Prospect Auto Sales & Repairs, Inc. v State Farm Mut. Auto. Ins. Co.
2024 NY Slip Op 31775(U)
March 8, 2024
Supreme Court, Westchester County
Docket Number: Index No. 56109/2023
Judge: William J. Giacomo
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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
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

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PROSPECT AUTO SALES AND REPAIRS, INC., as assignee of JOHN SAXE and NATASHA MADERA,

Plaintiff,

– against –

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

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Index No. 56109/2023

Motion Seq. 001

DECISION & ORDER

In an action to recover damages for breach of contract, defendant State Farm Mutual Automobile Insurance Company (State Farm) moves, pursuant to CPLR 3212, for an order dismissing the complaint:

Papers Considered **NYSCEF DOC NO. 17-57**

1. Notice of Motion/ Affirmation of Scott D. Mancuso, Esq./Exhibits A-B/Affidavit of Kathleen O'Neill/Exhibits A-P/Statement of Material Facts/Memorandum of Law
2. Counterstatement of Material Facts/Affirmation of Anthony J. Mamo, Jr., Esq. in opposition/ Exhibits A-M/Memorandum of Law in Opposition
3. Memorandum of Law in Reply/Exhibit A

FACTUAL AND RELEVANT PROCEDURAL BACKGROUND

Plaintiff commenced this action on or about January 28, 2023 by filing a summons and complaint. State Farm joined issue by the filing of its answer on or about March 23, 2023.

State Farm issued automobile insurance policies to John Saxe (Saxe) and Natasha Madera (Madera). On June 1, 2022, Saxe's 2021 Tesla Model Y automobile sustained damages and Saxe made a claim for insurance benefits. On October 23, 2022, Madera's 2022 Tesla Model 3 automobile sustained damages and Madera made a claim for insurance benefits. The complaint sets forth that both Saxe and Madera signed a Repair Authorization and Designated Representative Authorization allowing plaintiff to repair the vehicles to their pre-accident condition and allowing

plaintiff to negotiate with State Farm for the cost and payment of the repairs. Both Saxe and Madera also signed an assignment of claim assigning plaintiff all rights against State Farm for damages arising out of the costs to repair the vehicles.

Plaintiff performed all repairs requested by the vehicle owners and returned the vehicles to their pre-accident conditions. However, according to plaintiff, State Farm refused to make a full and final payment of the amount due to Saxe and Madera, and therefore to plaintiff, by way of its assignment. As a result, plaintiff alleges that State Farm breached its contractual obligations under the insurance policies issued to Saxe and Madera. The complaint also alleges that State Farm violated New York Insurance Law Section 2601 and Regulation 64 by failing to negotiate in good faith over the procedures and costs necessary to return the vehicles to their pre-accident condition.

The first cause of action alleges that State Farm made repairs costing $37,131.25, however State Farm breached its contractual obligations when it only paid its insured the amount of $30,755.54. Plaintiff is seeking a money judgment against State Farm of at least $6,375.71 plus interest. The second cause of action alleges that State Farm made repairs costing $32,096.32, however State Farm breached its contractual obligations when it only paid its insured the amount of $27,436.64. Plaintiff is seeking a money judgment against State Farm of at least $4,659.68 plus interest.

State Farm now moves for summary judgment dismissing the complaint. State Farm argues that it has not breached any part of the Saxe or Madera insurance policies. It maintains that plaintiff has not identified, and cannot identify any specific provision of the policies at issue which State Farm has allegedly failed to remit payment. According to State Farm, the amount of reimbursement allowed for repairs is limited to the terms and conditions of the insurance policies. As plaintiff's standing is based on its assignment from Saxe and Madera, the terms of the insurance policies are controlling. As relevant here, payments were provided in accordance with the Limits and Loss Settlement section of the insurance policies.

