

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/05/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUÑOZ, C.A.

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

BC639944

R/T BC638626

Plaintiff

LEAD CASE

Counsel

NO APPEARANCES

LESLIAN JACKSON

Defendant

VS

Counsel

TRAVELERS COMMERCIAL INSURANCE
COMPANY

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER OF APRIL 3, 2017, RE 1) DEMURRER OF DEFENDANT TRAVELERS COMMERCIAL INSURANCE COMPANY TO PLAINTIFF LESLIAN JACKSON'S CLASS ACTION COMPLAINT AND 2) MOTION TO STRIKE OF DEFENDANT TRAVELERS COMMERCIAL INSURANCE COMPANY TO PLAINTIFF LESLIAN JACKSON'S CLASS ACTION COMPLAINT

The Court, having taken the above entitled matters under submission on April 3, 2017, issues the following Opinion and Order:

DEMURRER AND MOTION TO STRIKE

The Demurrer is Overruled. The Motion to Strike is Denied.

Defendant argues that Plaintiff's claims must fail because, as a matter of law, Defendant's policy is valid and enforceable by its terms.

Defendant argues that the policy complies with Insurance Code section 2071 because the notice requirements set forth in the section of the policy titled "Duties After Loss" should be interpreted as a policy limit on recovery consistent with the standard form fire insurance policy prescribed by that Code section. The "Duties After Loss" language does

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not follow the form specified by section 2071. An insurer may specify and enforce a policy limit on recovery, but in order to do so it must use the language of the standard form, viz., specifying that: "In consideration of the provisions and stipulations herein . . . at location of property involved, to and amount not exceeding _____ dollars, does insure [name of insured] and legal representatives, to the extent of the actual cash value of the property at the time of loss" Because the "Duties After Loss" language does not follow this policy form, the "Duties After Loss" specifications regarding notice cannot be justified on the ground that they are a permissible policy limit on recovery.

Defendant argues in the alternative that the "Duties After Loss" provision is enforceable because it is more favorable to the insured than the form policy, as permitted by section 2070. Under California law, when an insured fails to give notice as required in a policy, and the failure results in loss of benefits, the insurer has the affirmative duty to show that it was "substantially prejudiced by the late notice." (Safeco Ins. Co. of Am. v. Parks (2009) 170 Cal.App.4th 992, 1003.) This requirement that the insurer show

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prejudice in order to enforce a notice requirement applies to fire insurance policies. (Henderson v. Farmers Group, Inc. (2012) 210 Cal App 4th 459.) The form fire policy described by Insurance Code section 2071 requires that an insured provide "written notice [of loss] . . . without unnecessary delay" The "Duties After Loss" provision of the Travelers policy requires that the policyholder give notice of loss within 45 days, and specifies that if notice is received after 45 days the insured may recover no more than \$2500. At oral argument, counsel for Travelers conceded that the "Duties After Loss" policy language is intended to apply even if the insurer cannot show prejudice from the late notice. The "Duties After Loss" clause therefore does not satisfy the requirement of Insurance Code section 2070 that language other than what is in the form policy specified in section 2071 must be substantially equivalent to or more favorable to the insured. Although the "Duties After Loss" clause pays an insured \$2500 if the 45 day period is missed, an insured who misses the 45 day reporting deadline is deprived of his right to recover any amount owed for fire loss in excess of \$2500, thus being subject to a loss of benefits, even if the insurer cannot prove substantial prejudice

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from the late notice. The "Duties After Loss" policy language thus is not substantially equivalent to or more favorable to the insured than the statutory form policy.

Defendant also argues that the "Duties After Loss" clause is authorized by Insurance Code section 2080. Insurance Code section 2080 does not abrogate the requirements of sections 2070 and 2071. To the contrary, section 2080 is specifically subject to those sections because it applies only "[e]xcept as otherwise provided in this article" The various sections of a statute that addresses a particular issue or circumstance must be read as a whole, giving meaning to each section. Therefore, section 2080, which refers to "clauses imposing specified duties and obligations upon the insured and limiting the liability of the insurer," must be read so as not to abrogate or undercut section 2070, which requires clauses that diverge from the standard form be "substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy." The "Duties After Loss" clause is not unlawful because it was added to the policy, which section 2080 permits if in the form of a rider with appropriate typeface, but rather it is unlawful because it is not at

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least "substantially equivalent" to the statutory form policy, as required by section 2070.

Therefore, Plaintiff's breach of contract claim survives because Plaintiff has alleged that she met all legally enforceable contractual requirements for recovery or was excused from compliance. Similarly, Plaintiff's causes of action for bad faith and violation of the UCL adequately plead that Defendant acted unlawfully and in bad faith by enforcing the 45 day notice requirement.

Defendant's demurrer also disputes Plaintiff's contention that the policy language regarding "Duties After Loss" was not clear and conspicuous and therefore was unenforceable. This issue need not be reached on this motion because, as discussed above, Plaintiff adequately pleads contract, bad faith and UCL causes of action on the ground that Defendant, contrary to law, has enforced the 45 day notice period. Moreover, Defendant's principal argument in opposition the Plaintiff's theory that the "Duties After Loss" provision is not clear and conspicuous is based on Exhibit A to Defendant's Request for Judicial Notice. Exhibit A is not a document of which the Court can take judicial

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notice because it is not self-authenticating nor is it admitted by the Plaintiff, and therefore Defendant's argument on this point fails in the context of the Demurrer.

Defendant's Motion to Strike seeks to strike from the Complaint Plaintiff's punitive damages allegation. Plaintiff has adequately alleged that Defendant's denial of coverage was unreasonable and done with a willful disregard of Plaintiff's rights.

Defendant also seeks to strike Plaintiff's requested remedy of disgorgement. Defendant is correct that restitutionary relief by way of disgorgement is not properly sought for benefits due but not paid to an insured. (Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134.) However, Plaintiff has alleged that she is entitled to return of premiums paid with respect to a policy that was rendered illusory by Defendant's unlawful conduct. In an appropriate case, equitable relief by way of disgorgement is available to require a return of insurance premiums paid. (See Troyk v. Farmers Group, Inc. (2009) 171 Cal.App.4th 1305.)

Defendants shall file an answer within 30 days.

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The stay on discovery is lifted.

The parties are to meet and confer with respect to a discovery plan limited to class certification issues. The plan is to be centered on information and documents to be produced, not a boilerplate plan to issue interrogatories, take depositions, etc.

If the parties cannot agree on a go-forward plan after a full meet and confer process they are to jointly post a message on the message board describing the areas of difference and asking for a status conference.

A Further Status Conference is set for July 7, 2017 at 11:30 am in Department 309.

The Clerk shall give notice by posting of this Minute Order on www.CaseAnywhere.com.

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the 4/5/17 Minute Order

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entered herein, on 4/5/17, upon each party or counsel of record in the above entitled action, by electronically serving the document on Case Anywhere at www.caseanywhere.com on 4/5/17 from my place of business, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005 in accordance with standard court practices.

Dated: April 5, 2017

Sherri R. Carter, Executive Officer/Clerk

By: _____, Deputy Clerk

J. Manrique