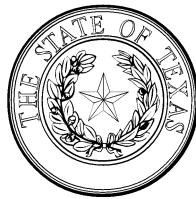


Affirmed and Opinion Filed March 22, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-14-01473-CV

VAN K. MARTIN, Appellant

V.

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Appellee**

On Appeal from the County Court at Law No. 5
Collin County, Texas
Trial Court Cause No. 005-00483-2014

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Fillmore, and Justice Stoddart
Opinion by Justice Stoddart

Van K. Martin appeals the trial court's judgment denying his declaratory judgment action against State Farm Mutual Automobile Insurance Company. He also appeals the partial summary judgment granted State Farm on his breach of contract claim. After Martin's son was involved in a car accident on private property, the other driver filed a liability insurance claim with Martin's insurance company, State Farm. Martin sued State Farm even though it paid the claim, alleging State Farm breached its contract with Martin and exercised bad faith by determining Martin's son was at fault.

Martin contends that the trial court erred by (1) granting State Farm summary judgment on his breach of contract claim; and (2) denying his request for declaratory judgment. We conclude the summary judgment evidence establishes that State Farm did not breach the contract and that Martin's declaratory judgment claim does not present a justiciable controversy.

Accordingly, we affirm the trial court’s judgment.

BACKGROUND

Martin’s son was involved in an auto accident with another State Farm insured, Jeffery Lonsdale. No one was injured in the accident, but Lonsdale filed a claim for property damage, which was submitted to State Farm under Part A of Martin’s liability policy. Martin filed a claim for property damage to his vehicle under Part D of the policy. State Farm settled Lonsdale’s claim and provided coverage for the property damage to Martin’s vehicle. Martin alleges that State Farm unreasonably concluded his son was primarily responsible for the accident without interviewing Martin’s son or other witnesses in the car. Martin alleges he paid the deductible to have his vehicle repaired and paid “incremental semi-annual premiums” related to the accident.

Martin sued State Farm for breach of contract and sought a declaration that State Farm violated a common law duty of good faith and fair dealing by acting unreasonably in determining the responsible party. State Farm moved for partial summary judgment on the breach of contract claim, arguing it did not breach the contract because the policy permits State Farm to “settle or defend, as we consider appropriate, any claim or suit asking for these damages.” The trial court granted the partial summary judgment. After a brief bench trial on the declaratory judgment claim, the trial court rendered a final judgment denying Martin’s declaratory judgment claim. The trial court filed written and amended findings of fact and conclusions of law.

ANALYSIS

A. Standard of Review

We review a trial court’s summary judgment de novo. *Paragon Gen. Contractors, Inc. v. Larco Constr., Inc.*, 227 S.W.3d 876, 881 (Tex. App—Dallas 2007, no pet.). In a traditional motion for summary judgment, the movant has the burden of showing that no genuine issue of material fact exists and it is entitled to judgment as a matter of law. *Id.* Where that burden is met, the nonmovant must present evidence creating a genuine issue of material fact. *Id.* We take

as true all competent evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant’s favor. *Id.*

We review declaratory judgments under the same standards as other judgments. *Berryman’s S. Fork, Inc. v. J. Baxter Brinkmann Int’l Corp.*, 418 S.W.3d 172, 196 (Tex. App.—Dallas 2013, pet. denied). We look to the procedure used to resolve the issue at trial to determine the standard of review on appeal. *Id.* Martin argues the evidence is insufficient to support the trial court’s judgment but does not identify whether this is a legal or factual sufficiency challenge, and identifies no standard of review. Because Martin asks us to reverse the trial court’s judgment and render judgment in his favor, we interpret the issue as raising a legal sufficiency point. *Apex Fin. Corp. v. Garza*, 155 S.W.3d 230, 234 (Tex. App.—Dallas 2004, pet. denied).

