Romero v Sinisgalli
2016 NY Slip Op 32985(U)
August 30, 2016
Supreme Court, Nassau County
Docket Number: 600331/2016
Judge: James P. McCormack

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice

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JACQUELINE ROMERO,

Plaintiff(s),

-against-

VINCENT SINISGALLI d/b/a ALPHA COLLISION AND AUTO REPAIR and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant(s).

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TRIAL/IAS, PART 29
NASSAU COUNTY

Index No. 600331/2016

Motion Seq.: 001
Motion Submitted: 6/27/16

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X
Affirmation in Opposition.....X
Reply Affirmation.....X

Defendant, State Farm Mutual Automobile Insurance Company (State Farm), moves this court pursuant to CPLR §§3211(a)(1), (5) and (7) for an order dismissing the complaint against it. Plaintiff opposes the motion. Defendant, Vincent Sinisgalli d/b/a/ Alpha Collision and Auto Repair (Alpha), does not submit papers in support of, or opposition to, the motion.

Plaintiff commenced this action by summons and complaint dated January 16, 2016. Issue was joined by service of an answer by Alpha dated March 11, 2016[1]. State Farm made the within motion in lieu of an answer.

Plaintiff was involved in a single-car accident and had her car towed to Alpha to be repaired. State Farm, Plaintiff's insurer, paid for the repairs pursuant to the term of the insurance contract. Plaintiff claims[2] that the car never ran correctly after the repairs, and sometime thereafter the vehicle simply stopped running while she was driving on the Wantagh Parkway. Plaintiff brought the vehicle to a different mechanic and was charged in excess of $7,500.00 for repairs. According to the complaint, Alpha never actually performed the repairs they had claimed and were paid for. Plaintiff made another claim with State Farm which was rejected. She then commenced this action, accusing State Farm of breach of contract, negligence and bad faith. In particular, the complaint alleges that State Farm did not inspect the repairs they paid for. State Farm now moves to dismiss the complaint against them, claiming that the documentary evidence establishes State Farm is not responsible for Plaintiff's damages, that the complaint is time-barred by the statute of limitations and that the complaint fails to state a cause of action.

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[1]The answer indicates that Alpha's correct name is Sinisgalli Auto Body, but as the caption has not yet been amended, the court will still refer to them as "Alpha".

[2]Annexed to Plaintiff's opposition papers is an unsigned, un-notarized statement from Plaintiff that does not even swear to the truth of its contents. The court was therefore unable to consider the contents of the statement, and relied upon the complaint and the moving papers to piece together the facts.

CPLR §3211(a)(1)

A party seeking relief pursuant to CPLR 3211(a)(1) " 'on the ground that its defense is founded upon documentary evidence has the burden of submitting documentary evidence that resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim' " (*Flushing Sav. Bank, FSB v. Siunykalimi*, 94 AD3d 807, 808 [2d Dept 2012], *quoting Mazur Bros. Realty, LLC v. State of New York*, 59 AD3d 401, 402 [2d Dept 2009]; *see Leon v. Martinez*, 84 NY2d 83, 88 [1994]). "[T]o be considered 'documentary,' evidence must be unambiguous and of undisputed authenticity" (*Fontanetta v. John Doe 1*, 73 AD3d 78, 86 [2d Dept 2010]).

A motion to dismiss a complaint pursuant to CPLR § 3211(a)(1) may be granted only if the documentary evidence submitted by the moving party "utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law" (*Kopelowitz & Co., Inc. v. Mann*, 83 AD3d 793, 796 [2d Dept 2011]; *Fontanetta v. John Doe* 1, 73 AD3d 78, 83 [2d Dept. 2010]).

In order for evidence to qualify as "documentary," it must be unambiguous, authentic, and undeniable (*Fontanetta v John Doe 1*, 73 AD3d 78, 84-86 [2d Dept 2010]). Neither affidavits, deposition testimony, nor letters are considered "documentary evidence" under CPLR § 3211 (a) (1) (*see Suchmacher v Manana Grocery*, 73 AD3d 1017 [2d Dept 2010]; *Fontanetta v John Doe* 1, 73 AD3d at 85-87 [2d Dept 2010]). Affidavits submitted by a defendant "will almost never warrant dismissal under CPLR 3211" (*Lawrence v Miller*, 11 NY3d 588, 595 [2008]). In the context of CPLR § 3211(a)(1), the narrow exception to this general rule might be affidavits used solely to establish the *bona fides* of other, genuinely documentary evidence.

"To succeed on a motion to dismiss pursuant to CPLR § 3211 (a) (1), the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Tietler v Pollack & Sons*, 288 AD2d 302 [2d Dept 2001]; *see also, Held v Kaufman*, 91 NY2d 425, 430-431 [1998]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]; *Museum Trading Co. v Bantry*, 281 AD2d 524 [2d Dept 2001]; *Jaslow v Pep Boys--Manny, Moe & Jack*, 279 AD2d 611 [2d Dept 2001]).

In support of their motion to dismiss based upon the documentary evidence, State Farm submits the insurance contract, in its entirety. The complaint alleges State Farm committed negligence when it paid for work not done by Alpha and when it failed to inspect Alpha's work after paying for it. While the court is of the opinion the terms of Plaintiff's complaint speak more toward breach of contract than negligence, the court will address both issues.

For negligence to exist, one party must owe a legally recognized duty to another. (*Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222[2001]). Herein, the relationship between the parties is defined by the insurance contract. As State Farm's purported negligence involves its failure to perform a duty Plaintiff believed it had, the court must determine: 1) whether this duty is one that is presumed or one that every insurance company would have, whether or not the contract imposed the duty, or 2) if it was one imposed by the contract. The court finds no evidence of either. Plaintiff has offered no evidence that State Farm, merely by being her insurance company, was under a duty to inspect the repairs performed by the mechanic she chose. The terms of the contract are

clear in that State Farm was required to pay for the repairs that resulted from an accident. While the contract gives State Farm the right to inspect the car before and/or after it is repaired, it was not under and obligation to do so, and certainly not under an obligation as per the terms of the contract, to inspect the workmanship of Plaintiff's chosen mechanic. As such, the court finds State Farm did not owe Plaintiff a duty to inspect Alpha's work. Further, from a breach of contract perspective, the contract contains no obligation to inspect the work. State Farm was required to pay for the repairs, and they did so. As such, they appropriately dispensed their contractual obligation to Plaintiff.

The complaint also alleges that State Farm was negligent, or acted in bad faith, when it failed to guarantee the work performed by Alpha. Similar to the analysis *supra*, this court believes this, too, is more akin to a breach of contract claim. Regardless, State Farm owed no duty to Plaintiff that would involve a "guarantee" of the work of Plaintiff's chosen mechanic, nor did the contract require State Farm to guarantee the work. As there was no duty owed, and no contractual obligation, the court finds State Farm, could not have acted in bad faith (assuming such a cause of action existed) in failing to guarantee the work. Therefore, based upon CPLR §3211(a)(1), the complaint must be dismissed as against State Farm.

CPLR §3211(a)(5)

In moving for dismissal pursuant to CPLR 3211 (a) (5), a defendant must establish, *prima facie*, that one or more of the asserted causes of action are time-barred

(*see 6D Farm Corp. v Carr*, 63 AD3d 903 [2d Dept 2009]; *Santo B. v Roman Catholic Archdiocese of N.Y.*, 51 AD3d 956, 957 [2d Dept 2008]; *Matter of Schwartz*, 44 AD3d 779 [2d Dept 2007]). To meet its burden, a defendant must establish when the causes of action accrued (*see Swift v New York Med. Coll.*, 25 AD3d 686 [2d Dept 2006]). Only if the defendant makes such a *prima facie* showing does the burden then shift to the plaintiff to "aver evidentiary facts establishing that the case falls within an exception to the [s]tatute of [l]imitations" (*Savarese v Shatz*, 273 AD2d 219, 220 [2d Dept 2000] [internal quotation marks omitted]; *Swift v New York Med. Coll.*, 25 AD3d 686, 687 [2d Dept 2006]) or that a question of fact exists as to whether an exception applies (*see Santo B. v Roman Catholic Archdiocese of N.Y.*, 51 AD3d at 957).

Statutes of Limitation were "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared" (*Telegraphers v Railway Express Agency*, 321 US 342, 348-349 [1944]). Other considerations include "promot[ing] repose by giving security and stability to human affairs" (*Wood v Carpenter*, 101 US 135, 139 [1879]), judicial economy, discouraging courts from reaching dubious results, recognition of self-reformation by defendants, and the perceived unfairness to defendants of having to defend claims long past the time of the occurrence.

Plaintiff's accident occurred on February 11, 2014 which, according to State Farm, is the date the cause of action accrued. As the contract required any legal action to be brought within one year of the time of the loss, and as the within action was commenced

nearly two years after the accident, the action is time-barred. In opposition, Plaintiff's counsel tries to argue that the cause of action accrued when Plaintiff's car malfunctioned on the Wantagh Parkway on February 7, 2015, thus making the complaint timely. However, a simple reading of the complaint indicates Plaintiff alleging State Farm was "negligent in paying for repairs that were never done", was "negligent in not inspecting" Alpha's work, and was "negligent and/or acted in bad faith by failing to advise they would not guarantee" Alpha's work. Each of these allegations accrued at the time Alpha performed its work or, at the latest, at the time State Farm paid for the work performed. Either way, both events occurred outside the one year window provided for in the contract. As such, Plaintiff's complaint against State Farm is time-barred.

CPLR §3211(a)(7)

In reviewing a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the court is to accept all facts alleged in the complaint as being true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the alleged facts fit within any cognizable legal theory (see *Delbene v. Estes*, 52 AD3d 647 [2nd Dept. 2008]; see also *511 W.232nd Owners Corp. v. Jennifer Realty Co.*, 98 NY2D 144 [2002]. Pursuant to CPLR § 3026, the complaint is to be liberally construed. *Leon v. Martinez*, 84 NY2d 83 [1994]. It is not the court's function to determine whether plaintiff will ultimately be successful in proving the allegations.

Aberbach v. Biomedical Tissue Services, 48 AD3d 716 [2nd Dept. 2008]; see also *EBCI, Inc. v. Goldman Sachs & Co.*, 5 NY3D 11 [2005].

The pleaded facts, and any submissions in opposition to the motion, are accepted as true and given every favorable inference *(see 511 W. 323nd Owners Corp. v. Jennifer Realty Co.*, 98 NY2d at 151-152; *Dana v. Malco Realty, Inc.*, 51 AD3d 621 [2d Dept 2008]; *Gershon v. Goldberg*, 30 AD3d 372, 373 [2d Dept 2006]). However, a court may consider evidentiary material submitted by a defendant in support of a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7) (*see* CPLR § 3211[c]; *Sokol v. Leader*, 74 AD3d at 1181). "When evidentiary material is considered" on a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), the criterion is whether the plaintiff has a cause of action, not whether they have properly stated one, and unless it has been shown that a material fact as claimed is not a fact at all or that no significant dispute exists, the dismissal should not be granted (*Guggenheimer v. Ginzburg*, 43 NY2d at 275; *see Sokol v. Leader*, 74 AD3d at 1182).

Accepting all allegations stated in the complaint as true, and allowing Plaintiff every possible inference, the complaint does not state a cause of action for negligence, bad faith or breach of contract against State Farm. State Farm's responsibility was to pay for Plaintiff's accident-related repairs. There is no allegation they failed to do so. Plaintiff has offered no evidence whatsoever, nor any acceptable theory, that State Farm was under an obligation inspect or guarantee Alpha's work. Plaintiff is, perhaps justifiably, unhappy with the accident-related repairs and the people who performed the

repairs, but neither of those complaints changes the fact that State Farm performed as it was required to do so under the contract. Further, even if the court wereto accept that State Farm might have had such a duty, Plaintiff fails to offer any competent evidence that connects the repairs performed in February, 2015 to the accident-related repairs that were either shoddily performed or not performed at all.

Accordingly, it is hereby

ORDERED, that State Farm's motion to dismiss the complaint as against it pursuant to CPLR §3211(a)(1) is GRANTED; and it is further

ORDERED, that State Farm's motion to dismiss the complaint as against it pursuant to CPLR §3211(a)(5) is GRANTED; and it is further

ORDERED, that State Farm's motion to dismiss the complaint pursuant to CPLR §3211(a)(7) is GRANTED.

The complaint is dismissed as against State Farm.

This constitutes the decision and order of the court.

Dated: August 30, 2016
Mineola, N.Y.

Hon. James P. McCormack, J. S. C.

ENTERED

SEP 06 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE