Stricker et al v. Auto-Owners Insurance Company et al

2022 | Cited 0 times | W.D. Missouri | October 27, 2022

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MISSOURI

CENTRAL DIVISION DR. WILLIAM E. STRICKER AND PAMELA STRICKER,

Plaintiffs, v. Case No. 2:22-cv-4074-NKL AUTO-OWNERS INSURANCE COMPANY,

Defendant.

ORDER Defendant Auto-Owners Insurance Company has moved to dismiss as untimely Count II, m. Doc. 9. Auto-Owners contends a vexatious refusal to pay claim is penal and therefore subject to a three-year statute of limitation under Missouri law. Doc. 10 (Suggestions in Support of Mot. Dismiss Count II). As explained in detail below, even assuming a three-year statute of limitation applies, as Auto-Owners suggests, it is not clear from efusal to pay claim is time barred. Therefore Auto- II is DENIED.

I. BACKGROUND Plaintiffs Pamela and William Stricker maintained - Owners covering accidental physical loss to their home and its contents. Doc. 1-2 (Complaint), at ¶¶ 11 14. While Plaintiffs were out of town in April 2016, a water line connected to their washing machine broke loose, resulting in pressurized water flowing into the house for several days. The first floor and basement of home, and all personal belongings therein, suffered water damage. -2, at ¶ 19. Plaintiffs claim that losses were covered by their policy with Auto-Owners.

Auto-Owners partially paid claims. However, Plaintiffs argued they were and still are entitled to additional money under their insurance policy. Plaintiffs claim Auto-Owners underpaid claims for the: (1) structural damage caused by flooding; (2) personal property lost or and (4) vandalism . On March 22, 2019, Auto-Owners informed Plaintiffs that, without more information, Auto- . Id. at ¶ 51. The letter informed Plaintiffs that Auto-Owne investigation was complete, but it invited them to submit additional information for review. See Doc. 16-5. From the Complaint, it appears Plaintiffs provided additional information in response to this letter, and negotiations continued through at least July 20, 2021. See Id. at ¶¶ 34, 53, 66.

II. LEGAL STANDARD

the complaint and draw all reasonable inferences in favor of the nonmoving party[.] McDonough

v. Anoka Cty., 799 F.3d 931, 945 (8th Cir. 2015).

affirmative limitations defense clearly appears on the face of the com Sanders v. Dept. of

Army, 981 F.2d 990, 991 (8th Cir. 1992); see also Horn v. Burns & Roe, 536 F.2d 251, 256 n.4 has run, an action is properly subject to dismissal for failure to state a claim upon which relief may

Columbia Petroleum, Inc. v. Waddell, 680 F. Supp. 1348, 1349 (W.D. Mo. 1987).

The Court generally may not consider matters outside the pleadings when deciding a Rule 12 ocuments necessarily embraced by the complaint are not matters Gorog v. Best Buy Co., 760 F.3d 787, 791 (8th Cir. 2014) (quoting Ashanti v. City of Golden Valley, 666 F.3d 1148, 1151 (8th Cir. 2012)). For example, when, as here, the claims relate to a written contract that is part of the record in the case, [the Court] consider[s] the M.M. Silta, Inc. v. Cleveland Cliffs, Inc., 616 F.3d 872, 876 (8th Cir. 2010). The Court may also consider exhibits attached to the pleadings as well as matters of public record. Illig v. Union Elec. Co., 652 F.3d 971, 976 (8th Cir. 2011). Documents referenced in the complaint are also properly considered McChesney v. Petersen, 275 F. Supp. 3d 1123, n.1 1132 (D. Neb. 2016), 900 F.3d 578 (8th Cir. 2018); Downey v. Coal. Against Rape & Abuse, Inc., 143 F. Supp. 2d 423, n. 5 in the amended complaint, the authenticity of which is not in dispute, without thereby converting

this to a summary judgment motion, as such documents are not matters outside the , 142 Fed. Appx. 645 (3d Cir. 2005). That said, exhibits not referenced in the pleadings

generally are considered outside the pleadings. Mill Bridge V, Inc. v. Benton, 2009 WL 4639641, at n.17 *24 (E.D. Pa. Dec. 3, 2009). 1

1 Plaintiffs submitted various exhibits along with their opposition to Auto- Dismiss, including letters between Auto-Owners and Plaintiffs. See Doc. 16-5 (3/22/19 Ltr.); Doc. 16-6 (7/1/19 Ltr.); Doc. 16-7 (7/20/2021 Ltr.); Doc. 16-2 (9/19/21

Ltr.). Because the 3/22/2019 Letter (Doc. 16-5), 7/20/2021 Letter (Doc. 16-7), and 9/19/2021 Letter (Doc. 16- official correspondence between Plaintiffs and Auto-Owners, the authenticity of which are not disputed, the Court will consider them here without converting the Motion to Dismiss into one for summary judgment. However, the 7/1/19 Letter (Doc. 16-6) is not referenced in the Complaint. Nor is it clear how much Auto- beyond these letters. Accordingly, the Court will not consider the 7/1/2019 letter, and reiterates that Auto-

III. DISCUSSION

Auto- refusal to pay claim is untimely. To determine whether that is true, the Court must be able to

determine both what statute of limitation applies and when a cause of action accrues. The Parties agree that Missouri courts have not yet decided which statute of limitations period applies to a vexatious refusal to pay claim. Auto-Owners contends that because the vexatious refusal to pay -year limitation provided by R.S.Mo. § 516.130 applies. Doc. 10 (Suggestions in Support of Mot. Dismiss Count II), at 4. Plaintiffs argue instead that either the traditional five- or ten-year limitation period that applies to insurance contract actions should apply. See Doc. 16 , at 3; see also R.S.Mo. § 516.120; R.S.Mo.§ 516.110. However, even assuming for the purposes of this Motion that a three-year statute of limitati , as argued by Auto- Owners, it is neither clear nor obvious on the face of the Complaint and the documents necessarily embraced by it vexatious refusal to pay claim was filed more than three years after it accrued.

Under Missouri law, the De Paul Hosp. Sch. of Nursing, Inc. v. Sw. Bell Tel. Co., 539 S.W.2d

542, 546 (Mo. Ct. App. 1976). A the technical breach of contract or duty occurs, but when the damage resulting therefrom is

sustained and capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damages may be recovered, and full and complete relief obtained. § 516.100; see also Bldg. Erection Services, Inc. v. JLG, Inc., 376 F.3d 800, 802 (8th Cir. 2004).

sustained and capable of ascertainment when the fact of damage can be discovered Rajala v. Donnelly Meiners Jordan Kline, P.C., 193 F.3d 925, 928 (8th Cir. 1999) (internal quotations and citations omitted). e principles have routinely held that insurance-dispute claims accrue 2

when the plaintiff receives notice that a claim DeCoursey, 822 F.3d at 474.

First, Auto-Owners argues that the accrual test in § 516.100 does not apply to statutory vexatious refusal to pay claim because it applies only to contract claims. Doc. 31, at 5 6. While §516.100 certainly embraces contract claims, it applies far more broadly. Indeed, by its

very terms, - Owners claims that the three- vexatious refusal to pay claim. § 516.130 falls within the statutory range to which § 516.100

applies. See generally De Paul Hosp. Sch. of Nursing, 539 S.W.2d at 546 47 (deciding that the court need not decide whether a statute was penal because, using the test provided by § 516.100 to determine when the cause of action a limitations). 3

Accordingly, the Court rejects this argument. Next, Auto-Owners argues that the denied on March 22, 2019, and therefore the same day. The Court disagrees. By March 22, 2019, Auto- in part. The

Complaint suggests Plaintiffs still believed that Auto-Owners owed more and

provided additional documentation accordingly. While Plaintiffs in their Complaint refer to the

2 While DeCoursey does not discuss a vexatious refusal to play claim, there is no reason to believe that such a claim, which is largely based on, if not entirely derivative from, an underlying contractual dispute, would accrue any differently than its contractual counterpart. Auto-Owners has certainly not explained why this would be true. Accordingly, the Court relies on DeCoursey to claim accrues, even if such a claim is ultimately subject a different statute of limitations. 3 Auto-Owners does not identify a different test the Court should use vexatious refusal to pay claim accrued. March 22 letter as a denial letter, that letter invited Plaintiffs to submit more information to further support their claims for additional payments. See Doc. 16- rther payment can be -5, at 4 (However, if there is any additional information you believe to be relevant to the question of . Further, the Complaint suggests that Plaintiffs provided Auto-Owners additional information in response to this letter, and the Parties continued exchanging information and negotiating until Plaintiffs sent their final demand letter on July 20, 2021. Doc. 1-2, at ¶¶ 34, 53, 66; see also Doc. 16-7 (final demand letter). Indeed, the thirty-day deadline in Plaintiffs demand letter was later extended at Auto-Owners request. Id. at ¶ 34. Accordingly, the Complaint does not clearly show on its face that on March 22, 2019, the Plaintiffs knew or could ascertain what their final damages would be.

Put simply, even assuming a three-year statute of limitation applies, it is not clear that claim would be barred by it. This is because the Complaint and the m claim accrued. At best, from the Complaint, the accrual date vexatious refusal to pay

claim is ambiguous. Accordingly, even if a three-year statute of limitation applies, Auto-Owners has not shown that dismissal is appropriate at this stage, and the Court therefore DENIES Auto- See Harris v. Mortgage Professionals, Inc., 4:12-CV-01368-BCW, 2013 WL 12182255, at *3 (W.D. Mo. Aug. 30, 2013) (denying Rule 12(b)(6) motion because it was unclear

IV. CONCLUSION

For the reasons stated above, Auto- Motion to Dismiss Count II, Doc. 9, is DENIED. s/ Nanette K. Laughrey NANETTE K. LAUGHREY United States District Judge

Dated: 10/27/2022 Jefferson City, Missouri