



Phillips v. State Farm Mutual Automobile Insurance Co.

2015 | Cited 0 times | M.D. Pennsylvania | May 29, 2015

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA CALVIN PHILLIPS, : Civil Action No. 4:14-CV-1919 :: Plaintiff, : (Judge Brann) :
v. :: STATE FARM MUTUAL : AUTOMOBILE INSURANCE CO., :::

Defendants. :

MEMORANDUM

May 29, 2015 Pending before this Court is Defendant State Farm Mutual Automobile amended complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule recovery on several bases for the failure of Defendant to pay what he alleges is the entire amount of underinsured motorist benefits due under his insurance policy. He asserts a claim for \$225,000 in additional underinsured motorist benefits (Count I), a claim for statutory bad faith (Count II), and a claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection

The matter has been fully briefed and is now ripe for disposition. In

with leave to amend in accordance with the following reasoning. I. BACKGROUND Plaintiff alleges that on October 18, 2013, he was injured in an automobile accident while riding his newly leased Harley Davidson motorcycle. The accident

turning left into a parking lot. Unfortunately, Ms. Miller did not have sufficient insurance coverage to compensate Plaintiff for the losses he sustained. Consequently, he made a demand for UIM coverage from his own insurer, Defendant, under two different insurance policies. 1 Desp policy was \$300,000, Defendant initially offered to pay only \$45,000 on each

policy. After several months of discussions with Plaintiff, Defendant agreed to reform one of the policies and issued a check for \$300,000 on that policy; however, Defendant refused to reform the other policy and issued only \$45,000 to Plaintiff under that policy. The instant lawsuit ensued.

1 the history of these policies is largely irrelevant to the issue currently before the Court, the Court will not repeat those facts here. II. LEGAL STANDARD When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court must view all allegations stated in the complaint as true and construe all inferences in the light most favorable to plaintiff. See *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984); see also *Kost v. Kozakiewicz*, 1 F.3d



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the [factual] allegations contained in the complaint is inapplicable to legal Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citations omitted). In ruling on such a motion, the court primarily considers the allegations of the pleading, but is not required to consider legal conclusions alleged in the complaint. Kostac Iqbal, 556 U.S. at 678. At the motion to dismiss stage, the court considers whether plaintiff is entitled to offer evidence to support the allegations in the complaint. See Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000). A complaint should only be dismissed if, accepting as true all of the allegations in the amended complaint, plaintiff has not pled enough facts to state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 562 (2007). It is a context-specific task that requires the reviewing court to Iqbal, 556 U.S. at 663-664. courts require notice pleading, as opposed to the heightened standard of fact

Hellmann v. Kercher, No. 07-1373, 2008 WL 1969311 at * 3 (W.D. Pa. May 5, 2008) (Lancaster, J.). Federal Rule of Civil Procedure 8 "requires only a

which it rests." Twombly, 550 U.S. at 554 (quoting Conley v. Gibson, 355 U.S. 41,

47 (1957)). However, even under this lower notice pleading standard, a plaintiff must do more than recite the elements of a cause of action, and then make a blanket assertion of an entitlement to relief. See Hellmann, 2008 WL 1969311 at *3. Instead, a plaintiff must make a factual showing of his entitlement to relief by alleging sufficient facts that, when taken as true, suggest the required elements of a particular legal theory. See Twombly -pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - - - Iqbal, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)).

The failure-to-state-a- Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). A court may dismiss a claim under Rule 12(b)(6) where Id. at 326. If it is beyond a doubt that the non-moving party can prove no set of facts in support of its allegations, then a it is based on an outlandish Id. at 327. III.

DISCUSSION

Under Count III for violations of the UTPCPL, Plaintiff alleges that or \$300,000 underwriting documents, unreasonably delaying payment of the full amount of the

the

Defendant argues that Plaintiff has failed to set forth a valid claim under the UTPCPL because Plaintiff has failed to allege deceptive acts and justifiable reliance which are necessary elements of a UTPCPL claim. 2

Plaintiff responds he has sufficiently pled enough facts relating to the elements of deceptive conduct and justifiable reliance. 2



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Defendant makes another argument that Plaintiff is alleging only nonfeasance on behalf of Defendant, which is not actionable under the UTPCPL. Because the Court will dismiss this count on other grounds, it will not address this argument in the instant memorandum. in. 73 P.S. § 201-2(4)(i)-(xx). There is, further, a catch-all provision that prohibits

-2(4)(xxi). It is under this catch-all provision that Plaintiff brings his UTPCPL claim against Defendant. *Burke v. Yingling*, 666 A.2d 288, 291

