Prospect Auto Sales & Repairs, Inc. v State Farm Mut. Auto. Ins. Co.

2025 NY Slip Op 31680(U)

April 23, 2025

Supreme Court, Westchester County

Docket Number: Index No. 62272/2024

Judge: Elena Goldberg-Velazquez

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 EZECHIAS LOUIS,

Plaintiff,

-against-

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

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DECISION & ORDER
Index No. 62272/2024
Motion Seq. 1

Hon. Elena Goldberg-Velazquez, J.S.C.

The following electronically filed papers were read and considered on the motion by defendant, State Farm Mutual Automobile Insurance Company ("State Farm"), seeking summary judgment dismissing the complaint pursuant to CPLR 3212:

PAPERS	**NYSCEF DOC. NO.**
Notice of Motion, Affirmation in Support with Exhibits A-B, Affidavit in Support with Exhibits A-H, and Memorandum of Law in Support with Exhibits A-B	9-24
Affirmation in Opposition with Exhibits A-N and Memorandum of Law in Opposition	30-45
Affirmation in Reply with Exhibits A-J and Memorandum of Law in Reply	47-58

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced this action seeking to recover an additional $7,992.44 for the repair of key scratch damage to a vehicle owned by Ezechias Louis and insured by State Farm. Plaintiff alleges that State Farm breached its insurance policy with Louis by failing to make a good faith

claim settlement offer in an amount necessary for plaintiff to restore Louis' vehicle to its pre-damaged condition, as required by New York's insurance law and its promulgated regulations. After the exchange of paper discovery, State Farm filed the instant motion seeking summary judgment dismissing the complaint.

In support of the motion, State Farm argues that it is entitled to judgment because it paid Louis' insurance claim in accordance with the policy limits and plaintiff has not set forth a basis for its right to additional amounts. State Farm also contends that plaintiff has failed to allege a specific breach of the insurance policy, and instead, alleges violations of New York State Insurance Law § 2601 and Regulation 64 (Dept of Fin Servs Regs [11 NYCRR] § 216), for which there is no private right of action. In addition, State Farm argues that even if plaintiff had a valid breach of contract claim, plaintiff fails to raise any triable issues of fact to warrant denial of State Farm's motion.

In opposition, plaintiff argues that State Farm's motion is premature because discovery is not yet complete. Plaintiff claims that depositions are outstanding and State Farm's discovery responses are deficient. In addition, while plaintiff concedes there is no private right of action under Insurance Law § 2601 or Regulation 64, it nonetheless argues that these provisions are deemed incorporated into all insurance contracts, and therefore, State Farm's failure to comply with the applicable law and regulation is a breach of the insurance policy itself. Plaintiff further contends that there are issues of fact as to whether State Farm negotiated the repair estimate in good faith, as required by Regulation 64, thereby precluding summary judgment.

ANALYSIS

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate that there is no genuine dispute as to any material fact (CPLR 3212; *Alvarez v Prospect Hospital*, 68 NY2d 320, 324

[1986]). Once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). If it appears that facts essential to justify opposition to the motion "may exist but cannot then be stated," the court may deny the motion, permit disclosure to be had, and make such other order as may be just (CPLR 3212).

To recover damages for breach of contract, the plaintiff must establish the existence of a contract, plaintiff's performance pursuant to the contract, defendant's breach of its contractual obligations, and damages resulting from the breach (*Legum v Russo*, 133 AD3d 638, 640 [2d Dept 2015]). New York's Insurance Law prohibits insurers "from engaging in unfair claims settlement practices" (Insurance Law § 2601). Regulation 64, which is Part 16 of the New York State Department of Financial Services Regulations (11 NYCRR § 216) provides that when a claim is made, the insurer must commence negotiations with the insured or the insured's designated representative and make "a good faith offer of settlement, sufficient to repair the vehicle to its condition immediately prior to the loss" (11 NYCRR 216.7 [b][1]). If an agreed upon price cannot be reached after negotiations, the insurer must furnish, at the express request of either the insured or the designated representative, "the name and address of a New York State registered motor vehicle repairer, properly equipped to complete the repairs on the damaged motor vehicle (back-up shop), at a location reasonably convenient to the insured, who will repair the damaged motor vehicle at the insurer's estimated cost of repair" (11 NYCRR 216 [b][14]).

As an initial matter, contrary to plaintiff's contention, State Farm's motion is not premature. The parties exchanged discovery demands and responses months prior to the filing of this motion (NYSCEF Doc. Nos. 48-54). Plaintiff has never objected to State Farm's responses,

which included disclosure of the entire insurance claim file, or otherwise advised State Farm of any discovery deficiencies. In addition, plaintiff's suggestion that the depositions of State Farm's employees might reveal facts exclusively within State Farm's knowledge that are necessary to oppose the instant motion is mere speculation, and an insufficient basis for denying State Farm's motion (*Kimyagarov v Nixon Taxi Corp.*, 45 AD3d 736, 737 [2d Dept 2007]).

Regarding the merits of the motion, it is undisputed that Insurance Law § 2601 "serves to regulate insurers' performance of their contractual obligations rather than to create a separate duty of care" and therefore, "does not give rise to a private cause of action" (*Perlbinder v Vigilant Ins. Co.*, 190 AD3d 985 [2d Dept 2021]). However, there is an abundance of federal and state case law to support plaintiff's contention that Insurance Law § 2601 and Regulation 64 are "deemed to be a part of the insurance contract as though written into it," and therefore, a violation of the law and regulation may constitute a breach of contract (*Trizzano v Allstate Ins. Co.*, 7 AD3d 783, 785 [2d Dept 2004]; *Milligan v GEICO Gen. Ins. Co.*, 2022 WL 433289, at *2 [2d Cir, Feb. 14, 2022, No. 20-3726-CV, Irizzary, J.]; *Volino v Progressive Cas. Ins. Co.*, 2024 WL 1251185, at *5 [SD NY, Mar. 22, 2024, No. 21 Civ 6243, Schoefield, J.]; *Garnes v Hartford Ins. Co.*, 2022 WL 3576739, at *2 [ED NY, Aug. 19, 2022, No. 22-CV-3406, Kovner, J.] [finding that because the applicable insurance law regulations are "deemed to be a part of an insurance contract as though written into it, "violations of the regulations are actionable "via a breach-of-contract claim rather than through a separate cause of action"]; *cf. Greenspan v Allstate Ins. Co.*, 937 F Supp 288, 293 [SD NY 1996] [finding that "section 2601 does not preempt common-law breach of contract claims, even if the alleged breaches consist of conduct which cumulatively meets the statutory definition of an unfair claim settlement practice"]). Even several trial court level decisions involving the exact same parties to this litigation have reached the same result (*Prospect Auto Sales & Repairs, Inc. v State*

Farm Mut. Auto. Ins. Co., 2024 NY Slip Op 31775(U) [Sup Ct, Westchester County 2024]; *Prospect Auto Sales & Repairs, Inc. v State Farm Ins. Co.*, 2022 NY Misc LEXIS 48248 [Sup Ct, Westchester County 2022]; *Prospect Auto Sales & Repairs, Inc. v State Farm Ins. Co.*, 2022 NY Misc. LEXIS 48002 [Sup Ct, Westchester County 2022]). The court has considered State Farm's competing arguments and proffered case law, including *Prospect Auto Sales & Repairs, Inc., as Assignee of Janet Sukhram v State Farm Mut. Auto. Ins. Co.*, Putnam County Supreme Court, Index No. 500493/2023, and finds them unpersuasive or legally distinguishable from the case at hand.

Given this court's finding that an alleged failure to comply with applicable provisions of the insurance law can form the basis of a breach of contract claim, State Farm must establish, prima facie, that it made "a good faith offer of settlement, sufficient to repair the vehicle to its condition immediately prior to the loss" (11 NYCRR 216.7[b][1]). State Farm has met its burden by proffering, among other things, the affirmation of State Farm's Estimatics Team Manager Mark Wagner, the insurance policy, the claim file, the initial repair estimate, the supplemental payment request and approval, and a letter from State Farm to Louis dated December 22, 2023 (NYSCEF Doc. Nos. 13-17). This evidence demonstrates, prima facie, that State Farm performed under the terms of the policy and negotiated the repair costs with plaintiff in good faith, as required by both the policy and the insurance law. Under the terms of the policy, State Farm has the right to settle a claim by paying the cost to repair the covered vehicle, minus any deductible. In determining the repair cost, State Farm may choose one of the three following options: (1) a cost agreed to by State Farm and the owner of the vehicle, (2) a bid or repair estimate approved by State Farm, or (3) a repair estimate based upon or adjusted to, among other things, the "prevailing competitive price" ("PCP") (NYSCEF Doc. No. 18). The PCP is defined as "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 [State Farm]" (*id.*). As affirmed by Wagner, State Farm attempted to negotiate its proposed settlement amount with plaintiff on December 19, 2023 and again on December 21, 2023. During negotiations, State Farm explained its position that simple key scratches to the vehicle's paint did not require removal of the left-side car doors, nor did such repair work require special certification that would justify a $125 per hour labor rate. According to Wagner, State Farm's reasoning was supported by its own experience, as well as comparisons and consultations with other Audi-certified repairers and local estimatics team managers. In addition, State Farm served Louis with a letter dated December 22, 2023 advising him that good faith negotiations with plaintiff had failed and that, pursuant to Insurance Law § 2610, State Farm could only recommend another repair shop if Louis expressly requested such information and signed the attached Insurance Law Disclosure Statement, which Louis did not do. As further evidence of its good faith negotiations, State Farm attests that it entertained plaintiff's request for a $1,000 supplement to the initial repair estimate and, after a further inspection of the vehicle, State Farm increased its original estimate by $1,906.43.

In opposition, plaintiff submits various documents, some of which are inadmissible because they do not fall within the business records exception to the hearsay rule under CPLR 4518 (NYSCEF Doc. No. 36) or, as this case with the deposition transcripts, are unsigned and lack any evidence of compliance with CPLR 3116 (NYSCEF Doc. Nos. 37-39). With respect to the proffered evidence that is admissible, including the affidavits of Louis and plaintiff's employee Junior Martinez (NYSCEF Doc. Nos. 34, 32), plaintiff has succeeded in raising a material issue of fact. According to Martinez, State Farm did not engage in good faith negotiations with plaintiff because they ignored the vehicle manufacturer requirements that set forth the extensive repair

procedures necessary to return the vehicle to its pre-damaged condition, refused to negotiate the labor rate, and artificially suppressed their PCP rates or failed to use the PCP rates that apply to aluminum body vehicles such as the Audi Q7 at issue here. Martinez also attests that State Farm refused to provide plaintiff with the name of an alternative repair shop who purportedly agreed to perform the repairs in the manner and at a cost determined by State Farm, despite plaintiff's request for that information in its role as assignee of Ezechias Louis (NYSCEF Doc. No. 34). Based on this evidence, the trier of fact could find that State Farm breached the insurance policy by failing to negotiate the repair estimate in good faith as required by the pertinent insurance law and regulation.

The court has considered the parties' remaining contentions and finds them to be without merit or rendered moot by this decision and order.

Accordingly, it is hereby

ORDERED that the motion by State Farm Mutual Automobile Insurance Company seeking summary judgment dismissing the complaint is denied; and it is further

ORDERED that the parties are to appear for compliance conference on **May 20, 2025 at 10:00a.m. in Courtroom 1803**.

This constitutes the decision and order of the court.

Dated: White Plains, New York
April 23, 2025

HON. ELENA GOLDBERG-VELAZQUEZ, J.S.C.

To: All parties via NYSCEF