Mullowney v. USAA Casualty Insurance Company

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND _____ JAMES MULLOWNEY, JR.) Plaintiff,) v.) C.A. No. 22-404 WES

USAA CASUALTY INSURANCE) COMPANY,) Defendant.) _____)

MEMORANDUM AND ORDER WILLIAM E. SMITH, District Judge. This case involves a claim for insurance coverage made

USAA Casualty Insurance Company to Plaintiff James Mullowney. Plaintiff alleges that a water loss occurred at his insured property in Newport, Rhode Island, on July 5, 2021, that resulted in extensive damage. See Am. Compl. ¶¶ 9, 31, ECF No. 9. Before the Court is Motion to Dismiss , ECF No. 8, which challenges two counts of the Complaint, ECF No. 1, and one corresponding count of the Amended Complaint, ECF No. 9. For the reasons that follow, Motion to Dismiss is GRANTED insofar as (Count II of the Complaint and Count V of the Amended Complaint) and DENIED as MOOT insofar as Trade Practices and Consumer Protection Act (Count V of the Complaint). I. Background

Plaintiff is the owner of a property located at 38 Pelham Street in Newport, Rhode Island. Am. Compl. ¶ 5. Defendant issued , to August 9, 2021, to Plaintiff, covering the property. Id. ¶ 6. A water Id. ¶ 9. That same day, he notified Defendant of the loss. Id. ¶ 10. Plaintiff alleges that Defendant failed to conduct an adequate investigation into the loss and failed to make payments as required by the terms of the insurance policy, leaving him unable to promptly repair and rent the property. Id. ¶¶ 12-19. II. Discussion

a. Legal Standard To survive a motion to dismiss, a complaint must set forth

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The Court need not find the claim to be probable but must find the claim to be more than merely possible. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) Alston v.

Spiegel, 988 F.3d 564, 571 (1st Cir. 2021) (citing SEC v. Tambone, 597 F.3d 436, 442 (1st Cir. 2010)). When reviewing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court must assume the truth of well-pleaded facts and give the plaintiff the benefit of all

reasonable inferences. Cook v. Gates, 528 F.3d 42, 48 (1st Cir. 2008).

The parties agree that Rhode Island law applies because the policy at issue is for Rhode Island property and the conduct has the most significant relationship with Rhode Island. See Webster , 268 A.3d 556, 560 (R.I. 2022); 4 n.3; 3, ECF No. 10 (citing Rhode Island Supreme Court cases).

b. Operative Complaint As a preliminary matter, Plaintiff argues that his filing the

2. arty may amend its pleading once as a matter of course within . . . if the pleading is one to which a responsive pleading is

required. Fed. R. Civ. P. 15(a)(1)(B). Here, the Complaint was a pleading to which a responsive pleading was required, and Defendant filed a motion to dismiss under Rule 12(b)(6) on January 10, 2023. See generally On January 17, 2023, within twenty-one days of the filing of the motion to dismiss, Plaintiff filed his Amended Complaint. See generally Am. Compl. Therefore, the Amended Complaint was filed as of Connectu LLC v. Zuckerberg, 522 F.3d 82, 95 (1st Cir. 2008) (amended as of right . . . became

However, even where an amended pleading has superseded the

dismiss as moot or consider the merits of the motion, analyzing Pettaway v. National Recovery Solutions, LLC, 955 F.3d 299, 303 (2d Cir. 2020).

the changes to that claim made in the Amended Complaint, the Court elects to

economy [and] obviat Id. 1

c. Negligence Claim Plaintiff alleges that Defendant was negligent because it accurately adjust and pay the claim related to the Loss, that it

Am. Compl. ¶¶ 65- 70. 1

original Complaint asserted a cause of action under the Unfair Trade Practices and Consumer Protection Act. See Compl. ¶¶ 65-69. Plaintiff removed that count from the Amended Complaint. See generally Am. Compl. Therefore, to Dismiss, insofar as it concerns that claim, is DENIED as MOOT. Mot. Dismiss 2. Because the Court concludes on the basis that Defendant did not owe a duty to Plaintiff, it is unnecessary to consider the applicability of the economic loss doctrine.

be determined by the court . . . [and] [i]n the absence of a legal Ouch v. Khea, 963 A.2d 630, 632 33 (R.I. 2009); see Benaski v. Weinberg, [A] defendant cannot be liable under a negligence theory unless the defendant owes a duty to the . Plaintiff asserts that Bibeault v. Hanover Insurance Co., 417 A.2d 313,

319 (R.I. 1980) establishes that Defendant owed a negligence duty to Plaintiff here. See The Bibeault court concluded that business in Rhode Island is obligated to act in good faith in its duty will give rise to an independent claim in tort in which . . .

there has been a specific finding that the insurer has in bad faith Bibeault, 417 A.3d at 319. However, , and requires a showing by a reasonable basis for denying disregard of the lack of reasonable basis for denying the claim. Id. (quoting Anderson v. Continental Ins. Co., 85 Wis. 2d 675, 691, 693 (1978)). The case makes no mention of a negligence claim, and, although the case discusses a duty that gives rise to a claim of negligence, but rather a duty of good faith in contract dealings. In Skaling v. Aetna Insurance Co., the Rhode Island Supreme Court further clarified the bad faith tort articulated in Bibeault failing to settle a claim . . . A.2d 997, 1006-07 (R.I. 2002).

Plaintiff also points to Forte Brothers, Incorporated v. National Amusements, Incorporated, 525 A.2d 1301, 1030 (R.I. exist between parties that are in a contractual relationship with

on[e] a In that case, the Rhode Island Supreme Court concluded that a] supervising architect, in the performance of its contract with the owner, is required to exercise the ability, skill and care customarily exercised by architects in similar circumstances contractors who share an economic relationship and community of

reliance by the contractor on the contractual performance of the architect when the architect knows, or should know, of that Forte Bros., 525 A.2d at 1303. The court, however, has not extended this conclusion beyond the construction context; Plaintiff points to no cases that establish a similar duty in the insurance context.

negligence theory unless the defendant owes a duty to the Benaski, 899 A.2d at 502 (quoting Lucier v. Impact Recreation, Ltd., 864 A.2d 635, 638 (R.I. 2005)), and Plaintiff has failed to establish the existence of that duty here, GRANTED insofar as it concerns

III. Conclusion

For the foregoing reasons Dismiss, ECF No. 8, is GRANTED as to Count V of the Amended Complaint, ECF No. 9, and DENIED as MOOT as to Count V of the Complaint, ECF No. 1. IT IS SO ORDERED.

William E. Smith District Judge Date: April 26, 2023