(Pa.Super. 1995). Accordingly, the act is to be construed liberally so as to effectuate that purpose. See *Wilson v. Parisi*, 549 F.Supp.2d 637, 666 (M.D.Pa. 2008) (Vanaskie, J.); see also *Keller v. Volkswagen of America, Inc.*, 733 A.3d 642, 646 (Pa.Super. 1999). A 1996 amendment to the UTPCPL expanded the ambit of the catch-all provision to include not only fraudulent conduct, but also deceptive conduct. 73 P.S. § 201-2(4)(xxi). The United States Court of Appeals for the Third Circuit has interpreted this expansion to suggest that a plaintiff can prove a violation of the catch-all provision without proving all of the elements of common law fraud; rather, a plaintiff need only prove deceptive conduct. See *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 498 (3d Cir. 2013); see also *Fazio v. Guardian Life Ins. Co.*, 62 A.3d 396, 406 (Pa.Super. 2012). To that end, arising from a false representation made knowingly or recklessly with the intent *Wilson*, 549 F.Supp.2d at 666 (citing *In re Patterson*, 263 B.R. 82, 94 (E.D.Pa. 2001)). In addition to deceptive conduct, a UTPCPL plaintiff must also prove justifiable reliance on he justifiably bought the product or service in the first instance, or that he engaged

in some other detrimental activity because of the deceptive conduct. See *Hunt v. U.S. Tobacco Co.*, 538 F.3d 217, 222 (3d Cir. 2008); see also *Weinberg v. Sun Co.*, 777 A.2d 442, 445 (Pa. 2001). Proving justifiable reliance requires that a plaintiff Id. at 222. Finally, a plaintiff must also prove that he suffered harm as a

result of that reliance. See *Johnson v. MetLife Bank, N.A.*, 883 F.Supp.2d 542, 548 (E.D.Pa. 2012) (quoting *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 438 (Pa. 2004)).

1. Allegations that Defendant improperly investigated his claim Defendant improperly and inadequately investigated his claim for \$300,000 by

ts own underwriting Plaintiff does not elaborate on this alleged conduct, merely stating in the next

con Such allegations do not constitute deceptive conduct under the UTPCPL. Even assuming that Defendant did not claim, Plaintiff has alleged no facts to the effect that this allegedly improper conduct was intentionally done to give a false impression (or what that false impression would be), nor has he alleged a false representation made knowingly or recklessly. Moreover, his blanket assertion that such conduct constitutes deceptive conduct under the UTPCPL is an unsupported legal conclusion which is insufficient to overcome the dearth of facts in his pleading.



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Additionally, Plaintiff has failed to adequately plead an injury stemming from his justifi He appears to allege that lawsuit and therefore his injury is the monetary costs of this litigation. However,

of counsel [does] Grimes v. Enterprise Leasing Co. of Philadelphia, LLC, 105 A.3d 1188, 1193 (Pa. 2014). In formulating this rule of law, the Pennsylvania Supreme Court explicitly relied upon the fact that the UTPCPL separately provides in another section see 73 P.S. § 201- that the General Assembly deemed ascertainable

Id. Moreover, that Id. at 1194. dismissed without prejudice with leave to amend to allege particularized facts demonstrating that in improperly investigating his claim was done intentionally to give Plaintiff a false impression. Further, Plaintiff also must allege an ascertainable loss that is distinct from the initiation of the instant litigation and its associated costs.

2. Allegations that Defendant misrepresented the terms of coverage under his policy Plaintiff next alleges as a basis for his UTPCPL claim that Defendant misrepresented the terms of coverage under his policy. The Court infers from misrepresentation knowingly and recklessly, with the intent that Plaintiff rely upon it. To the extent that this is the case, Plaintiff has adequately alleged deceptive conduct sufficient to survive a motion to dismiss. Similarly, at this early stage in the litigation Plaintiff has adequately alleged that he justifiably relied upon this misrepresentation. However, this Court can discern no allegation of injury other than the one already discussed in the preceding section, that is, that he was engage in unnecessary negotiations through legal counsel and to engage in the instant Again, this is an insufficient allegation of harm under the UTPCPL. See Grimes, 105 A.3d at 1193. Consequently, this is dismissed without prejudice also with leave to amend to allege some harm other than the initiation of the instant litigation and its associated costs. IV.

CONCLUSION In accordance with the foregoing analysis, is granted. Co with leave to amend in accordance with the .

BY THE COURT:

/s Matthew W. Brann Matthew W. Brann United States District Judge

