Prospect Auto Sales & Repairs, Inc. v State Farm Ins. Cos.
2022 NY Slip Op 34717(U)
January 11, 2022
Supreme Court, Westchester County
Docket Number: Index No. 65622/2020
Judge: James W. Hubert
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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PROSPECT AUTO SALES AND REPAIRS, INC., as Assignee of GIANLUCA MORRONE,

Plaintiffs,

-against-

STATE FARM INSURANCE COMPANIES,

Defendant.

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Index No. 65622/2020

DECISION & ORDER

Motion Seq. #1 and #2

Hubert, J.S.C.

Plaintiff Prospect Auto Sales and Repairs, Inc., an auto body repair shop located in the Bronx, commenced this action on December 4, 2020, to recover certain costs to repair a vehicle insured by Defendant State Farm Insurance Companies ("State Farm"). The complaint alleges that on August 22, 2020, the vehicle insured by State Farm (and owed by its insured, Gianluca Morrone) sustained property damage that was a covered loss as defined by the insurance policy; Gianluca Morrone subsequently made a claim for insurance benefits under the collision portion of the policy; the insured went to Prospect Auto for the necessary repair work, but Plaintiff estimated the repair costs for the vehicle in excess of State Farm's estimate.[1] The complaint alleges that Plaintiff sustained damage in the amount of $9,180.27, with "the exact amount to be determined at trial."

In Motion Sequence #1, State Farm moves for an Order pursuant to CPLR § 3211(a)(7)

[1]According to State Farm, Prospect Auto estimated that it would cost $25,328.76 to repair Morrone's vehicle, which was $9,180.27 higher than State Farm's $16,148.49 estimate, representing "three times the number of hours of work compared to State Farm's estimate. Less the $500 deductible, the total amount State Farm paid was $15,648.49."

dismissing Plaintiff's allegations concerning Insurance Law § 2601 and 11 NYCRR § 216.1 *et seq.* ("Regulation 64"), and dismissing Plaintiff's claim for attorneys' fees.[2] State Farm also moves to dismiss this action pursuant to CPLR 3211(a)(2) on the grounds that the amount in controversy is less than the jurisdictional minimal amount for this Court, and therefore theCourt lacks subject matter jurisdiction. In Motion Sequence #2, Plaintiff cross moves to amend its complaint pursuant to CPLR § 3025(b).

Insurance Law § 2601 prohibits insurers from "engag[ing] in unfair claim settlement practices," and specifies various acts which, when "committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices." Insurance Law § 2601 (a). Such acts include "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear." Insurance Law §§ 2601 (a)(4). Similarly, Regulation 64, entitled "Unfair Claims Settlement Practices and Claim Cost Control Measures," governs an insurer's conduct in the automobile repair process, and provides practice rules for the processing of first-party motor vehicle damage claims and third-party property damage claims arising under motor vehicle liability insurance contracts. *See* 11 N.Y.C.R.R. § 216.0 (a). Section 216.7 also sets forth "[s]tandards for prompt, fair and equitable settlement of motor vehicle physical damage claims." 11 N.Y.C.R.R. § 216.7.

Here, State Farm argues that to the extent that Plaintiff is asserting causes of action for violations of Insurance Law § 2601 and Regulation 64, those claims must be dismissed because there is no private cause of action for any alleged violations of these statutes under New York law.

[2] Plaintiff has since withdrawn its claim for attorneys' fees.

"It is well settled that no private cause of action exists for a violation of Insurance Law § 2601 or for an alleged violation of part 216 of the Insurance Regulations." *De Marinis v. Tower Ins. Co.*, 6 A.D.3d 484, 774 N.Y.S.2d 436 (2d Dep't 2004); *Rocanova v. Equitable Life Assurance Society*, 83 N.Y.2d 603, 612 N.Y.S.2d 339, 343 (1994). To the contrary, the New York State Superintendent of Insurance is empowered to investigate and hold hearings on allegations of deceptive and unfair claims settlement practices, and enforce the statute's prohibitions by cease and desist orders or, through the attorney general, judicial action.[3] *See* Insurance Law §§ 2404, 2405 (superintendent is empowered to investigate and hold hearings to determine whether an insurer is committing "defined violation"); Insurance Law § 109 (authorizing superintendent to impose monetary penalties); *see also Kurrus v. CNA Ins. Co.*, 115 A.D.2d 593, 496 N.Y.S.2d 255, 255 (2d Dep't 1985)("enforcement of the provisions of section 2601 is more appropriately within the province and jurisdiction of the State Superintendent of Insurance"); *Saastomoinen v. Pagano*, 278 A.D.2d 218, 717 N.Y.S.2d 274 (2d Dep't 2000)(stating that "[i]f the Supreme Court believed that Allstate's settlement practices were improper, the correct course would have been to refer the matter to the Superintendent of Insurance").

Nevertheless, Plaintiff states that it is not asserting a private right of action for any alleged violations of Insurance Law Section 2601 or Regulation 64; instead, it is alleging a cause of action for breach of contract arising from State Farm's failure to pay its insured and the Plaintiff's assignor the full amount of money owed to him for the repair of his insured vehicle.

[3]Compre Gen. Bus. L. § 349 (a), which makes unlawful "deceptive acts or practices in the conduct of any business, trade or commerce . . . in this state," and provides for a private right of action for "any person who has been injured by reason of any violation of this section" to recover actual damages or fifty dollars, whichever is greater. *Id.* § 349 (h).

In order to state a claim for breach of contract, a plaintiff must allege that: (1) the parties entered into a valid agreement; (2) plaintiff performed; (3) defendant failed to perform; and (4) damages. *See Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 913 N.Y.S.2d 161 (1st Dep't 2010). In New York, the "applicable provisions of Insurance Law are deemed to be part of an insurance contract as though written into it." *Trizzano v. Allstate Ins. Co.*, 7 A.D.3d 783, 780 N.Y.S. 2d 147, 147 (2d Dep't 2004)(internal quotation marks and alterations omitted); *Security Mut. Life Ins. Co. of N.Y. v. Rodriguez*, 65 A.D.3d 1, 880 N.Y.S.2d 619, 622-23 (1st Dep't 2009)("[e]xisting and valid statutory provisions enter into and form a part of all contracts of insurance to which they are applicable, and, together with settled judicial constructions thereof, become a part of the contract as much as if they were actually incorporated therein")(quoting 2 Couch on Insurance 3d § 19:1).

Thus, although Plaintiff is not asserting a private right of action for any alleged violations of Insurance Law Section 2601 or Regulation 64–as it acknowledges–all existing and applicable statutory provisions become part of the contract "as much as if they were actually incorporated therein." *Sec. Mut. Life Ins. Co. of N.Y. v. Rodriguez*, 65 A.D.3d 1, 880 N.Y.S.2d 619, 622-23 (1st Dep't 2009)(citation omitted). An alleged failure to comply with the applicable statutory provisions can therefore form the basis of a cause of action for breach of contract.

State Farm also contends that because Plaintiff seeks damages less than $25,000, this action should be dismissed due to lack of subject matter jurisdiction, or transferred to County Court pursuant to CPLR § 325(a). This argument does not require extended discussion. The New York State Supreme Court is a Court of original general jurisdiction in both law and equity, and thus has jurisdiction over this action, regardless of the amount in controversy. See N.Y. State Const., Article 6, §7.

State Farm's motion for leave to amend its complaint is granted. CPLR § 3025 (b) provides that a party may amend their pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court and that "[l]eave shall be freely given upon such terms as may be just including the granting of costs and continuances." Thus, unless a proposed amended pleading is "palpably insufficient or patently devoid of merit," or there is prejudice to the other side, leave to amend must be freely given. *See* 1 Weinstein, Korn & Miller CPLR Manual § 19.14 (2020)("[t]he principal justification for a denial of leave to amend is the avoidance of prejudice to the opponent").

Accordingly, it is hereby:

ORDERED, that Defendant's motion pursuant to CPLR § 3211 (a)(7) is denied; and it is further

ORDERED, that Plaintiff's motion to amend the complaint, as set forth in "Exhibit D" to its cross motion is granted; and it is further

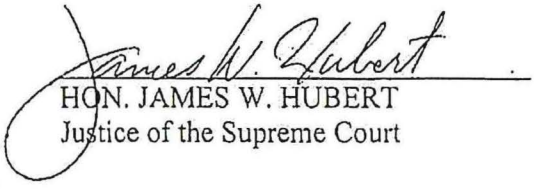
ORDERED, that Plaintiff's proposed amended verified complaint is deemed served as of the date of this Decision & Order; and it is further

ORDERED, that any responsive pleading shall be filed within twenty days; and it is further

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry upon Defendant within seven days of the entry of this Decision & Order.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 11, 2022



HON. JAMES W. HUBERT
Justice of the Supreme Court

TO: Counsel of Record via NYSCEF

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