YAMARICK v. UNUM GROUP et al Doc. 14

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM YAMARICK	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 16-6164
UNUM GROUP, aka/dba/ UNUM PROVIDENT	:	
CORP., ET AL.	:	

MEMORANDUM

SURRICK, J. **JULY 14 , 2017**

Presently before the Court is Defendants' Motion to Dismiss Count III of the Amended Complaint. (ECF No. 3.) For the following reasons, Defendants' Motion will be granted.

I. BACKGROUND

Plaintiff William Yamarick purchased a life insurance policy through Defendant John Hancock Life Insurance Company ("John Hancock"), which provided him with residual disability benefits. This action arises as a result of Defendants' denial of Plaintiff's residual disability claims. Plaintiff brings suit against Defendants alleging bad faith, 42 Pa. Stat. Ann. § 8371, breach of contract, and violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-2(4)(xxi) ("UTPCPL").

A. Factual Background[1]

On January 13, 1987, Plaintiff purchased a life insurance policy from John Hancock. (Am. Compl. ¶ 8, ECF No. 9.) The policy included a Rider, which provided Plaintiff with additional coverage for Residual (partial) Disability Benefits. (*Id.* ¶ 9.) In order to receive the Rider benefits, Plaintiff's residual disability must: (1) begin while the policy is in force; (2) be

[1] For the purpose of this Motion, the factual allegations in Plaintiff's Complaint are accepted as true. *See Rocks v. City of Phila.*, 868 F.2d 644, 645 (3d Cir. 1989).

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due to injury or sickness; (3) require the regular care of a physician; and (4) cause a loss of monthly earnings of twenty percent or more. (*Id.* ¶ 24.) Plaintiff paid all of the necessary premiums in order to maintain this coverage. (*Id.* ¶ 10.)

In May 2004, Plaintiff was diagnosed with a condition known as Familial Essential Tremor, a chronic condition that causes tremors and shakes in extremities, and which worsens over time. (*Id.* ¶ 11.) After being diagnosed with this condition, Plaintiff's symptoms were treated with medications that caused additional problems such as fatigue, mental fogginess, and lightheadedness. (*Id.* ¶ 17.) Over the course of the next ten years, Plaintiff received medical treatment from neurologist Dr. Thomas Graham, and psychological treatment from Dr. Eugene J. Huang and Dr. Jed Yalof. (*Id.* ¶¶ 12, 15, 23.)

By 2014, Plaintiff's worsening condition began to significantly impact his ability to perform his job as the sole owner of an executive employment recruiting service. (*Id.* ¶ 12.) Plaintiff's tremors prevented or severely hampered his ability to use a keyboard, mouse, and cell phone. (*Id.* ¶ 16.) His condition also limited his ability to meet with and inspire confidence in his clients, and caused depression and anxiety. (*Id.* ¶¶ 18, 23.) Dr. Graham chronicled each of Plaintiff's visits in progress reports, which detailed Plaintiff's deterioration over the years. (*Id.* ¶¶ 18-21.)

From 1987 until 2014, Plaintiff was "unaware" that his insurance policy provided him with Residual Disability Benefits. (*Id.* ¶ 13.) In 2014, after Plaintiff learned that he was entitled to these benefits, he filed a residual disability claim with John Hancock, and provided Defendant with his medical and financial records. (*Id.*) On March 18, 2014, Dr. Graham completed and submitted an individual disability claim form to John Hancock, which detailed Plaintiff's medical condition from 2007 to 2014. (*Id.* ¶ 22.)

Defendant Unum Group ("Unum") was responsible for adjusting John Hancock's disability claims. On November 5, 2014, Unum sent a letter to Plaintiff, explaining that Unum had split Plaintiff's single claim into two individual claims. (*Id.* ¶ 27, Ex. G.) The first claim covered 2007 to 2013 ("Claim 1") and the second claim covered 2013 to 2014 ("Claim 2"). (*Id.*) In the letter, Unum denied Claim 1 because Plaintiff lacked "any physical restrictions or limitations neurologically." (*Id.* ¶ 26, Ex. G.) On April 10, 2015, Unum sent Plaintiff a second letter that confirmed its previous denial of Claim 1, and also denied Claim 2 because Plaintiff "failed to meet the twenty percent reduction in income requirement of the policy." (*Id.* ¶ 28, Ex. H.)

On September 29, 2015, Plaintiff administratively appealed these denials. (*Id.* ¶ 29.) Plaintiff requested that his claims be re-evaluated, and provided Unum with additional proof that he had suffered a reduced income due to his condition. (*Id.*) Plaintiff sent Defendants a total of ten requests for re-evaluation. (*Id.* ¶ 31.) On September 28, 2016, Defendants sent a letter to Plaintiff confirming its denial of both of Plaintiff's claims. (*Id.* ¶ 32.) Defendants denied Plaintiff's claims based on the determination that "Mr. Yamarick is able to perform the material duties of his occupation and that he is not experiencing at least a twenty percent loss of monthly earnings due to an injury or sickness." (*Id.*)

Plaintiff alleges that Defendants John Hancock and Unum: (1) failed to promptly provide a reasonable explanation for its claim denial; (2) failed to act upon the claim within a reasonable amount of time; (3) deliberately ignored Plaintiff's evidence of his physical and psychological disability; (4) knowingly or recklessly disregarded its own policy requirements; and (5) knowingly or recklessly disregarded Plaintiff's evidence that demonstrated that he suffered a twenty percent loss in income. (*Id.* ¶¶ 33-39.)

B. Procedural History

On May 3, 2016, Plaintiff filed a Writ of Summons to commence this action in the Court of Common Pleas of Chester County, Pennsylvania. (Notice of Removal ¶ 1, ECF No. 1.) On October 24, 2016, Plaintiff filed his Complaint in the Court of Common Pleas. (*Id.* ¶ 2.) On November 23, 2016, the case was removed to this Court. (*Id.*, Ex. A.) The Complaint asserts three claims against Defendants: bad faith, 42 Pa. Stat. Ann. § 8371 (Count I); breach of contract (Count II); and a violation under the UTPCPL, 73 Pa. Stat. Ann. § 201-2(4)(xxi) (Count III).

On November 30, 2016, Defendants filed a Motion to Dismiss Count III of Plaintiff's Complaint. On December 7, 2016, Plaintiff filed a Response and Memorandum in Opposition to Defendants' Motion. (ECF Nos. 4, 5.) On December 9, 2016, Plaintiff filed an Amended Complaint.[2] (ECF No. 9.) Defendants submitted a Reply in Support of their Motion on December 15, 2016. (ECF No. 10.) On February 16, 2017, we entered an Order directing that Defendants' Motion to Dismiss Count III of the Complaint be treated as a Motion to Dismiss Count III of the Amended Complaint. (ECF No. 11.)

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 8(a)(2), "[a] pleading that states a claim for relief must contain a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 12(b)(6) provides for the dismissal of a complaint, in whole or in part, for failure to state a claim upon which relief can be granted. A motion under Rule 12(b)(6) tests the sufficiency of the complaint against the pleading requirements of Rule 8(a). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a

[2] The Amended Complaint simply added Provident Life and Accident Insurance Company as a Defendant.

claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A complaint that merely alleges entitlement to relief, without alleging facts that show entitlement, must be dismissed. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). Courts need not accept "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements . . . ." *Iqbal*, 556 U.S. at 678. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id*. at 679. This '"does not impose a probability requirement at the pleading stage,' but instead 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of' the necessary element." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Twombly*, 550 U.S. at 556).

In determining whether dismissal of the complaint is appropriate, courts use a two-part analysis. *Fowler*, 578 F.3d at 210. First, courts separate the factual and legal elements of the claim and accept all of the complaint's well-pleaded facts as true. *Id*. at 210-11. Next, courts determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "'plausible claim for relief.'" *Id*. at 211 (quoting *Iqbal*, 556 U.S. at 679). Given the nature of the two-part analysis, "'[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *McTernan v. City of York*, 577 F.3d 521, 530 (3d Cir. 2009) (quoting *Iqbal*, 556 U.S. at 679).

III. DISCUSSION

In Count III, Plaintiff alleges that Defendants violated the UTPCPL by engaging in deceptive conduct, which resulted in a denial of Plaintiff's residual disability claims. Specifically, Plaintiff alleges that Defendants failed to comply with their own contract terms, and misrepresented the insurance policy requirements in order to deny Plaintiff's claim. (*Id.* ¶¶ 62-65.) Defendants contend that Plaintiff's UTPCPL claim is barred by the economic loss doctrine.

In *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 671 (3d Cir. 2002), the Third Circuit held that "[t]he economic loss doctrine 'prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from a contract.'" (quoting *Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604, 618 (3d Cir. 1995)). "The economic loss doctrine is designed to . . . establish clear boundaries between tort and contract law," and may be used to bar statutory claims brought under the UTPCPL. *Id.* at 680. A claim under the UTPCPL is viable "only when a party makes a representation extraneous to the contract." *Whitaker v. Herr Foods, Inc.*, 198 F. Supp. 3d 476, 490 (E.D. Pa. 2016) (citation and internal quotation marks omitted). The economic loss doctrine "generally precludes recovery in negligence actions for injuries which are solely economic." *Excavation Techs., Inc. v. Columbia Gas Co. of Pennsylvania*, 985 A.2d 840, 841 (Pa. 2009). However, the doctrine does not apply where the deceptive or fraudulent conduct occurs in the inducement of the contract, and is "extraneous to the alleged breach of contract." *Werwinski*, 286 F.3d at 676 (citation and internal quotation marks omitted).

When the Third Circuit decided *Werwinski*, the Pennsylvania Supreme Court had not yet ruled on whether the economic loss doctrine applied to statutory claims brought under the UTPCPL. 286 F.3d at 670. Therefore, the Third Circuit was required to "predict how the court would rule by 'giving proper regard to the relevant rulings of other courts of the state.'" *Id.*

(quoting *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 378 (3d Cir. 1990)). Since *Werwinski*, the Pennsylvania Superior Court has in two separate cases held that the economic loss doctrine does not bar statutory claims brought under the UTPCPL. *See Knight v. Springfield Hyundai*, 81 A.3d 940, 952 (Pa. Super. Ct. 2013); *Dixon v. Northwestern Mut.*, 146 A.3d 780, 790 (Pa. Super. Ct. 2016). However, since the Pennsylvania Supreme Court still has not spoken on this issue, the Third Circuit's decision in *Werwinski* remains binding, and the majority of the courts in this district continue to apply the economic loss doctrine to bar UTPCPL claims. *See Simon v. First Liberty Ins. Corp.*, 225 F. Supp. 3d 319, 326-27 (E.D. Pa. 2016) (applying *Werwinski's* holding to bar UTPCPL claims under the economic loss doctrine); *McGuckin v. Allstate Fire and Cas. Ins. Co.*, 118 F. Supp. 3d 716, 720-21 (E.D. Pa. 2015) (same); *Murphy v. State Farm Mut. Auto. Ins. Co*., No 16-2922, 2016 WL 4917597, at *5 (E.D. Pa. Sept. 15, 2016) (same); *Moore v. State Farm Fire & Cas. Co*., No. 14-3113, 2015 WL 463943, at *2 (E.D. Pa. Feb. 4, 2015) (same); *Vaughan v. State Farm Fire & Cas. Ins. Co*., No. 14-1684, 2014 WL 6865896, at *4 (E.D. Pa. Dec. 3. 2014) (same); *but see Landau v. Viridian Energy PA LLC*, 223 F. Supp. 3d 401, 412-15 (E.D. Pa. 2016) (declining to apply *Werwinski* because there is persuasive evidence that Pennsylvania law has changed and because "[b]lind adherence to predictive precedent is [] problematic").

The Third Circuit's decision in *Werwinski* is binding upon this Court, and we will therefore apply the economic loss doctrine. *See McGuckin*, 118 F. Supp. 3d at 720 ("The Third Circuit's prediction of how Pennsylvania's highest court will rule carries authority independent of intermediate state court's decisions." (citation and internal quotation marks omitted)). In *McGuckin*, the court held that the economic loss doctrine barred the plaintiff's UTPCPL claim because a majority of the plaintiff's allegations flowed from the defendant's breach of contract.

Id. at 721. Specifically, the plaintiff alleged that the defendant: "failed to conduct an adequate investigation of [the plaintiff's] claims;" "neglected to reevaluate its decision when faced with contrary evidence;" relied on inadequate and incorrect information in its denial of the plaintiff's claims; "failed to timely communicate with [the plaintiff];" and failed to pay funds that the plaintiff was entitled to receive. *Id*.; *see also Simon*, 225 F. Supp. 3d at 327 (barring the plaintiff's UTPCPL claim because all of the allegations within the complaint flowed from violations of the insurance contract).

Like in *McGuckin*, the crux of Plaintiff's UTPCPL claim is based upon Plaintiff's allegation that Defendants violated its responsibilities under the insurance policy. Plaintiff alleges that Defendants: "misrepresented the policy requirements for claims of residual disability and based their claim upon those misrepresentations;" "misrepresented the evidence produced by Plaintiff;" and "failed to comply with the terms of the insurance agreement." (Am. Compl. ¶¶ 63-65.) The economic loss doctrine bars UTPCPL claims where the deceptive conduct occurred in the performance of the contract. *See Reilly Foam Corp. v. Rubbermaid Corp.*, 206 F. Supp. 2d 643, 659 (E.D. Pa. 2002) ("Inducement claims remain viable only when a party makes a representation extraneous to the contract, but not when the representations concern the subject matter of the contract or the party's performance."). Here, Defendants' misrepresentations relate to Defendants' denial of Plaintiff's disability claims. Since Plaintiff does not allege that Defendants' misrepresentations induced him into signing the policy, these allegations concern the *performance* of the contract, and are thus barred by the economic loss doctrine.

Accordingly, we will dismiss Count III of Plaintiff's Amended Complaint under the economic loss doctrine. [3]

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss Count III of the Complaint will be granted. An appropriate Order follows.

BY THE COURT:

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R. BARCLAY SURRICK, J.

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[3] Defendants also argue that Plaintiff's UTPCPL claim should be dismissed under the nonfeasance and the gist of the action doctrines. Since we find that Plaintiff's claim fails under the economic loss doctrine, we need not address these arguments.