

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DIANE L. MOFFETT,	:	
	:	C.A. No. 03C-03-028
Plaintiff	:	
	:	
v.	:	
	:	
DELAWARE GRANGE MUTUAL	:	
INSURANCE COMPANY, a	:	
Delaware corporation,	:	
	:	
Defendant.	:	

Submitted: December 3, 2004
Decided: March 4, 2005

ORDER

Upon Plaintiff's Motion to Dismiss Defendant's
Counterclaim and Motion for Summary Judgment.
Denied.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware; attorneys for the Plaintiff.

Jeffrey A. Young, Esquire of Young & McNelis, Dover, Delaware; attorneys for the
Defendant.

WITHAM, R.J.

Diane Moffett v. Delaware Grange Mutual Ins. Co.
C.A. No. 03C-03-028
March 4, 2005

Before the Court are two motions filed by Plaintiff, Diane Moffett: a Motion to Dismiss Defendant's Counterclaim and a Motion for Summary Judgment. Based on the submissions of the parties, it appears that:

FACTS

This dispute is based on an oral settlement allegedly reached by the parties on August 15, 2003. On April 8, 2002, Plaintiff Diane L. Moffett's home and the contents therein were severely damaged by fire. The fire caused damage in excess of the limits of Plaintiff's insurance policy with Defendant Delaware Grange Mutual Insurance Company. After settlement negotiations, counsel reached a presumed settlement over the phone in which Defendant agreed to pay \$38,501.36 for the structure loss to the house and \$5,942.22 for contents lost. Defendant soon thereafter tendered two settlement checks to Plaintiff but Plaintiff objected to the check for the structure loss because that check was made out to the mortgage-holder, Ameriquest, in addition to Plaintiff and Plaintiff's attorney.

Plaintiff filed a Motion to Compel Settlement which the Court denied on September 16, 2003 with leave to amend. Plaintiff filed an Amended Complaint on August 30, 2004 claiming additional damages and Defendant filed an Answer to the Amended Complaint on September 3, 2004. Defendant filed an Amended Answer on September 13, 2004, in which Defendant asserted a counterclaim alleging fraud and misrepresentation by Plaintiff in her insurance application.

CONTENTIONS OF THE PARTIES

Plaintiff maintains that an oral settlement agreement was reached between

Diane Moffett v. Delaware Grange Mutual Ins. Co.

C.A. No. 03C-03-028

March 4, 2005

counsel over the telephone on August 15, 2003. Plaintiff's counsel asserts that the attorneys agreed that no payments other than the two checks for structural damage and for contents lost would be made from Defendant to Plaintiff and that the litigation would be dismissed. Plaintiff's attorney also states that he sent a confirmation letter to Defendant's attorney the same day. Plaintiff argues that Defendant is bound under the contract created by the oral settlement agreement and that implicit in the agreement was that Defendant also waived any right to counterclaim against Plaintiff. Plaintiff therefore argues that she is entitled to summary judgment because Defendant is bound by the oral settlement agreement and that Defendant's Counterclaim should also be dismissed.

Defendant acknowledges that the parties reached an oral settlement but argues that the agreement was necessarily bound by the contractual obligations under which the policy was originally issued, such as including the mortgage-holder in any settlement payment. Defense counsel also argues that his focus when making the oral settlement agreement was purely on the monetary amount of the settlement and he was not focused on the particular parties to be included on each settlement check. Defense counsel is adamant that he would never have agreed to a settlement that would not have included the mortgage-holder on the check. Defense counsel further maintains that he viewed inclusion of the mortgage-holder in the settlement to be a material term in the agreement and that if Plaintiff's counsel was not agreeable to this essential term, then there was no meeting of the minds. Defendant notes that Plaintiff was aware or at least should have been aware upon receipt of the check which

Diane Moffett v. Delaware Grange Mutual Ins. Co.

C.A. No. 03C-03-028

March 4, 2005

contained the name of the mortgage holder, that there had not be a meeting of the minds on this essential element. Defendant also points out that the inclusion of the mortgagee on the settlement check was proper under Plaintiff's insurance policy which specifically stated that "[i]f a mortgagee is named in this policy, any loss payable...will be paid to the mortgagee and you, as interests appear."

Defendant further contends that the oral agreement did not dismiss or release any claims the Defendant may have had against the Plaintiff. The proposed Stipulation of Dismissal agreed to dismiss, "any and all claims brought by or on behalf of Plaintiff, Diane Moffett, against Defendant, Delaware Grange Mutual Company." Defendant notes that this proposed stipulation was never signed or filed by Plaintiff's attorney and never executed and that, in any event, the stipulation waived only Plaintiff's right to bring suit against Defendant. Defendant also claims this settlement arrangement does not preclude Defendant's counterclaim alleging that Plaintiff's insurance policy was void *ab initio* because of material misrepresentations by Plaintiff in her insurance policy application.

Defendant also asserts that Plaintiff had no interest in the property at the time of the fire because Plaintiff was in default of her mortgage and the house was scheduled to be sold at a sheriff's sale. Defendant maintains that Plaintiff's application for insurance contained numerous material misrepresentations which made Plaintiff's insurance policy void *ab initio*. Defendant acknowledges that, unfortunately, much of the information demonstrating fraud by the Plaintiff did not become known to the Defendant until after settlement negotiations had begun on

Plaintiff's claim. Defendant maintains that to grant judgment for Plaintiff would condone Plaintiff's fraud.

DISCUSSION

I. Motion for Summary Judgment

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.¹ The facts must be viewed in the light most favorable to the non-moving party.² Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.³ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.⁴

While the parties agree that some form of oral settlement agreement was reached between counsel, the arguments from each side make it clear that there is significant dispute over the terms of the alleged oral agreement, specifically the parties to be included on the settlement checks and which claims were waived and by whom. Viewing the facts in the light most favorable to Defendant it appears that it

¹ Super. Ct. Civ. R. 56(c).

² *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

³ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁴ *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

Diane Moffett v. Delaware Grange Mutual Ins. Co.

C.A. No. 03C-03-028

March 4, 2005

is possible the parties did not have the requisite meeting of the minds on certain material terms to form an agreement.⁵ Counsel for the parties do not appear to have discussed specifically whether or not the mortgage-holder should be included on the settlement check for structural damage and there is no evidence in the record to indicate that Defendant ever waived the contingency in the original policy that the mortgage-holder should be included on the settlement check. Furthermore, although not raised by the parties, the mortgage-holder, Ameriquest, was listed on Plaintiff's original application for homeowner's insurance dated April 4, 2002, indicating that Plaintiff was aware that payment of any settlement should also be made to the mortgage-holder. Summary Judgment is not appropriate in a situation where there are still disputed material facts such as these. For these reasons, Plaintiff's Motion for Summary Judgment is denied as to the settlement amount for structural damage to Plaintiff's house.

II. Motion to Dismiss Defendant's Counterclaims

When reviewing a motion to dismiss for failure to state a claim under Rule 12(b)(6), all well-pleaded allegations must be accepted as true.⁶ If it is clear that the original pleading party cannot prove a set of facts that would entitle them to relief,

⁵ *Sowell v. Townsends, Inc.*, 2000 WL 305502 (Del. Super.) *aff'd*, 763 A.2d 92 (Del. 2000). "The mere fact the parties said they had an agreement does not make an agreement exist. There actually had to be an agreement on the essential terms." *Id.*

⁶ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

Diane Moffett v. Delaware Grange Mutual Ins. Co.

C.A. No. 03C-03-028

March 4, 2005

then the Rule 12(b)(6) motion should be granted.⁷ Such a motion cannot be granted if the non-moving party may recover under any conceivable set of circumstances susceptible of proof under the claims.⁸

A. Failure to State a Claim

Plaintiff contends that Defendant has failed to state a claim upon which relief can be granted because Defendant's counterclaims in its Amended Answer are barred by the settlement agreement. Plaintiff asserts that, although the agreement was never reduced to writing, both parties intended to dismiss all claims against the other party with prejudice and therefore the Defendant waived any claims against Plaintiff. In support of this claim, Plaintiff has presented a proposed Stipulation of Dismissal dismissing Plaintiff's claims against Defendant (signed only by Defendant's counsel), and a letter confirming the oral agreement sent by Plaintiff's counsel to Defendant's counsel.

The proposed stipulation of dismissal and confirmation letter are not sufficient evidence that Defendant waived its right to challenge the validity of the insurance contract. The proposed but un-executed release merely barred Plaintiff from bringing suit against Defendant under the policy and did not restrict the defendant's claims. Plaintiff has not presented any other reason why Defendant may not raise a counterclaim against her.

⁷ *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. Ct. 1982).

⁸ *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995).

B. Failure to Obtain Leave of Court to Amend Answer

Plaintiff further maintains that Defendant's claims should be barred because Defendant failed to obtain leave of the Court prior to amending its answer. In response, Defendant argues that it had a right to amend its Answer and that the Amended Answer was filed only 10 days after its original Answer to the Amended Complaint—within the 20 days permitted by Superior Court Civil Rule 15(a).⁹ I find the amendment to be appropriate and, under the generous language of Rule 15(a), will permit the amendment in any event.

CONCLUSION

There are still material facts in dispute concerning the original oral agreement, specifically whether the mortgage-holder was to be included on the settlement check for the payment for structural damage. With such issues still in contention, summary judgment cannot be granted. Plaintiff's Motion for Summary Judgment is accordingly DENIED. In addition, Plaintiff has not provided sufficient evidence that Defendant waived its right to assert a counterclaim against Plaintiff and the counterclaim will be permitted. If Defendant's allegations in its counterclaim that Plaintiff made material misrepresentations in her insurance application are assumed

⁹ Super. Ct. Civ. R. 15(a) provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Diane Moffett v. Delaware Grange Mutual Ins. Co.

C.A. No. 03C-03-028

March 4, 2005

to be true, it cannot be said that Defendant would not be entitled to recover money paid under the insurance contract. The Motion to Dismiss is, therefore, also DENIED.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File