



Philadelphia Indemnity Insurance Company v. Ward

2020 | Cited 0 times | D. Maryland | June 3, 2020

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND CHAMBERS OF STEPHANIE A. GALLAGHER UNITED STATES
DISTRICT JUDGE

101 WEST LOMBARD STREET

BALTIMORE, MARYLAND 21201

(410) 962-7780 Fax (410) 962-1812 June 3, 2020 Maxine Ward 3601 Clarks Lane Suite 330 Baltimore,
MD 21215 LETTER OPINION RE: Philadelphia Indemnity Insurance Co. v. Ward,

Case No. SAG-20-0868 Dear Ms. Ward and Counsel:

Plaintiff filed this lawsuit against Maxine Ward, seeking a condominium building. ECF 1. Ms. Ward, who appears pro se, has filed a Motion to Dismiss. The Court is mindful of its duty to liberally construe the filings of pro se litigants. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). - convene such hearings is presently constrained as a result of the COVID-19 pandemic, and no hearing is necessary to resolve this matter. See Loc. R. 105.6 (D. Md. 2018). For the reasons stated herein,

A defendant, like Ms. Ward, is permitted to test the legal sufficiency of a complaint by way of a motion to dismiss. See, e.g., *In re Birmingham*, 846 F.3d 88, 92 (4th Cir. 2017); *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165-66 (4th Cir. 2016). A Rule 12(b)(6) motion constitutes an assertion by a defendant that, even if the facts alleged by a plaintiff are true, the complaint states a claim for relief is assessed by reference to the pleading requirements of Rule

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007).

In its Complaint, PIIC alleges that it provided property insurance to the Imperial Condominium Inc., for its condominium property on Clarks Lane in Baltimore, Maryland. ECF 1, ¶ 2. Ms. Ward was a resident at that condominium property. Id. ¶ 7. On February 20, 2019, a fire at the property caused extensive damage to multiple units. Id. ¶¶ 8, 10. Imperial claimed coverage under its policy for the damage sustained, and PIIC paid the claim and related expenses, in an amount exceeding \$75,000. Id. ¶¶ 11-12. PIIC alleges that,



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careless use, handling and/or disposal of smoking materials. Id. ¶ 9. Accordingly, PIIC seeks to recover from Ms. Ward, in subrogation, the amounts it paid to Imperial under its insurance policy, claiming that Ms. Ward was negligent in causing the fire. Id. ¶¶ 12-21.

Subrogation, essentially, is the insured and to recover for the wrongful acts of a third party against the insured where *Lexington Ins. Co. v. Balt. Gas & Elec. Co.*, 979 F. Supp. 360, 362 (D. Md. 1997). In a subrogation action, who rests on subrogation stands in the place of one whose claim he has paid, as if the payment *United States v. Munsey Tr. Co.*, 332 U.S. 234, 242 (1947).

. First, Ms. Ward asserts in this subrogation action, PIIC must adhere to the dispute resolution procedure described in the Maryland Condominium Act, section 11-113(b). ECF 6 at 1-2. Second, Ms. Ward argues Imperial, which is located in Maryland, diversity jurisdiction is improper. 1

Id. Each argument will be addressed in turn.

, section 11-113(b), is useful. See Md. Code Ann., Real Prop. § 11-113(b) (West 2020). That provision is Procedures required before imposition of fine or infringement of rights, infringe upon any other rights of a unit owner or ot without following a specific procedure, involving a cease and desist demand, and a hearing

before the board, which the board must provide written notice of. Id. The provision has no ose a fine, suspend [condominium] express provisions of section 11-113(b). Thus, to the extent that Ms. Ward seeks dismissal based haust [administrative] remedies that section 11-113(b) may require, ECF 11 at 1-2,

finds no more success. She contends, pursuant to Federal Rule of Civil Procedure 12(b)(1), that this Court lacks subject matter jurisdiction to adjudicate PIIC PIIC is brought in federal court, instead of Maryland state court, on 1 A handwritten document attached to the Motion to Dismiss, ECF 6-1, provided some information about what appeared to have been an unrelated condominium-related dispute, along with some information about certain proceedings apparently relating to the fire. The relevance of this document to the existing motion is not clear. To the extent Ms. Ward intends to raise an affirmative claim for relief against Imperial that claim would need to go forward in a separate proceeding, because Imperial is not a party to this case.

the basis of or value of \$75,000, exclusive of interest and costs, different states. 28 U.S.C. § 1332(a)(1) (2018). The burden rests with PIIC *Lovern v. Edwards*,

190 F.3d 648, 654 (4th Cir. 1999). Ms. Ward contends that because PIIC stands in the shoes of Imperial as its subrogee, PIIC should be held to thereby destroying diversity jurisdiction. ECF 6 governing law. In the typical insurance subrogation case where an insured has been fully indemnified for his loss, the federal courts have generally held that the insurer is the real party in interest and



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must sue in its own name. *Jefferson v. Ametek, Inc.*, 86 F.R.D. 425, 427 (D. Md. 1980) (citing *United States v. Aetna Cas. & Surety Co.*, 338 U.S. 366, 380-81 (1949); *Va. Elec. & Power Co. v. Carolina Peanut Co.*, 186 F.2d 816, 820 (4th Cir. 1951)). Where, as here, the insured (Imperial) is not a party to the case, and has already citizenship is not relevant to an assessment of diversity jurisdiction. See *Va. Elec. & Power Co. v. Westinghouse Elec. Corp.*, 485 F.2d 78, 83 & n.8 (4th Cir. 1973). The only party entitled to any compensation as a result of e is PIIC. A party in interest, governs an assessment of diversity. Because PIIC is a citizen of Pennsylvania, and Ms. Ward is a citizen of Maryland, ECF 1, ¶¶ 1, 4, and the amount in controversy exceeds \$75,000, id. ¶ 12, diversity jurisdiction exists. Finally, i Section 11-113(b). ECF 7. For the reasons described above, PIIC, as a subrogee in a case subject to diversity jurisdiction, is permitted to bring a federal lawsuit to address its claims against Ms. Ward. N would allow PIIC to pursue the reimbursement it believes it is owed, within the context of a proceeding designed to adjudicate alleged rules violations involving a condominium board and an occupant. Further problematic, this Court has no authority to remand any case that is originally filed in federal court to any state court; this Court can only remand to state court cases that were originally filed in state court, and later removed to federal court. See 28 U.S.C. § 1447; *Payne v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 75 F. App'x 903, 904-05 (4th Cir. 2003).

For the reasons set forth herein, Motion to Dismiss, ECF 6, and her Motion to Remand, ECF 7, will be DENIED. Ms. Ward will have twenty-one days from the date of this Opinion A separate order follows.

Sincerely yours, /s/ Stephanie A. Gallagher United States District Judge