A declaratory judgment is proper only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). “To constitute a justiciable controversy, there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute.” *Id.*

B. Breach of Contract

Martin alleges State Farm breached the contract by acting unreasonably “in its factual approach and analysis” determining the responsible party. State Farm moved for traditional summary judgment on grounds that it did not breach the contract and attached a copy of the policy as evidence.

Martin’s pleading is not entirely clear, but it appears he is using the breach of contract and declaratory judgment claims as vehicles for asserting a bad faith insurance practice claim under the decision in *Arnold v. National County Mutual Fire Insurance Co.*, 725 S.W.2d 165 (Tex. 1987).

In *Arnold*, the supreme court recognized an extra-contractual duty of good faith and fair dealing in the handling first-party insurance claims. *Id.* at 167. We discuss this duty in more detail below, but note here that the duty recognized in *Arnold* is a tort duty, not a contract duty. See *Univ. Life Ins. Co. v. Giles*, 950 S.W.2d 48, 52 (Tex. 1997) (“[W]e imposed the tort duty recognizing that insureds who encounter losses they believe to be covered will often be particularly vulnerable to an insurer’s arbitrary or unscrupulous conduct.”); *Arnold*, 725 S.W.2d at 168 (permitting recovery of exemplary damages and mental anguish damages for breach of duty of good faith and fair dealing “under the same principles allowing recovery of those damages in other tort actions”). Thus, the alleged violations of the duty of good faith and fair dealing do not give rise to a breach of contract claim.

In his response to the motion for summary judgment, Martin argues State Farm took action to “limit plaintiff[’]s contract rights under Part A, Paragraph A, and Part D, Paragraph A of the contract.” Martin contends State Farm found his son responsible for the accident and “withheld reimbursement for property damage to the extent of the policy deductible.”

Part A of the policy provides liability coverage. It states in part:

A. We will pay damages for bodily injury or property damage for which any *covered person* becomes legally responsible because of an auto accident. . . . We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

Part D of the policy provides coverage for damage to the insured’s vehicle. It states in part:

A. We will pay for direct and accidental loss to *your covered auto*, including its equipment, less any applicable deductible shown in the Declarations. However, we will pay for loss caused by *collision* only if the Declarations indicate that Collision Coverage (Coverage D2) is provided.

Lonsdale filed a claim for property damage to his vehicle against Martin. This claim was within the scope of the liability coverage provided by Part A of Martin’s policy. The record

indicates State Farm settled Lonsdale's claim within the policy limits and without any liability to Martin. The policy expressly allows State Farm to "settle or defend, as we consider appropriate, any claim or suit asking for these damages."

Martin presented evidence about how the accident occurred and of his communications with State Farm. Martin's communications with State Farm demonstrate his disagreement with State Farm's decision, but fail to show how State Farm breached the express terms of the policy. There is simply no evidence that State Farm did not consider the settlement with Lonsdale appropriate. The settlement of Lonsdale's claim was not a breach of contract.

Martin also filed a claim with State Farm for property damage to his vehicle. The record indicates State Farm paid Martin's claim under Part D of the policy. The policy specifically provides, "We will pay for direct and accidental loss to *your covered auto*, including its equipment, less any applicable deductible shown in the Declarations." Requiring Martin to pay the deductible required by the policy was not a breach of contract.

We conclude State Farm established it did not breach the contract and Martin failed to raise a genuine issue of material fact as to that element of his breach of contract claim. Thus, the trial court did not err by granting the motion for partial summary judgment. We overrule Martin's first issue.

C. Duty of Good Faith and Fair Dealing

Martin's live pleading asked the trial court to declare that State Farm "breached its contract with plaintiff by (1) unreasonable analysis and/or fact review supporting the agency's conclusion of proximate cause of the accident, or (2), failure by the agency to properly investigate the accident." However, Martin expressly states he "does not ask the Court to render a declaration reversing" State Farm's decision regarding the assignment of responsibility for the accident. Martin states his "future objective is to overturn the conclusion of the agency regarding ultimate responsibility for the accident, but plaintiff does not immediately seek that objective

with this filing.” Martin does not seek damages, however; he seeks only a “declaratory judgment for breach of contract by State Farm, related to its analysis and actions concerning” the accident, court costs, and general relief.

Martin’s declaratory judgment claim¹ is apparently based on the duty of good faith and fair dealing recognized in *Arnold*, but as we said in *Coats v. Ruiz*, 198 S.W.3d 863, 880 (Tex. App.—Dallas 2006, no pet.), the “supreme court [has] held that an insurer owes its insured no common law duty of good faith and fair dealing to investigate and defend claims made by a third party against the insured.” *Id.* (citing *Maryland Ins. Co. v. Head Indus. Coatings & Servs, Inc.*, 938 S.W.2d 26, 28–29 (Tex. 1996) (per curiam) (superseded in part by statute)). The *Arnold* duty of good faith and fair dealing does not apply to claims by third parties on the insured’s policy even if both parties are insured by the same company. *See Giles*, 950 S.W.2d at 54 n.2 (“We have recognized the bad-faith tort only in the first-party context.”).

Lonsdale filed a third-party claim for property damages against Martin. Martin sought liability coverage under Part A for these damages. *See Giles*, 950 S.W.2d at 54 n.2 (third-party claim is one in which insured seeks coverage for injuries to third party). As discussed above, State Farm met its contractual duty regarding this claim by settling the claim “as [it] consider[ed] appropriate.” State Farm’s only other duty relating to this claim was to satisfy its common law duty under the *Stowers* doctrine to accept a reasonable settlement demand within the insured’s policy limits. *See Maryland Ins. Co.*, 938 S.W.2d at 28 (“Texas law recognizes only one tort duty in [third-party insurance cases], that being the duty stated in [G.A.] *Stowers Furniture Co. v. American Indemnity Co.*, 15 S.W.2d 544 (Tex. Comm’n App. 1929, holding approved).”); *Coats*, 198 S.W.3d at 882 (discussing *Stowers* doctrine). State Farm satisfied its duty under the *Stowers*

¹ At trial, Martin argued that State Farm violated duties under section 541.060 of the Texas Insurance Code. TEX. INS. CODE ANN. § 541.060. Martin continues this argument on appeal. However, Martin failed to raise this claim in his pleadings, and State Farm objected to the failure at trial. Therefore, Martin was not entitled to judgment on this claim, *see Tex. R. Civ. P. 301* (judgment must conform to the pleadings), and the claim was not tried by consent, *see Tex. R. Civ. P. 67*; *Hampden Corp. v. Remark, Inc.*, 331 S.W.3d 489, 497 (Tex. App.—Dallas 2010, pet. denied).

doctrine by settling within Martin's policy limits. *See Coats*, 198 S.W.3d at 882.

Regarding a first-party claim by Martin on his policy for property damage to his vehicle, there is no evidence State Farm breached a duty of good faith and fair dealing. The record indicates State Farm accepted Martin's property damage claim and paid for the damage less Martin's deductible as required by the terms of the policy. Because State Farm paid the claim and there is no evidence or argument that it unreasonably delayed payment of the claim, there is no evidence to support Martin's claim that State Farm violated any common law duty of good faith and fair dealing. *See Giles*, 950 S.W.2d at 55–56 (bad faith claimant must prove carrier failed to attempt to effectuate a settlement after its liability has become reasonably clear).

We conclude Martin's declaratory judgment claim does not present a justiciable controversy. We overrule Martin's second issue.

CONCLUSION

Resolving Martin's issues against him, we affirm the trial court's judgment.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

VAN K. MARTIN, Appellant

No. 05-14-01473-CV V.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, Appellee

On Appeal from the County Court at Law

No. 5, Collin County, Texas

Trial Court Cause No. 005-00483-2014.

Opinion delivered by Justice Stoddart. Chief
Justice Wright and Justice Fillmore
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

It is **ORDERED** that appellee State Farm Mutual Automobile Insurance Company
recover its costs of this appeal from appellant Van K. Martin.

Judgment entered this 22nd day of March, 2016.