

Cite as 2011 Ark. 260

SUPREME COURT OF ARKANSAS

No. 10-1226

STEVE BAXTER,
APPELLANT,

VS.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
APPELLEE,**Opinion Delivered** June 16, 2011APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
NO. CV-09-2475-2,
HON. DAVID CLINGER, JUDGE,REVERSED AND REMANDED.**PAUL E. DANIELSON, Associate Justice**

Appellant Steve Baxter appeals the circuit court's order dismissing one count of his complaint against appellee State Farm Mutual Automobile Insurance Company. This appeal is one of three appeals before this court involving the same issue. The sole point on appeal is whether the circuit court erred in dismissing the count on the basis that State Farm had a valid, but unenforceable lien against funds Baxter received in settlement for his claims stemming from a motor-vehicle accident. We reverse and remand.

The relevant facts are these. On May 27, 2007, Baxter, State Farm's insured, was involved in a motor-vehicle accident from which he sustained injuries and for which he received medical treatment. State Farm paid medical coverage in the amount of \$5000, and it subsequently informed the tortfeasor's insurer carrier, Farmers Insurance, of its "notice of . . . subrogation rights."

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On November 10, 2008, Baxter's attorney advised State Farm that Baxter's liability claim against Farmers was "near settlement at \$15,000.00" and that the amount of settlement was not sufficient for Baxter to be made whole. Baxter's counsel requested that State Farm release its subrogation claim in his case, and State Farm responded that it would reduce its recovery amount to \$3000. When Baxter's counsel requested an explanation of State Farm's calculations regarding the amount it would take to make Baxter whole, State Farm responded, stating simply that its right of recovery was granted pursuant to both statute and its policy with Baxter.

On August 13, 2009, Baxter filed a petition for declaratory judgment and complaint for bad faith against State Farm, asserting a failure by State Farm to establish an enforceable subrogation interest, breach of contract, and violation of the Unfair Trade Practices Act. State Farm answered, stating affirmatively that it was legally entitled to reimbursement by statute and case law, provided Baxter was made whole as determined by a court sitting without a jury. On January 26, 2010, Baxter filed a first amended declaratory action to invalidate lien and complaint for injunctive relief, deceptive trade practices, bad faith, and tortious interference with a contract, in which Baxter contended that State Farm had prematurely asserted its subrogation rights because it had not yet sought a determination of whether Baxter had been made whole. State Farm answered, admitting that it had "asserted its subrogation rights upon [Baxter's] settlement with Farmers, having made a determination that [Baxter] was made whole by the settlement." It further contended that it was not required to seek a judicial

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determination before asserting its subrogation rights and that it had not issued a lien. State Farm prayed that the injunctive-relief paragraphs in Baxter's first amended petition be dismissed for failure to state a claim and that the remainder of the petition also be dismissed.

After several hearings, the circuit court entered its judgment, in which it found that State Farm had a valid, but unenforceable lien against any settlement paid to Baxter. It then dismissed count one of Baxter's complaint with prejudice and issued a certificate pursuant to Arkansas Rule of Civil Procedure 54(b), wherein the circuit court made the requisite findings. Baxter timely filed a notice of appeal, and he now appeals.

Baxter argues that the circuit court erred in dismissing the first count of his complaint because, pursuant to this court's case law, an insurer's right to subrogation only arises once the insured has been made whole. We agree, and for the reasons set forth this same day in *Riley v. State Farm Mutual Automobile Insurance Co.*, 2011 Ark. 256, ___ S.W.3d ___, we reverse and remand.

Reversed and remanded.