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NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PETE NIJJAR,)	Case No. CV 12-08148 DDP (JCGx)
)	
Plaintiff,)	ORDER RE: DEFENDANT'S MOTION FOR
)	SUMMARY JUDGMENT
v.)	
)	[DKT No. 21.]
GENERAL STAR INDEMNITY)	
COMPANY,)	
)	
Defendant.)	
)	
_____)	

Before the Court is Defendant General Star Indemnity Company's ("General Star") Motion for Summary Judgment. (DKT No. 21.) The matter is fully briefed and suitable for adjudication without oral argument. Having considered the parties' submissions, we rule as follows.

I. Background

In this action, Plaintiff Pete Nijjar ("Nijjar") asserts claims for breach of contract and bad faith arising from General Star's alleged failure to comply with its obligations under a property insurance policy issued by General Star to Nijjar Reality,

1 Inc. ("NRI"). (See First Amended Complaint ("FAC") ¶¶ 6-28; General
2 Star's Statement of Uncontroverted Facts and Conclusions of Law in
3 Support of Motion for Summary Judgment ("SUF").)¹

4 NRI is a property management company. (SUF No. 2.) General
5 Star, an insurance company, issued a commercial property insurance
6 policy to NRI effective July 31, 2004 to July 31, 2005 (the
7 "Policy"). (SUF No. 3.) The Policy covered, among numerous other
8 properties, a commercial property located at 990 Ninth Street,
9 Pomona, California, 91768, where a fire occurred on January 15,
10 2005. (Id. No. 5; FAC ¶ 7.) The claim concerns losses resulting
11 from the fire. (FAC ¶¶ 6-11.)

12 Nijjar is not named as an insured or beneficiary under the
13 Policy. (See SUF No. 4; FAC Ex. A) Nijjar asserts that he is one of
14 two principals of NRI and that he, along with this brother, Mike
15 Nijjar, owned and controlled all aspects of the company.
16 (Declaration of Pete Nijjar in Support of Opposition ¶ 2.) Alleging
17 in his FAC that NRI assigned the causes of action asserted here to
18 him, Nijjar brought the instant claim on his own behalf. (FAC No.
19 2.) NRI is not a party to the suit.

20
21 **II. Legal Standard**
22 **A. Summary Judgement**

23 Summary judgment is appropriate where the pleadings,
24 depositions, answers to interrogatories, and admissions on file,
25 together with the affidavits, if any, show "that there is no
26

27 ¹ The facts drawn from the SUF cited here are not disputed by
28 Nijjar. (See Plaintiff's Separate Statement of Controverted and
Uncontroverted Facts. (DKT No. 23-3.))

1 genuine dispute as to any material fact and the movant is entitled
2 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
3 seeking summary judgment bears the initial burden of informing the
4 court of the basis for its motion and of identifying those portions
5 of the pleadings and other aspects of the record which it believes
6 demonstrate the absence of a genuine issue of material fact.
7 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). All reasonable
8 inferences from the evidence must be drawn in favor of the
9 nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
10 242 (1986).

11 Once the moving party meets its burden, the burden shifts to
12 the nonmoving party opposing the motion, who must "set forth
13 specific facts showing that there is a genuine issue for trial."
14 Anderson, 477 U.S. at 256. Summary judgment is warranted if a party
15 "fails to make a showing sufficient to establish the existence of
16 an element essential to that party's case, and on which that party
17 will bear the burden of proof at trial." Celotex, 477 U.S. at 322.
18 A genuine issue exists if "the evidence is such that a reasonable
19 jury could return a verdict for the nonmoving party," and material
20 facts are those "that might affect the outcome of the suit under
21 the governing law." Anderson, 477 U.S. at 248. There is no genuine
22 issue of fact "[w]here the record taken as a whole could not lead a
23 rational trier of fact to find for the nonmoving party." Matsushita
24 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

25 It is not the court's task "to scour the record in search of a
26 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275, 1278
27 (9th Cir. 1996). Counsel has an obligation to lay out their
28 evidence clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d

1 1026, 1031 (9th Cir. 2001). The court "need not examine the entire
2 file for evidence establishing a genuine issue of fact, where the
3 evidence is not set forth in the opposition papers with adequate
4 references so that it could conveniently be found." Id.

6 **III. Discussion and Analysis**

7 **A. Standing**

8 Before it may address the merits of Nijjar's claim, the Court
9 must consider the threshold issue of standing.

10 General Star has challenged Nijjar's standing to bring the
11 instant action. (See Mot. at 21.) As movant in this summary
12 judgment motion, General Star bears the initial burden of informing
13 the Court of the basis for its contention that no reasonable trier
14 of fact could find facts on which Nijjar has standing to bring
15 suit.

16 General Star easily meets this burden here. First, persons
17 other than the insureds and beneficiaries, or those who have been
18 validly assigned rights under an insurance policy, have no standing
19 to sue for damages resulting from an insurer's withholding of
20 policy benefits from an insured party. See C & H Foods Co. v.
21 Hartford Ins. Co., 163 Cal.3d 1055, 1068 (Ct. App. 1984). General
22 Star notes that Nijjar is not named an insured in the Policy;
23 rather the only insured identified is NRI. (See Motion at 21; SUF
24 No. 4.) Nor has Nijjar asserted that he is a beneficiary. Thus,
25 unless Nijjar was validly assigned NRI's rights under the Policy,
26 he has no standing to sue on behalf of himself under the Policy.

27 Second, General Star challenges Nijjar's contention, made with
28 no elaboration in his FAC, that NRI assigned to him the causes of

1 action asserted here. (See Mot. at 21; FAC ¶ 2.) "An assignment, to
2 be effective, must include manifestation to another person by the
3 owner of his intention to transfer the right, without further
4 action, to such other person or to a third person.... It is the
5 substance and not the form of a transaction which determines
6 whether an assignment was intended...." Recorded Picture Co. v.
7 Nelson Entm't, Inc., 53 Cal.App.4th 350, 368 (Ct. App. 1997)
8 (quoting McCown v. Spencer, 8 Cal.App.3d 216, 225 (Ct. App. 1970).
9 "The burden of proving an assignment falls upon the party asserting
10 rights thereunder. In an action by an assignee to enforce an
11 assigned right, the evidence must not only be sufficient to
12 establish the fact of assignment when that fact is in issue but the
13 measure of sufficiency requires that the evidence of assignment be
14 clear and positive to protect an obligor from any further claim by
15 the primary obligee." Cockerell v. Title Ins. & Trust Co., 42
16 Cal.2d 284, 292 (1954) (internal citations omitted).

17 As General Star notes, the only evidence in the record
18 indicating that an assignment might have taken place is Nijjar's
19 deposition testimony to the effect that, at the end of 2005 or
20 beginning of 2006, he reached a verbal agreement with his brother,
21 Mike Nijjar, that Pete Nijjar would pursue the insurance claim.
22 (Pete Nijjar Decl. at 84:16-85:2, at Declaration of Paul A.
23 Impellezzeri ("PAI") Ex. 41 at 589-590.) Specifically, Nijjar
24 testified that his brother told him, "Go ahead. It's your property
25 ... You have the right to proceed with it." (Id. 84:16-20.) Nijjar
26 has offered no other evidence supporting his contention that NRI's
27 rights under the Policy were assigned to him as an individual.

28

1 Assuming for the purposes of this Order that the conversation
2 between Pete and Mike Nijjar took place as asserted and that
3 Nijjar's deposition testimony regarding the conversation is
4 admissible evidence, we conclude that the alleged statement by Mike
5 Nijjar is not, as a matter of law, sufficient to demonstrate that
6 an assignment took place. The statement is at best ambiguous as to
7 whether it conveys an intent to assign rights under the Policy to
8 Nijjar as an individual. Indeed, the statement is at least as
9 easily understood to indicate that Mike Nijjar was simply
10 acquiescing that his brother take the lead in pursuing the
11 insurance claims against General Star on behalf of NRI. The
12 statement does not constitute the sort of "clear and positive"
13 evidence of an assignment that the law requires.² Cockerell, 42
14 Cal.2d at 292.

15 Because General Star has met its initial burden, the burden
16 shifts to Nijjar to "set forth specific facts showing that there is
17 a genuine issue for trial" as to the standing issue. Anderson, 477
18 U.S. at 256. In his opposition papers, Nijjar does not attempt to
19

20 ² We conclude that the purported conversation is inadequate to
21 constitute an assignment without need to consider other undisputed
22 facts, pointed to by General Star, which further undermine the
23 claim that Nijjar has been assigned the causes of action here. (See
24 Mot. at 21.) These include the following: Nijjar has acknowledged
25 that he did not give NRI compensation for the purported assignment.
26 (SUF Nos. 82.) Nijjar did not notify General Star of the purported
27 assignment of rights at any time prior to the filing of this
28 action. (SUF Nos. 82, 84.) All insurance payments by General Star
were made payable to NRI, not Nijjar, with no apparent objection by
Nijjar. (Id. Nos. 29-31, 34, 37.) NRI was the party that
participated in the appraisal process undertaken by the parties to
resolve disputes concerning General Star's obligations under the
Policy and the appraisal award was issued in NRI's favor, rather
than Nijjar. (Id. No. 56.) Finally, following the award's issuance,
objections were filed on behalf of NRI, not Nijjar. (Id. Nos. 45-
47, 50, 53-54.)

1 defend the contention that he was assigned the causes of action
2 asserted here; indeed, he makes no reference whatsoever to the
3 purported assignment. Instead, Nijjar asserts that he has standing
4 to pursue the instant claims because he has an ownership interest
5 of 50% in NRI. (See Opp. at 18.)

6 This argument, too, is unavailing. Assuming for the purposes
7 of this Order that Nijjar owned 50% of NRI, Nijjar does not explain
8 how this would establish his individual standing to bring claims
9 under the Policy. The shareholders of an insured company do not
10 have standing to sue for damages resulting from the insurer's
11 withholding of policy benefits from the insured company. See C & H
12 Foods Co., 163 Cal.App.3d at 1068 (owners, respectively, of 50% of
13 insured company, did not have standing to individually bring bad
14 faith claim against insurer for denying benefits to insured
15 company); Austero v. Nat'l Cas. Co., 62 Cal. App. 3d 511, 517 (Ct.
16 App. 1976) ("Where no [contractual] relationship exists, no
17 recovery for "bad faith" may be had."). Nijjar cites authority for
18 the proposition that an insurable interest in a property is not
19 necessarily tied to title of the property. (Id. (citing Riley v.
20 Mid-Century Insurance Exchange, 118 Cal.App.3d 195 (1981)).
21 However, as General Star points out, (Reply at 9), having an
22 insurable interest in a property does not establish that one is an
23 insured under an insurance policy covering the property; it only
24 establishes that one could purchase insurance on the property.
25 Fatal to his assertion of standing here, Nijjar has not offered
26 sufficient evidence to create a triable issue that he is actually
27 an insured or beneficiary or has been assigned rights under the
28 Policy.

1 We may not, however, grant summary judgment for General Star
2 at this juncture due to Nijjar's lack of standing. Federal Rule of
3 Civil Procedure 17(a)(3) provides:

4 The court may not dismiss an action for failure to prosecute
5 in the name of the real party in interest until, after an
6 objection, a reasonable time has been allowed for the real
7 party in interest to ratify, join, or be substituted into the
8 action. After ratification, joinder, or substitution, the
9 action proceeds as if it had been originally commenced by the
10 real party in interest.

11 Fed.R.Civ.P. 17(a)(3). Here, the real party in interest is NRI.
12 Thus, we must allow a reasonable time for NRI to ratify, join or be
13 substituted into the action.

14
15 **IV. Conclusion**

16 NRI shall have 21 days from the date of this Order to ratify,
17 join or be substituted into the action. If this has not occurred,
18 we will grant summary judgment against Nijjar for lack of standing
19 as described above at that time. Any purported action by NRI, a
20 corporation, shall fully comply with corporate law relating to any
21 such action by the corporation. In addition, the trial dates are
22 vacated and the Stipulation (DOCKET NUMBER 32) is vacated as moot.

23 IT IS SO ORDERED.

24 Dated: February 28, 2014



25
26 GEORGE H. KING
27 Chief United States District Judge
for
28 DEAN D. PREGERSON
United States District Judge