

Uhrinyak v Wayne Coop. Ins. Co.

2023 NY Slip Op 30226(U)

January 25, 2023

Supreme Court, Wayne County

Docket Number: Index No. 88476

Judge: Daniel G. Barrett

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court
held in and for the County of
Wayne at the Hall of Justice in the
Town of Lyons, New York on the
9th day of November, 2022.

PRESENT: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

LARRY UHRINYAK AND NICOLE UHRINYAK,

Plaintiffs

DECISION
Index No. 88476

-vs-

WAYNE COOPERATIVE INSURANCE COMPANY,
J.D. CHAPMAN AGENCY, INC.,

Defendants

The Defendant, Wayne Cooperative Insurance Company (hereafter Wayne) has filed a motion seeking summary judgment pursuant to CPLR 3212 dismissing the First, Second, Third, Fourth, Fifth and Seventh causes of action set forth in Plaintiffs (Larry Uhrinyak and Nicole Uhrinyak) Complaint.

Alternatively, Wayne requests staying discovery on any of the Plaintiffs surviving claims pending resolution of Plaintiffs' action for reformation.

The Plaintiffs have cross-moved for an Order directing Wayne to fully respond to Plaintiffs' Discovery Demands within forty-five (45) days or whatever the Court deems just and reasonable. In addition, Plaintiffs seek an Order precluding Wayne from offering any documents, evidence or information not produced and disclosed to the Plaintiffs within forty-five (45) days or by such date as the Court deems just and proper.

As an overview, on a motion for summary judgment, this Court must view facts in the light most favorable to the non-moving party. The moving party's failure to make a prima facie showing of entitlement to summary judgment requires a denial of the motion regardless of the sufficiency of the non-moving party's papers. (See Vega v Restani Const. Corp., 18 N.Y. 3d 499.)

Issue finding rather than issue determination is a function of a court on a motion for summary judgment (see Stache Investments Corp. v Ciolek, 174 A.D. 3d 1393 [4th Dep't 2019]).

Summary judgment should be denied if there is even arguably such an issue. (See Stache Ins. Corp., supra) Courts are allowed to grant summary judgment where pertinent facts essential to oppose a motion are exclusively within the knowledge and control of the movant and may be revealed through pre-trial discovery (see Kaufman v Lederle Laboratories, 169 A.D. 2d 706 [2nd Dep't 1991]).

The posture of this case is that Wayne has not fully responded to Discovery Demands and no depositions have been conducted.

FIRST CAUSE OF ACTION
REFORMATION OF INSURANCE POLICY
(As Against Wayne)

Plaintiffs allege Defendant Chapman is an agent of Wayne. Chapman and Plaintiffs agreed that Chapman would procure an insurance policy to cover Plaintiffs' property for its full and complete value. Plaintiffs, at this stage, are not privy to the communications between Chapman and Wayne regarding coverage. There is an issue of fact whether Chapman was an agent of Wayne and what information was communicated to Wayne regarding coverage. The Affidavits submitted on behalf of the Plaintiffs in opposition to this motion puts the amount of coverage provided in question. Consequently, the first cause of action to dismiss is denied.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

(Damage to the Dwelling as Against Wayne)

As set forth in the Complaint, this cause of action contains two causes of action. One cause of action is for failure of Wayne to make full and complete payment to Plaintiffs for damages to the dwelling. The second cause of action is for extra-contractual consequential damages as a result of Wayne's failure to act promptly in breach of its duty and obligation of good faith and fair dealing. This second cause of action is recognized in New York. (See Bi-Economy Mkt., Inc., v Harleystville, 10 N.Y. 3d 187 [2008]). This cause of action is also set forth in the Seventh cause of action of the Complaint. The Court is not dismissing the breach of contract cause of action.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT

(Damage to Personal Property as Against Wayne)

This cause of action, like the second cause of action, pleads two causes of action. The first cause of action addresses a breach of contract regarding failure of Wayne to pay the appropriate amount of damages for personal property. The second cause of action seeks extra-contractual consequential damages as a result of Wayne's failure to act promptly in breach of its duty and obligation of good faith and fair dealing. This second cause of action is pleaded in the Seventh cause of action. The Court is not dismissing the breach of contract cause of action.

FOURTH CAUSE OF ACTION

BREACH OF CONTRACT

(Failure to Pay Additional Living Expenses as Against Wayne)

Like the Second and Third causes of action, two causes of action are pleaded in this cause of action although in not as great detail. The first cause of action is a breach of the insurance policy contract for failure of Wayne to pay the proper amount of additional living expenses. The second cause of action is the same as the second cause of action in the previous two causes of action except it deals with additional living expenses. This second cause of action is pleaded in the Seventh cause of action. The Court is not dismissing the fourth cause of action for breach of contract.

FIFTH CAUSE OF ACTION

NEGLIGENCE

(As Against Chapman and Wayne)

This cause of action alleges that the Plaintiffs requested Defendant Chapman to procure insurance coverage to fully protect their property. It also alleges that the Plaintiffs developed a "special relationship". By not securing adequate insurance coverage, Chapman breached its duty to Plaintiffs. It is alleged that Chapman was Wayne's agent. Accepting the allegations of the Complaint, the Court will not dismiss this cause of action.

SEVENTH CAUSE OF ACTION

BREACH OF CONTRACT

(Extra-Contractual Consequential Damages as Against Wayne)

This cause of action encompasses the failure of Wayne to promptly pay the appropriate amounts of insurance for "property damage loss; personal property loss; and additional living expenses." New York recognizes this cause of action and it is a separate cause of action from the breach of contract action. (See Bi-Economy Mkt., Inc., [supra]) The Court is not dismissing this cause of action.

PROTECTIVE ORDER

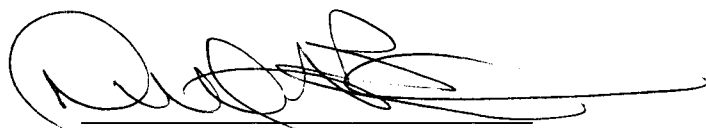
Wayne has requested a Protective Order staying Discovery on any of the surviving claims pending Plaintiffs' claim for reformation. The only thing the Plaintiffs desire to reform in the contract is the amount of coverage available for the dwelling, personal property and additional living expenses. The Affidavit of the Plaintiff indicates that Wayne has disputed some of these items. The application for a Protective Order is denied.

PLAINTIFF CROSS-MOTION

Wayne should provide responses to Plaintiffs Discovery Demands by April 1, 2023. Plaintiffs also request a Preclusion Order be issued at this time precluding Wayne from offering any documents, evidence or information not so provided and disclosed to Plaintiffs by April 1, 2023. The Court declines to issue this Order.

This constitutes the Decision of the Court. Counsel for Wayne to prepare an Order consistent with this Decision.

Dated: January 25, 2023
Lyons, New York



Daniel G. Barrett
Acting Supreme Court Justice