

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: July 8, 2013)

CHAMPLIN'S REALTY :
ASSOCIATES, INC., CHAMPLIN'S :
REALTY ASSOCIATES LIMITED :
PARTNERSHIP, CHAMPLIN'S :
MARINA RESORT AND TENNIS :
CLUB, LTD., CHAMPLIN'S TRADER :
VIC, INCORPORATED, CHAMPLIN'S :
WATER TAXI, INCORPORATED, :
CHAMPLIN'S REALTY :
ASSOCIATION :

v. :

C.A. No. WC-2007-0396

NORTHERN ASSURANCE COMPANY :
OF AMERICA, ONE BEACON :
INSURANCE, INTERNATIONAL :
MARINE UNDERWRITERS, DURFEE :
BUFFINTON INSURANCE AGENCY, :
INC., WALTER BROWN, and :
DOUGLAS BROWN :

DECISION

K. RODGERS, J. The matter before the Court is Defendants Durfee Buffinton Insurance Agency, Inc., Walter Brown and Douglas Brown's Renewed Motion to Strike Plaintiffs' Expert Designation of Thomas Ricci, Esq. Because the claims asserted against these remaining Defendants sound in tort, and in the absence of any statutory authorization to award attorneys' fees as a separate element of damages, the Renewed Motion is granted.

I

Facts and Travel

Plaintiffs are a number of business entities that oversee various aspects of Champlin's Marina and Resort, a vacation resort located on Block Island. Defendants Walter Brown and Douglas Brown are the President and Vice President, respectively, of Defendant Durfee Buffinton Insurance Agency, Inc. (Durfee Buffinton). Durfee Buffinton has acted as Plaintiffs' longtime insurance agent and has been—and continues to be—responsible for procuring insurance coverage for the twelve buildings located at the resort. Durfee Buffinton, through Walter Brown, placed the marina operator's policy through Defendant International Marine Underwriters (IMU) in the early 1990s and Walter Brown handled subsequent renewals of the policy.

On July 2, 2006, a fire ignited in Plaintiffs' generator room, resulting in substantial damage to the resort. Defendant insurance companies assigned an adjustment company to investigate and advised Plaintiffs that a coinsurance penalty would be deducted from any loss payment because the property was underinsured. As a result of this determination and the existence of the coinsurance policy, the 2005 and 2006 renewals of Plaintiffs' policy with IMU have become the central focus of the three counts directed against Durfee Buffinton and Walter and Douglas Brown, which allege negligent misrepresentation, negligence, breach of contract and breach of fiduciary duty. Specifically, Plaintiffs allege, *inter alia*, that these Defendants are liable for having failed to provide Plaintiffs with an insurance policy that provided sufficient coverage for the fire loss and that did not mandate a coinsurance penalty, and also for having failed to follow the express directives of Plaintiffs to fully insure the resort against such losses.

Plaintiffs originally filed suit against these Defendants, IMU, and two other insurance companies, Northern Assurance Company of America and One Beacon Insurance. The claims against all but these Defendants have been resolved. Trial is set for September 2013.

Plaintiffs filed an expert disclosure on July 26, 2012, identifying ten expert witnesses that were expected to testify in this case, including Thomas Ricci, Esq. (Attorney Ricci). That disclosure simply stated that Attorney Ricci was “expected to testify as to the reasonableness of Plaintiff’s attorneys’ fees and expenses incurred in prosecuting Plaintiff’s action against IMU.” In response to this disclosure, Defendants filed a motion to strike the designation of Attorney Ricci as an expert witness. This Court denied that motion without prejudice and ordered Plaintiffs to serve a supplemental disclosure that complies with Rule 26 of the Superior Court Rules of Civil Procedure by February 21, 2013. Plaintiffs served a supplemental disclosure on February 20, 2013, which states in its entirety:

“Thomas Ricci is expected to testify as to the necessity for and reasonableness of the legal work performed on behalf of Champlin’s entities in the civil action against IMU. Attorney Ricci will also offer his opinion concerning the amount of fees charged for that work.”

Defendants’ Renewed Motion to Strike contends that the supplemental disclosure still fails to comply with Super. R. Civ. P. 26; that other correspondence from Plaintiffs’ counsel to Defendants’ counsel suggests that Attorney Ricci has not reviewed any documents from which he could form an opinion and that he had not yet, as of the supplemental disclosure, formed any expert opinion; and that attorneys’ fees are not an element of damages for which expert testimony before a jury would be appropriate.

II

Analysis

Because the relevance of the proposed expert testimony is dispositive, this Court will first address whether expert testimony on attorneys' fees is relevant in this case. Plaintiffs maintain that attorneys' fees are properly presented to the jury as damages because "[i]t is well-understood that '[d]amages that are foreseeable are recoverable in negligence actions.'" Defs.' Mem. at 3 (quoting Kay v. Menard, 754 A.2d 760, 771 (R.I. 2000) (citation omitted)). However, Rhode Island law clearly holds that a "claim for counsel fees as an element of damages must [] fail since it is well settled that attorney's fees may not be awarded as a separate item of damages in the absence of contractual or statutory authorization." Scully v. Matarese, 422 A.2d 740, 741 (R.I. 1980) (emphasis added) (citing Bibeault v. Hanover Ins. Co., 417 A.2d 313 (R.I. 1980); Orthopedic Specialists, Inc. v. Great Atl. & Pac. Tea Co., Inc., 120 R.I. 378, 388 A.2d 352 (1978); Waite v. Bd. of Review of the Dept. of Emp't Sec., 108 R.I. 177, 273 A.2d 670 (1971); 4 Restatement (Second) Torts § 914 at 492 (1977)); see also Farrell v. Garden City Builders, 477 A.2d 81, 81-82 (R.I. 1984) (reiterating "that attorney's fees may not be awarded as a separate item of damages absent contractual or statutory authorization"). Plaintiffs have not identified a contractual or statutory provision by which attorneys' fees could be made a separate element of damages to be presented to the jury in the instant case. Accordingly, the premise upon which Attorney Ricci's anticipated expert testimony is based fails, such testimony is not relevant, and the Plaintiffs' designation of Attorney Ricci as an expert witness is stricken.

Further, even if such expert testimony was relevant and properly an issue for the jury to consider, Plaintiffs' supplemental disclosure fails to satisfy Super. R. Civ. P. 26(b)(4)(A) inasmuch as there is no summary of the grounds for this proposed expert's opinion. Indeed, as of the supplemental disclosure date, Attorney Ricci had not yet formed any opinion and, therefore, there could not possibly be any grounds for a non-existent opinion.

III

Conclusion

For these reasons, this Court finds that Plaintiffs' expert designation of Attorney Ricci shall be stricken as not being relevant to the ultimate issues to be presented to the jury and as failing to comply with Super. R. Civ. P. 26.

Counsel for Defendants shall prepare an order consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Cover Sheet Addendum

TITLE OF CASE: Champlin's Realty Associates, Inc., et al. v. Northern Assurance Company of America, et al.

CASE NO: WC-2007-0396

COURT: Washington County Superior Court

DATE DECISION FILED: July 8, 2013

JUSTICE/MAGISTRATE: Kristin E. Rodgers

ATTORNEYS:

For Plaintiff: Robert D. Goldberg, Esq.
Thomas H. DiPrete, Esq.

For Defendant: Syd A. Saloman, Esq.