In support of its motion, State Farm provides an affidavit from Kathleen O'Neill (O'Neill), claim team manager. O'Neill states that Saxe initially brought the automobile to InterContinental Auto Body. State Farm's auto estimatics appraiser wrote an initial estimate in the amount of $11,810.36. Saxe then notified State Farm that he moved the vehicle to plaintiff's shop. State Farm's auto estimatics inspector wrote two estimates for repair of the vehicle which totaled $30,757.54. Saxe then provided State Farm with a direction to pay, among other assignment forms.

Based on these documents, State Farm issued payment to plaintiff in the amount of $30,757.54 for repair of the damage to the Saxe vehicle. O'Neill affirms that, until the instant complaint was filed, State Farm had no record of plaintiff disputing the amount of the repairs.

Similarly, Madera initially brought her vehicle to another repair shop and the initial estimate to repair the vehicle was for $9,297.14. Madera then brought her vehicle to plaintiff's shop. After inspection by Allen Lim (Lim), an amount of $22, 432.31 was provided as a supplemental estimate for repair. O'Neill states that, on November 21, 2022, Junior Martinez from plaintiff's shop emailed State Farm and requested for State Farm to provide the names of other repair shops that would provide the repairs for the amount of Lim's estimate. O'Neill provided Martinez with the names of two other repair shops. Martinez advised State Farm that he had contacted both these shops and they informed him that they did not want to be involved as the designated back up shops. In any event, Lim wrote a second supplemental estimate for the repair damage in the amount of $4,051.67. Lim's estimates were purportedly based on the prevailing competitive price, which as defined by State Farm, is the prevailing competitive price determined by a survey made by State Farm of the prices charged by a majority of the repair market in the area where the covered vehicle is to be repaired.[1] Madera signed documents including an assignment and direction to pay, and State Farm issued payment directly to plaintiff in the amount of $27,436.64. State Farm maintains that its payments to plaintiff are consistent with the terms of the Limits and Loss Settlement Section of the insurance policies and that no further payment is warranted.

The Limits and Loss Settlement Section of the insurance policies state the following, in pertinent part:

> "Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage 1. We have the right to choose to settle with you or the owner of the covered vehicle in one of the following ways: a. Pay the cost to repair the covered vehicle minus any applicable deductible. (1) We have the right to choose one of the following to determine the cost to repair the covered vehicle: (a) The cost agreed to by both the owner of the covered vehicle and us; (b) A bid or repair estimate approved by us; or (c) A repair estimate that is written based upon or adjusted to: (i) the prevailing competitive price; (ii) the lower of paintless dent repair pricing established by an agreement we have with a third party or the paintless

[1] A footnote in the estimates indicates that State Farm relied on CCC ONE Estimating - A product of CCC Intelligent Services Inc.

> dent repair price that is competitive in the market; or (iii) a combination of (i) and (ii) above.
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> The prevailing competitive price means prices charged by a majority of the repair market in the area where the covered vehicle is to be repaired as determined by a survey made by us. If asked, we will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the covered vehicle to its pre-loss condition."

See NYSCEF Doc. No. 22.

In sum, State Farm maintains that it paid plaintiff for the repairs in accordance with the terms of the insurance policies. The policies limit the amount that State Farm will reimburse for repairs. According to State Farm, plaintiff voluntarily chose to the accept assignments from its customers and is now bound to the terms of the policies at issue. As a result, even if plaintiff allegedly incurred more costs to repair the vehicle than what State Farm provided, plaintiff is not contractually entitled to the extra amounts.

In opposition, plaintiff argues that issues of fact remain as to whether State Farm breached applicable provisions of the Insurance Law, which are deemed part of the contract, in unilaterally determining the amount it would pay to repair the vehicles. For instance, if the parties cannot reach an agreed price for the repairs, the insured must furnish the insured with a notice of rights letter, identifying a repair shop that will repair the vehicle for the price. According to plaintiff, State Farm failed to issue a notice of rights letter to Saxe and failed to provide Madera with an alternate shop willing to do the repairs at the costs set by State Farm.

Plaintiff also argues that issues of fact remain as to what constitutes the reasonable labor rate for the repair of a Tesla. Although State Farm asserted that $100 an hour is reasonable and prevailing, other insurance company repair estimates appraise the rate at $125 an hour. Plaintiff submits detailed estimates from at least nine other insurance companies who agreed to pay plaintiff $125 an hour for Tesla repairs.

In support of the opposition, plaintiff provides an affidavit from Junior Martinez (Martinez), plaintiff's employee and a licensed appraiser. Martinez states that he was the estimator in charge of the repairs for both the Saxe and Madera vehicles. Martinez affirms that plaintiff charges $125 an hour to repair Tesla vehicles and that all of the major insurance companies routinely pay plaintiff that rate. Martinez continues that State Farm refused to negotiate the labor rate and other items which were necessary to bring the vehicles to their pre-accident condition.

Plaintiff still performed the repairs, resulting in a cost difference. After Martinez received Madera's notice of rights letter from State Farm, he contacted the alternate repair shops that had allegedly been retained by State Farm to perform the repair work for the agreed upon price. Martinez affirms that both shops advised him that they had not been contacted by State Farm regarding the Madera vehicle, that they did not agree to be the alternate repair shop and that they did not want to repair the vehicle. Martinez then communicated this information to State Farm.

In reply, among other things, State Farm argues that plaintiff may not recover under breach of contract for any alleged violations of Insurance Regulations because the regulations do not give rise to a private right of action.

DISCUSSION

A party seeking summary judgment has the burden of tendering evidentiary proof in admissible form to demonstrate the absence of material issues of fact. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). In determining a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. *Boulos v Lerner-Harrington*, 124 AD3d 709, 709 (2d Dept 2015). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 (1986). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility." *Ruiz v Griffin*, 71 AD3d 1112, 1115 (2d Dept 2010) (internal quotation marks and citation omitted).

Insurance Law § 2610 sets forth the following, in relevant part:

> "(a) Whenever a motor vehicle collision or comprehensive loss shall have been suffered by an insured, no insurer providing collision or comprehensive coverage therefor shall require that repairs be made to such vehicle in a particular place or shop or by a particular concern.
> (b) In processing any such claim (other than a claim solely involving window glass), the insurer shall not, unless expressly requested by the insured, recommend or suggest repairs be made to such vehicle in a particular place or shop or by a particular concern."

Plaintiff alleges that State Farm failed to comply with Insurance Law § 2610 and that it engaged in unfair claims settlement practices under 11 NYCRR § 216.7, which is promulgated under Insurance Law § 2601. This regulation, also called Regulation 64, provides the standards for prompt, fair and equitable settlement of claims arising under motor vehicle collision and comprehensive coverage. In relevant part, "where the insurer decides to inspect the car prior to

repair, negotiations shall commence and a good faith offer of settlement shall be made (11 NYCRR 216.7 [b] [1]). . . . negotiations must be conducted in good faith with the basic goal of promptly arriving at an agreed price with the insured or the designated representative (11 NYCRR 216.7 [b] [7]). When the parties cannot reach an agreed price, the insurance company must provide a notice of rights letter, with the insurer's offer, and provides that upon the insured's request, the insurer can recommend a repair shop that will make repairs at the insurer's estimate." *See Rizzo v Merchants & Businessmen's Mut. Ins. Co.,* 188 Misc. 2d 180, 182 (App Term 2d Dept 2001).

In order to recover damages for breach of contract, plaintiff must demonstrate the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach. *Investment Retrievers, Inc. v Fox*, 150 AD3d 1090 (2d Dept 2017). Here, the insured entered into contracts with State Farm to provide car insurance in return for paying premiums. Plaintiff as assignee is bound by this contract and asserts damages as a result of the breach. According to State Farm, it paid plaintiff for the repairs of the vehicles in accordance with the Limits and Loss Settlement Section, and plaintiff cannot identify any specific provision under which State Farm has allegedly failed to provide payment. Specifically, State Farm alleges that it paid the prevailing competitive price for the repairs and that, in response to plaintiff's request, it also identified two other facilities who would perform the repairs for that price. Subsequently, based on the repair estimates and the assignments, among other documents, State Farm issued payments to plaintiff for the repair of both vehicles. Accordingly, State Farm has established, prima facie, that it complied with the terms of the contracts.

However, in opposition, plaintiff has raised a triable issue of fact as to whether State Farm complied with the terms of its contract by relying on the prevailing competitive price when paying the cost to repair the vehicles and by identifying some facilities that would perform the repairs at the prevailing competitive price. Plaintiff submits estimates from numerous insurance companies, including Allstate, Geico, USAA, Travelers, among many others, who uniformly agree to pay plaintiff $125 an hour to repair Tesla vehicles. Further, although the policies state that the rates are determined by a survey made by State Farm, State Farm does not provide the survey in the record or explain how its rate is lower than the other insurance companies' rates.

Further, although State Farm did identify other repair shops that would allegedly perform the repairs for its prevailing competitive price, Martinez submitted an affidavit stating that when

he reached out to these shops, they denied being contacted by State Farm. It is well settled that in determining a motion for summary judgment "the court must view the evidence in the light most favorable to the nonmoving party," and "[t]he motion should not be granted when conflicting inferences may be drawn or where there are issues of credibility regarding material facts." *Open Door Foods, LLC v Pasta Machs., Inc.,* 136 AD3d 1002, 1005 (2d Dept 2016).

As noted by State Farm, "the regulations promulgated to define such practices under Insurance Law § 2601 . . .. do not give rise to a private right of action." *Aetna Cas. & Sur. Co. v. ITT Hartford Ins. Co.,* 249 AD2d 241, 242 (1st Dept 1998). Nevertheless, courts have found that "[a]pplicable provisions of the Insurance Law are deemed to be part of an insurance contract as though written into it." *Trizzano v Allstate Ins. Co.,* 7 AD3d 783, 785 (2d Dept 2004) (internal quotation marks and citation omitted). Specifically, Regulation 64, the regulation at issue in the present action, "had the same effect as a contractual provision" and "effectively became part of the insurance policy . . .." *Id.* at 785. At least with respect to the Madera automobile, the record indicates that Lim refused to negotiate the rate of labor for the Tesla and the notice of rights letter suggested alternate shops who denied being contacted about the repairs. Accordingly, plaintiff has raised a triable issue of fact as to whether, as required by the pertinent Insurance Regulations, State Farm negotiated in good faith. *See e.g. Nadel v Allstate Ins. Co.*, 36 Misc 3d 17, 20 (App Term 2d Dept 2012) ("we find that we find that, in order to establish a prima facie case for summary judgment, defendant was required to comply with the regulatory mandate by demonstrating that it had undertaken good faith negotiations with plaintiff or his designated representative").

Courts have further held that an insured is not automatically "entitled to be reimbursed for the full amount charged by the repair shop authorized by the insured to make the repairs. Where, as here, the parties cannot reach an agreed price, the insured bears the burden of establishing the reasonable cost of the repairs necessary to bring the vehicle to its condition prior to the loss." *Rizzo v Merchants & Businessmen's Mut. Ins. Co.,* 188 Misc. 2d at 183. As noted, plaintiff met its burden through its submissions, and an issue of fact remains as to the reasonable costs of the repairs. Accordingly, State Farm's motion for summary judgment is denied.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court notwithstanding the specific absence of reference thereto.

CONCLUSION

Accordingly, it is hereby

ORDERED that State Farm's motion, pursuant to CPLR 3212, granting summary judgment dismissing the complaint is DENIED.

The parties are directed to appear for a virtual settlement conference on April 8, 2024 at 11:30 a.m. subject to confirmation by the virtual conference link emailed by this Court.

Dated: White Plains, New York
March 8, 2024

HON. WILLIAM J. GIACOMO, J.S.C.