement of this action. Indeed, Plaintiffs were certainly aware of the option of litigation since little more than a month after Defendant issued its written denial, they commenced a plenary action against the owners of the co-operative apartment where the leak allegedly emanated as well as the co-operative association.

Plaintiffs' argument that Defendant's reliance on the shorted limitations period in the policy in support of its cross-motion constitutes a surprise is unavailing. Defendant's denial of claim letter dated May 13, 2015 contained a notification of the existence and terms of the contractual limitations provision in policy. Also, Defendants' fourth affirmative defense in its answer pleads the contractual statute of limitations for both incidents.

Any claim for damages arising out of the November 11, 2014 incident is also fatally flawed as that incident occurred after the subject policy expired some two months earlier (*see Berger Bros. Elec. Motors v New Amsterdam Cas. Co.*, 293 NY 523 [1944]; *Greenlee v Sherman*, 142 AD2d 472, 476-477 [3rd Dept 1989]["it is well settled that there is no coverage unless the property damage is alleged to have occurred during the policy period"]). Moreover, defenses relating to the issue of the coverage and noncoverage are not waivable and insurance coverage cannot be created through equitable estoppel where no insurance policy exists (*see Taft v Equitable Life Assur. Soc. of U.S.*, 173 AD2d 267 [1st Dept 1991]; *see also Albert J. Schiff Assoc. v Flack*, 51 NY2d 692, 698 [1980]; *Nicoletta v Berkshire Life Ins. Co.*, 99 AD3d 567, 567 [1st Dept 2012]).

Accordingly, Plaintiffs' motion for summary judgment is denied, Defendant's cross-motion for summary is granted, Plaintiffs' complaint is dismissed and it is

ADJUDGED and DECLARED that Defendant State Farm Insurance Company is not required to indemnify Plaintiffs for any further damages to the premises 444 East 86th Street, Apt. 37F, New York, New York under the (Policy No. 32-BC-X619-8).



8/7/2020
DATE

FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE