

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: February 11, 2016)

PETER CUMMINGS

v.

**THE PHOENIX INSURANCE
COMPANY, Misidentified as
TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT**

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C.A. No. KD-2015-1112

DECISION

RUBINE, J. This case is before this Court on appeal from a final judgment in the District Court. That judgment favored Defendant Phoenix Insurance Company, misidentified as Travelers Indemnity Company of Connecticut (Travelers), and all of Plaintiff Peter Cummings' (Plaintiff or Cummings) claims were denied and dismissed. This Court conducted a trial de novo. The Complaint was brought in three counts: Count I, Breach of Contract; Count II, Breach of Duty of Good Faith and Fair Dealing; and Count III, Quantum Meruit. Many facts have been established by the Parties' Joint Statement of Undisputed Facts, which are incorporated herein by reference.

I

Facts and Travel

Plaintiff was the owner of a 1996 BMW 740i. On August 27, 2005, Plaintiff's vehicle was involved in a rear end collision, causing damage to the hood and radiator, as well as related damage elsewhere on the vehicle. At the time of the accident, Plaintiff was an insured under an automobile policy issued by Travelers which undisputedly insured against damage to the vehicle

occasioned by the collision. Plaintiff took the vehicle to a repair facility of his choosing, Advanced Autobody (Advanced) in the Village of Peace Dale, Rhode Island. Advanced surveyed the damage to the vehicle caused by the collision. Advanced provided Travelers an original repair estimate of \$4762.97. Travelers paid that estimate, minus a \$500 deductible, directly to Advanced as authorized by the insured. Sometime thereafter, Advanced submitted two supplemental estimates for repair to the vehicle. Travelers paid the two supplemental estimates in full. The original and two supplemental estimates were deemed to be covered by the collision portion of the automobile policy, and there is no dispute as to the coverage and cost to repair the insured vehicle resulting from the collision which occurred on August 27, 2005.¹

The vehicle was stored at Advanced for approximately three months during the course of repairs. In addition to the damage caused by the collision, Plaintiff claims that additional damage to the vehicle occurred while the vehicle was at Advanced for repair of the collision damage. These additional claims related generally to electrical repairs and paint repairs. This damage was the subject of additional claims that the insurer did not pay. The failure to pay those additional claims forms the basis of this lawsuit. Plaintiff alleges that such damage should be covered under section “F” set forth in the insurance policy, known as “comprehensive coverage,” which, under the insurance contract, covers damage to the vehicle other than that caused by a collision. There is evidence before this Court that allows it to conclude that Travelers considered the claims for damage to the vehicle when being repaired at Advanced falling within the

¹ There was evidence of additional damage to the vehicle caused by a tow truck hitting the BMW while it was parked in the Advanced lot. That additional damage, however, was covered and paid in full by insurance covering the tow truck and its operator, and was never paid as part of the Travelers’ claim.

comprehensive coverage²—that is, damage not resulting from impact with another vehicle. Plaintiff picked up his vehicle at Advanced on either November 17, 2005 or November 19, 2005.

The damage claims the Plaintiff asserts came within the comprehensive coverage include the following:

1. Damage to the electrical system rendering inoperable certain electrical components of the vehicle, including windshield wipers; heating; radio; onboard computer system; and door locks.
2. Damage attributed to a faulty paint job performed by Advanced.

It is these two claims, and Travelers' responsibility to cover them under the comprehensive coverage provision of its agreement with Plaintiff, that are before this Court for decision.

II

Discussion

1

Breach of Contract

“Under Rhode Island law, a contracting party may . . . seek damages if the other contracting party commits a breach that is ‘material’ or that ‘goes to the essence of the contract.’” Gibson v. City of Cranston, 37 F.3d 731, 735 (1st Cir. 1994) (quoting Aiello Constr., Inc. v. Nationwide Tractor Trailer Training & Placement Corp., 122 R.I. 861, 413 A.2d 85, 87 (1980)). To prevail on a breach of contract claim, a plaintiff must prove the existence of a

² In Travelers' pretrial memo, counsel seeks to justify nonpayment of the additional supplemental damage claims (damage occurring at the Advanced facility), asserting that neither the electrical or paint damage claimed by the insured was related to the August 2005 collision. This position overlooks the Plaintiff's assertion that even if such damage was unrelated to the collision coverage, the claim should have been honored under the comprehensive coverage contained in the policy.

contract, a breach of that contract, and damages flowing therefrom. Petrarca v. Fid. & Cas. Ins. Co., 884 A.2d 406 (R.I. 2005).

A

The Electrical System Claim

After returning home from picking up his car at Advanced, Plaintiff testified that he discovered damage rendering portions of the electrical systems in his automobile inoperable. Mr. Cummings, without returning to Advanced, drove the vehicle to a BMW dealership known as Newport Auto Center (Newport). While the vehicle was at the Newport facility, the fuse box—located under the hood—was opened, at which time Cummings observed standing water inside the box, as well as corrosion on electrical relays and wiring. The fuse box is a sealed unit with a watertight cover attached. The cover is attached to the box with four bolts, and the lid and box are joined with a gasket, which is designed to provide protection from water coming in contact with the electrical components housed therein. It is located in the engine compartment close to the firewall.

Cummings speculated³ that rainwater had infiltrated the fuse box through the damaged portion of the hood, causing corrosion to the wires and relays, resulting in the failure of various electrical components of the vehicle. Although the vehicle was now located at an authorized BMW dealership, the only evidence concerning the cause of the corrosion and resulting electrical failures was Plaintiff's own speculation that rainwater had somehow entered the sealed fuse box while being stored outside at the Advanced facility. He attempted to support this speculation by reference to his observation of the water inside the fuse box when the vehicle was at Newport, as well as the corrosion on wires and relays. Plaintiff testified that, because he resided in close

³ The Court did not accept Cummings as an expert witness qualified to offer his opinion as to the cause and nature of damage to the electrical system.

proximity to the Advanced facility, he frequently drove by it, affording him the opportunity to periodically observe that his car was parked in an outdoor lot adjoining the repair shop building. Although Cummings introduced photographs of the car parked outside in the lot, as well as photographs of the corrosion and the corroded parts themselves, he did not introduce any testimony that the car was ever observed by him or anyone else during a rain event to establish the basis for his speculation. Mr. Puccino, the manager of Advanced, admitted that the vehicle was stored outside at times, but noted that the automobile was stored indoors when it was being worked on.

Accordingly, the Court does not conclude that the car was continually stored outside for the three months it was at Advanced. Cummings also presented no expert testimony to corroborate his speculation, even though an authorized BMW technician observed the opened fuse box at the same time as Cummings. In light of this evidence, this Court, sitting as the finder of fact, attaches little weight to Plaintiff's speculative testimony as to the cause and nature of the damage to the electrical system. To the contrary, Travelers produced testimony and business records of Advanced attesting to the fact that at least three certified appraisers were of the opinion that the corrosion on the wires and relays demonstrated that it was caused not by rain entering the box over the relatively short time the vehicle was stored outside at Advanced, but that the condition of the electrical components indicated the corrosion was a long-term problem.

For that reason, Travelers denied the claim for electrical damage, indicating the corrosion and resulting loss to the electrical accessories arose from pre-existing mechanical problems or wear and tear to the vehicle over a long period of time. Damage resulting from wear and tear is specifically excluded as a covered claim under both the collision and comprehensive coverages. This Court determines that Plaintiff has failed to prove by a preponderance of the evidence and

credible testimony that the failure of Travelers to pay for repair of the electrical components was in violation of its obligation under the applicable policy of insurance. As Travelers is under no obligation to insure against normal wear and tear, as well as pre-existing mechanical problems per the terms of its agreement with Plaintiff, the contract between the parties was not breached, and judgment upon this claim should enter in favor of Travelers.

B

The Paint Related Claim

As to the allegedly faulty paint job, Plaintiff complains that the paint job on the vehicle as performed by Advanced was done improperly, resulting in what he described as scratches, drips, and sags in the paint. Cummings could not recall making a claim with Travelers for repair of an allegedly poor paint job. Travelers' representatives testified that no such claim was made by Cummings. Travelers did not pay Cummings for the repair of any alleged paint damage, either under the collision or comprehensive coverages.

Based on the evidence and testimony before it, this Court is not persuaded that such damage existed. The photographs introduced by Cummings did not show to the Court's satisfaction that there was damage to the paint as he described, nor did the photographs admitted into evidence lead this Court to conclude, even assuming damage to the paint existed, that it was caused by Advanced. Plaintiff testified that he observed scratches, drips, and sags shortly after he washed the vehicle after he brought the car home from Advanced. It is not disputed that Cummings never complained to Advanced about the paint nor returned the vehicle to Advanced to address the allegedly poor painting. If such paint defects existed, Plaintiff's testimony as to the alleged painting defects does not seem credible in that Cummings failed to return to Advanced to address the allegedly faulty paint job. Plaintiff nonetheless claims to have observed the alleged

paint defects shortly after the car was returned by Advanced. At any rate, Travelers proffered testimony from the Advanced manager who testified that when the vehicle left its facility the paint job was observed to have been proper. When Advanced subsequently observed what Cummings claimed as defective painting, the observed scratches were not deep and could have been addressed with a simple compounding. In sum, the effect of this testimony is that this Court is not persuaded that the damage to Plaintiff's car occurred as a result of Advanced's conduct.

Furthermore, it is clear from the evidence that Plaintiff could not recall having made a claim with Travelers for coverage arising out of this supposed damage, and that Travelers has no record of such a claim. The remaining evidence on this claim; namely, the photographs introduced, did not demonstrate to this Court's satisfaction that the paint job was faulty, that this fault was attributable to Advanced, and that Travelers was required under the agreement to cover such damage. Indeed, in any event, Plaintiff freely admitted he recalls submitting no claim for such damage, nor do Travelers' records indicate any such claim was made. The Court is of the firm belief that Plaintiff failed to prove by a preponderance of the credible evidence that the failure of Travelers to pay for defective painting was a breach of the insurance coverage under the applicable policy.

2

Breach of Good Faith and Fair Dealing

Plaintiff has also alleged a count against Travelers in the nature of a breach of the duty of good faith and fair dealing, resulting from Travelers' refusal to pay supplemental claims involving the damage to the electrical system and alleged faulty paint job. The Rhode Island Supreme Court has recognized the common law tort of insurer bad faith in the context of the wrongful refusal to pay an insured claim. Bibeault v. Hanover Ins. Co., 417 A.2d 313, 319 (R.I.

1980). The threshold inquiry under Bibeault is whether the insured has presented a fairly debatable claim because “[i]f a claim is fairly debatable, no liability in tort will arise.” Id. (citing Anderson v. Cont’l Ins. Co., 85 Wis.2d 675, 691, 693, 271 N.W.2d 368, 376-77 (1978)) (internal quotation marks omitted).

On the basis of the Court’s earlier findings supra, the claims made by Cummings herein are indeed “fairly debatable.”⁴ Under the circumstances, the Court need not address the subsequent inquiry of whether Plaintiff has shown the absence of a reasonable basis for denying benefits under the policy. The Plaintiff herein has not proven by a fair preponderance of the evidence the absence of a reasonable basis for the insurer’s denial of a claim. The claim of bad faith refusal is therefore denied.

3

Quantum Meruit

Plaintiff’s final claim in this action is asserted under a quantum meruit theory. “Quantum meruit, a Latin term for ‘as much as he has deserved,’ is ‘[a] claim or right of action for the reasonable value of services rendered.’” Process Eng’rs & Constructors, Inc. v. DiGregorio, Inc., 93 A.3d 1047, 1052 (R.I. 2014) (quoting Black’s Law Dictionary 1361, 1362 (9th ed. 2009)). “To recover on an action in quantum meruit, it must be shown that the owner [in this case the insurer] derived some benefit . . . and would be unjustly enriched without making compensation [to the Plaintiff] therefor.” Nat’l Chain Co. v. Campbell, 487 A.2d 132, 135 (R.I. 1985). Furthermore, “[a]lthough the term ‘unjustly enriched’ appears as a requirement for recovery under a quantum meruit theory, [the Court] note[s] the nuanced distinction between unjust

⁴ In fact, the parties have stipulated that Travelers denied the supplemental claims “after conducting a reasonable investigation.” (Stipulation, ¶ 16). In light of that Stipulation, it cannot be said that the claims were denied in bad faith.

enrichment and quantum meruit: “[w]hile unjust enrichment focuses on the propriety of a payee or beneficiary retaining funds or a benefit, quantum meruit’s primary focus is on the value of services rendered.” Process Eng’rs & Constructors, Inc., 93 A.3d at 1052-53 (quoting Parnoff v. Yuille, 139 Conn. App. 147, 57 A.3d 349, 355 n.7 (2012)). “Quantum meruit generally applies ‘in a situation in which the plaintiff has provided services to the defendant for which the defendant has refused to pay.’” Id. at 1053 (quoting Parnoff, 139 Conn. App. 147, 57 A.3d at 355 n.7).

In this case, there is no evidence before this Court that would enable it to conclude that Plaintiff performed any services for Travelers, such that it is inequitable to allow Travelers to retain the value of services rendered. It is further unclear, even if this Court were to read Plaintiff’s quantum meruit claim so broadly as to be an unjust enrichment claim, how Travelers received any unearned benefit such that it should be required to disgorge that benefit in order to avoid being unjustly enriched by its conduct. This Court concludes that Plaintiff has failed to set forth any evidence proving a claim under a quantum meruit theory.

III

Conclusion

In accordance with this Decision, and as a result of Plaintiff’s failure to meet its burden of proof, judgment shall enter for Travelers as to all claims.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Cummings v. The Phoenix Insurance Company

CASE NO: KD-2015-1112

COURT: Kent County Superior Court

DATE DECISION FILED: February 11, 2016

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

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