



Vogt v. State Farm Life Insurance Company

2017 | Cited 0 times | W.D. Missouri | April 26, 2017

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MISSOURI

CENTRAL DIVISION MICHAEL VOGT,) on behalf of himself and all others) similarly situated)

Plaintiff,) v.) No. 2:16-cv-04170-NKL STATE FARM LIFE) INSURANCE COMPANY) Defendant.)

ORDER

conversion claim (Count III), Doc. 52. [Doc. 56]. For the following reasons, s motion is is conversion claim is vacated.

I. Background

Plaintiff Michael Vogt filed this class action for claims arising out of his life insurance policy with Defendant State Farm Life Insurance Company. Under this policy, State Farm maintains an interest-bearing account in trust for the insured, and this , which is owned by the insured, grows over time. The policy authorizes State Farm to take a monthly deduction from this interest-bearing account, which is to be calculated based on particular factors listed in the policy. However, Vogt alleges that State Farm uses additional, undisclosed factors in its rate calculations, resulting in higher monthly charges than if State Farm relied only on the factors listed in the policy. Vogt brought claims for declaratory relief, conversion, and breach of alleged overcharges to his account. On February 3, 2017, the Court granted in part economic loss

doctrine. [Doc. 56]. Vogt now moves this Court under Rule 59(e) or 60(b) to reconsider this dismissal, which he contends was a manifest error of law. Specifically, Vogt argues that this Court overstated the reach of the economic loss doctrine in Missouri, which he argues has never been applied to a claim like his.

II. Discussion A district court has broad discretion in determining whether to grant Rule 59(e) and Rule 60(b) motions. In *re Levaquin Products Liab. Litig.*, 739 F.3d 401, 404 (8th Cir. 2014), and *Innovative Home Health Care, Inc. v. P.T. O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998). correct manifest errors of l Arnold v. Sec.



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Servs., Inc., 627 F.3d 716, 721 (8th Cir. 2010).

him to show that to possess it; (2) the defendant took possession of the property with the intent to exercise some control over it; and (3) the defendant thereby Hunt v. Estate of Hunt, 348 S.W.3d 103, 114 (Mo. Ct. App. 2011). For his conversion claim, Vogt alleges that State Farm deducted unauthorized amounts each month from his account; that he placed money in his account in State of the policy; and that State Farm misappropriated his money by diverting it for its own use contrary to the policy.

A. The Economic Loss Doctrine In its motion to dismiss, State Farm argued that claim was barred by the economic loss doctrineDubinsky v. Mermart, LLC, 595 F.3d 812,

819 (8th Cir. 2010). Vogt responded by contending that the doctrine did not apply because he [to the converted funds], independent of [hi]s rights under the contract. [Doc. 22, p. 19 of 22]. After assessing briefing on the economic loss doctrine, the Court ultimately concluded that the doctrine did bar s conversion claim because it [wa]s d] rise or fall based on the Cour interpretation of the policy contract [Doc. 52, p. 10 (Order on Motion to Dismiss)]. Now, however, Vogt submits extensive briefing in support of reconsideration, within which he s inapplicability, as well as provides the history and policy rationales behind this doctrine in Missouri. Having reconsidered its decision in light of these new authorities and substantial briefing on the issue, the Court

does not apply to . builders of homes, or instances where a plaintiff sought to hold a manufacturer or distributor of a

product liable in tort, as opposed to a contract action from which Autry Morlan Chevrolet Cadillac, Inc. v. RJF Agencies, Inc., 332 S.W.3d 184, 194 (Mo. Ct. App. 2010). The doctrine was derived from negligence and strict-liability cases and was created to preserve the distinction between tort claims sounding in warranty. See Crowder v. Vandendeale, 564 S.W. liability imposed for mere deterioration or loss of bargain resulting from latent structural defects is contractual. Autry Morlan Chevrolet Cadillac, Inc. v. RJF Agencies, Inc. thread running through these cases is the effort to impose tort liability on the builder of a home, or to recover in tort for the failure o see also Self v. Equilon Enterprises, LLC The Missouri Supreme Court adopted the doctrine to preserve the distinction between tort and contract where a See Crowder deterioration or loss of bargain is claimed, the concern is with a failure to meet some standard of

quality . . . [and] [i]n the absence of some express agreement to the contrary, the standard of quality will be presumed to be that of the implied warranty term of reasonable fitness To be sure, Khulusi v. Sw. Bell Yellow Pages, Inc. 916 S.W.2d 227, 230 (Mo. Ct. App. 1995) (citing American Mortg. Inv. Co. v. Hardin-Stockton Corp, 671 S.W.2d 283, 293 (Mo. Ct. App. 1984)). This is because [t]he act, not the breach gives rise to tort Id. Therefore, if the act done independently of the contract would result in a tort, and is not dependent on the elements of the contract claim, a tort claim may be asserted



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alongside a claim for breach of contract. See *id.* Accordingly, Missouri law is clear that a single act can constitute both a breach of contract and a tort without the tort being barred by the economic loss doctrine. See, e.g., *Autry*, 332 S.W.3d at 193 (T omission which breaches a contract may also be a negligent act which would give rise to a he independent duty not to appropriate contract with State Farm. See, e.g., *Cook v. John Hancock Life Ins. Co.*, 2015 WL 178108 (W.D.

common law duty owed by all, and would exist even in the absence of a contract between the In other words, still result in the tortious claim of conversion

independently s alleged may constitute both a breach of that independent . See *Davidson v. Hess*, 673 S.W.2d 111, 112-13 (Mo. Ct. App. 1984) Put

another way, a

, and therefore, both claims may proceed. T have indeed at times overstated the scope of the economic loss doctrine by stating it as an absolute rule (and therefore without exceptions) or by In re Syngenta AG MIR 162 Corn Litig., 131 F. Supp. 3d 1177, 1195 (D. Kan. 2015). Although the Court originally reasoned that Vogt had failed to provide authority showing an exception under f Missouri case authority extending There is not. In sharp contrast to the few cases cited by the did apply, Vogt does not allege claims for product or construction defects, nor does he allege that

State Farm negligently performed its contractual duties. 1

Cf., e.g., *Crowder v. Vandendeale*, 564 S.W.2d 879, 881 (Mo. banc 1978) (finding that a subsequent purchaser of a house could not sue the builder to recover the deterioration of the house caused by latent structural defects because the builder had no duty other than its contractual obligations under the theory of the implied warranty of habitability to protect the owners from deterioration). This historically narrowly applied doctrine cannot be broadly expanded to apply As Vogt correctly points out, Missouri courts have never extended the economic loss doctrine s traditional moorings as policing the boundaries between warranty and negligence/strict liability to a claim for conversion. See, e.g., *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 130- for economic loss sustained by reason of damage to or defects in products sold are limited to *Sharp Bros. Contracting Co. v. Am. Hoist & Derrick Co.*, 703 S.W.2d 901, 903 (Mo. banc 1986) (The economic loss doctrine denies State Farm does not offer any authority to the contrary, nor does it offer

authority suggesting that the Missouri Supreme Court would extend the economic loss doctrine beyond these traditional applications. Cf. *Davidson v. Hess*, 673 S.W.2d 111, 113 (Mo. Ct. App. 1984) (finding that in the landlord-tenant context, a tenant who was wrongfully evicted could

1 Mile Rail, LLC v. Compass Big Blue, LLC, 2015 WL 492884 (W.D. Mo. Aug. 18, 2015), where the plaintiff was barred from property purchased by the plaintiff pursuant to a contract. still bring a



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conversion claim for the landlord keeping her possessions independent of the contract). As to State Farm brief contention that a conversion claim should be barred in order bargaining relationship, the Court rejects this alleged policy justification as illogical when applied to : Vogt in no way ed to not have his money converted. [Doc. 60, p. 6]. effectively abrogate all conversion claims arising from the diversion of funds provided by a

plaintiff for one purpose but used by the defendant for another because in such claims, the plaintiff could assert that the defendant breached its contract by using these funds for a different purpose. Missouri courts have found conversion claims where a defendant diverts funds contrary implied contract setting forth their agreement as to the purpose for the money. See, e.g., Dayton

Construction, Inc. v. Meinhardt, 882 S.W.2d 206, 209 (Mo. Ct. App. 1994) (finding conversion agreement of the parties required that Mr. Meinhardt deposit all checks or deposited them into a separate account instead) (emphasis added); Johnson v. GMAC Mortgage

Corp., 162 S.W.3d 110 (Mo. Ct. App. 2005) (finding conversion claim where plaintiff alleged he made two payments to the defendant mortgage company for the purpose of funding his escrow account and assuring that taxes and insurance were paid but where the defendant failed to credit the money to this account). In such cases, the economic loss doctrine was not even raised as a conversion claim. not prior decision, Doc. 52, on this point. Because the Court found the economic loss doctrine barred this claim in its prior decision, the Court did not need to consid separate : that a claim for money does not state a claim for conversion. Therefore, the Court now considers this alternative argument.

B. Money as Specific Chattel As a separate argument, dismissed because it is a claim for money. Johnson v. GMAC Mortg. Corp., 162

S.W.3d 110, 125 (Mo. Ct. App. 2005). However, this rule is subject to a narrow exception: Koger v. Hartford Life Ins. Co., 28 S.W.3d 405, 415 (Mo. Ct. App. 2000)

(quoting Dayton Constr., Inc. v. Meinhardt, 882 S.W.2d 206, 208 (Mo. Ct. App. 1994)).

where they can be Id. Although requiring expert testimony, Vogt contends that the unauthorized charges State Farm deducted charges per month

with what the charges should have been. Therefore, the Court looks to Missouri case law for examples of circumstances in which a conversion claim for money is permissible.

In , the plaintiff gave cash to the use, the defendant bank misappropriated them by failing to apply them to his loan, as plaintiff had directed, and instead, converting the funds into money orders. Id. The plaintiff did not seek the same currency as if it were a chattel, but instead, he sought an amount in damages equal to the amount he gave to the teller to be put toward his debt. Id. The plaintiff also



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did not try to reclaim a specific representation of money, like a check or certificate of deposit. Id. The court held that although conversion does not customarily lie for money represented by a general debt, custody for a definite application, and they were not used for that purpose. Id.

Similar to Brandhorst, Vogt entrusted State Farm with funds (in the form of premiums), which were designated for the specific purpose of being maintained in his account accumulating interest over time on his behalf. Vogt gave these funds to State Farm for this specific use and to pay the deducted charges discussed previously. However, Vogt contends State Farm diverted funds from his account for its own purposes by withdrawing sums larger than the charges permitted under the policy. As in Brandhorst, these facts support a conversion claim because Vogt placed funds i that purpose.

However, the Court is unaware of authority holding that a conversion claim for money that can

not identifiable at the time of filing, particularly when the specific sum presumably, will be

identifiable as litigation progresses. See *Dayton Const. v. Meinhardt*, 882 S.W.2d 206, 209 (Mo. Ct. App. 1994) (finding plaintiff stated claim for conversion where the allegedly converted checks were specifically identified at trial).

In *Reason v. Payne*, the Missouri Court of Appeals permitted a claim for conversion of a chattel. 793 S.W.2d 471 (Mo. Ct. App. 1990). In finding that the account could properly be the

accounts could be the subject of a conversion claim if the money could be specifically described or identified. Id. at 475. The court noted that the accumulation of interest was the only real deposit into the account; no withdrawals were made; and the account was never commingled with any other funds. Id. Despite being a claim for money, the court ultimately determined that the savings account funds were sufficiently specific and identifiable to support a conversion claim. Id.

As in *Reason*, identifiable as specific chattel by comparing what State Farm deducted as charges every month

with what State Farm was authorized to deduct as charges every month. Vogt does not allege vague monetary claims. Rather, the funds he seeks are specific and identifiable, making them appropriate for a claim of conversion.

its argument for dismissal by relying on two additional cases not raised in its original motion to dismiss: *Allison v. Security Benefit Life Ins. Co.*, 980 F.2d 1213, 1215-16 (8th Cir. 1992) and *Dwyer v. Unit Power, Inc.*, 965 S.W.2d 301 (Mo. Ct. App. 1998). However, these cases are also distinguishable and do not .

State Farm cites *Allison v. Security Benefit Life Ins. Co.* -going *Allison v. Security Benefit Life Ins.*



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Co., 980 F.2d 1213, 1215-16 (8th Cir. 1992)]. In Allison, the

district court dismissed the diversity action against SBL, the defendant life insurance company, than the requisite jurisdictional amount. Id. at 1214. On appeal, the Eighth Circuit reviewed the

tempt to convert their on-going contract disputes with SBL into a tort action, their allegations fail[ed] to meet the Arkansas standard for Id. at 1216.

Specifically as to the Allison aim for

Id. The Eighth Circuit he erroneous belief that it had a legal right to do so is

not an intentional conver Id. at 1216 (emphasis added).

However, Allison . Unlike in Allison, this Court has Furthermore, in contrast to the Allison erroneous belief that it had a legal right to refuse to pay over funds under the policies, does not allege that State Farm believed it was acting consistently with its legal rights when it converted his funds. Compare with Allison, 980 F.2d at

1216 (where complaint alleged that the insurance company failed to pay over funds through its Therefore, at least at the present motion to dismiss stage, Vogt has plausibly stated a claim for conversion by alleging that St

through those deductions. [Doc. 1, p. 13, ¶ 72 (Complaint)].

Dwyer, the Court rejects this case for the proposition that a general claim for money is not a claim for conversion where the defendant is authorized to draw on . 965 S.W.2d 301, 305-307 (Mo. Ct. App. 1998). In Dwyer, the Missouri Court of Appeals held that a corporation could not state a accounts where indicated that the property allegedly converted was, at best, money

held for general corpo and that each officer was authorized to draw on these accounts. Id. at 306. In contrast to the funds in Dwyer, however, the allegedly converted funds were not but instead were held in trust for Vogt.

Furthermore, even to the extent that Dwyer s holding could be read to preclude s conversion claim account, this Missouri Court of Appeals decision conflicts with Missouri Supreme Court

precedent in Dillard v. Payne, 615 S.W.2d 53 (Mo. 1981). In Dillard, a former client sued his attorney for expenses in connection with a contemplated lawsuit. Id. at 54. The client deposited \$300 with the attorney, of which \$10 had been spent on expenses when the attorney withdrew his representation and claimed the balance in the trust account for his services. Id. The Missouri Supreme Court



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reversed the appellate court. The Missouri Supreme Court held instead

purpose. Id. at 55. The court

reasoned that because the client had advanced money to the attorney to be held in a trust account for the specific purpose of covering actual litigation expenses incurred, and the attorney diverted fees, the client stated a claim for conversion. Id. By finding the plaintiff stated a conversion claim, despite clear authority to withdraw money from the trust account and despite the fact that the amount converted was commingled with money the attorney rightfully withdrew, the Missouri Supreme Dillard opinion conflicts with the Missouri Court of Appeals opinion in Dwyer. Accordingly, the court has authority to deduct charges from

For the previous reasons, the Court finds that Vogt has stated a claim for conversion.

III. Conclusion Count III for conversion is vacated.

/s/ Nanette K. Laughrey NANETTE K. LAUGHREY United States District Judge Dated: April 26, 2017 Jefferson City, Missouri

