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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

JOSEPH D. ELIAS,

Plaintiff and Appellant,

v.

FAMERS INSURANCE EXCHANGE,

Defendant and Respondent.

C069262

(Super. Ct. No.
39200900213046CUICSTK)

In this action for breach of an insurance contract, the trial court granted summary judgment to defendant Farmers Insurance Exchange (Farmers) on the ground that the action was barred by the one-year limitation period contained in the policy because plaintiff Joseph D. Elias did not commence the action until more than a year after Farmers "clearly and unequivocally" denied his claim. On appeal, Elias contends the trial court erred because "the date of denial was an issue of fact which was not subject to determination and resolution in a summary judgment motion." Finding no merit in this argument, we will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Elias was allegedly the victim of a home burglary in January 2008. Shortly thereafter, he submitted a claim against his homeowners' insurance to Farmers. The policy contained a provision stating that "[s]uit on or arising out of this policy must be brought within one year after the loss occurs." Under California law, however, the one-year period "is tolled from the time the insured gives notice of the claim to the insurance company until 'the time the insurer formally denies the claim in writing.'" [Citations.] This has been construed to mean 'unequivocal' denial in writing." (*Migliore v. Mid-Century Ins. Co.* (2002) 97 Cal.App.4th 592, 604.)

On May 23, 2008, Farmers sent a letter to Elias explaining that Farmers had "finalized its investigation and evaluation of the . . . claim." The letter expressly stated that it "represent[ed] the final decision of [Farmers] for the . . . loss" and stated that Farmers "denies the claim in its entirety" "due to material misrepresentations and conflicting statements made by the insured." The "Conclusion" section of the letter included the following:

"For the reasons specified above, [Farmers] will not make any payment to the insured at this time.

"We are not aware of any party legally responsible for causing or contributing to this loss. If you believe there is additional information that would identify a responsible party, please contact [Farmers]. In the absence of additional information, the pursuit of any recovery is your responsibility.

Although the purpose of this letter is to advise of [Farmers]'s final decision, if you believe [Farmers] has failed to consider any relevant evidence or documentation concerning your claim, you have a period of an additional fourteen (14) days from the date of this letter to submit any additional evidence or documentation you wish for [Farmers] to consider. If no additional information is received from you during that time, then [Farmers] will assume it has considered all of the evidence and documentation you believe is relevant to the proper investigation of the claim."

The "Conclusion" section of the letter further specified that "[p]ursuant to the terms of the policy and California law, the insured has one year from the date of this letter to commence suit against [Farmers] should the insured wish to pursue this matter in litigation."

In a letter to Farmers's attorney dated June 6, 2008, Elias's attorney noted that he had "received the final decision of [Farmers] for the . . . loss" but asked that Farmers "reopen this claim [to] review [certain] supplemental police reports and [to] give [Elias] additional time to provide [certain] documentation" Farmers had requested earlier.

In a letter dated August 12, 2008, Farmers's attorney responded to Elias's attorney, explaining that Farmers had "reviewed[,] evaluated" and "considered" the information provided following the May 25 "Decision Letter," but that information did "not change the basis for the Decision. Accordingly, the claim is denied due to material

misrepresentation and conflicting statements." Thereafter, the August 12 letter stated that Farmers's "decision as set forth in their May 23, 2008 letter will not be changed and the claim remains denied."

Elias filed this breach of contract action against Farmers on June 2, 2009. In November 2010, Farmers moved for summary judgment on the ground that Elias "failed to comply with the one year limitation." In opposition, Elias argued the May 23, 2008, letter did not constitute an unequivocal denial of his claim and instead his claim was not finally denied until the August 12, 2008 letter.

The trial court sided with Farmers, concluding that the May 23 letter was "clear and specific in its terminology and does not waver in its conveyance that the investigation is over and [Elias] will not be paid for his loss. The letter goes on to explain to [Elias] what his options are in the event that he is unhappy with [Farmers]'s decision and wishes to pursue other options. He can provide them with additional information and he can contact the California Department of Insurance Consumer Claims Services Bureau. *And*, he can also bring suit against [Farmers], so long as he does so within one year of the date of the letter. The letter does not require that [Elias] take any action, it only informs him what he can do if he is unhappy with [Farmers]'s decision. When [Elias] did submit additional information to [Farmers], he did not re-toll the one-year limitation period."

Following the granting of Farmers's summary judgment motion, the court entered judgment for Farmers in August 2011, and Elias timely appealed.

DISCUSSION

On appeal, Elias contends there was an issue of fact as to whether, following the May 23 letter, Farmers's investigation of his claim was still open, precluding summary judgment on limitations issue. According to Elias, the letter included a "demand [that he] submit additional evidence or documentation" to Farmers. Elias further contends that "when the right to sue is postponed by an action that must be taken by the insured as a prerequisite to suit the limitation period does not commence to run until the insured has an opportunity to comply with the conditions precedent to the litigation."

This argument is based on an unreasonable interpretation of the May 23 letter. As the trial court recognized, nowhere in that letter did Farmers *demand* that Elias submit additional evidence or documentation or suggest in any manner that its investigation was still open. The letter began, "Please be advised that [Farmers] has finalized its investigation and evaluation of the above-reference claim based upon the information and documents obtained throughout the course of the investigation. Accordingly, this letter represents the final decision of [Farmers] for the above-captioned loss.

[¶] . . . [¶] As more fully set forth below, [Farmers] has evaluated the theft loss based upon the information provided and with full reservation of rights, [Farmers] denies the claim in

its entirety." Thereafter, after providing detailed information regarding Elias and the facts of the loss, the letter explained at length that Farmers was denying the claim because Elias knowingly made a claim for items that were not in his possession on the date of loss, because Elias's veracity was called into question by his account of various facts and circumstances, and because Elias misrepresented the number of Rolex watches in his possession on the date of loss.

It is true that, in its conclusion, the letter stated that Farmers was "not aware of any party legally responsible for causing or contributing to this loss," and further stated, "If you believe there is additional information that would identify a responsible party, please contact [Farmers]." Contrary to Elias's argument, however, this statement cannot reasonably be construed as a demand for additional information, such that it reasonably could be understood that the investigation remained open and the denial of the claim was something less than final. This is so for at least three reasons.

First, on its face, the sentence on which Elias relies did not require or demand that he provide additional information, notwithstanding Elias's repeated assertions to the contrary. It merely directed Elias to contact Farmers *if* he believed there was additional information that would identify a responsible party.

Second, that sentence was shortly followed with this statement: "Although the purpose of this letter is to advise of [Farmers]'s final decision, if you believe [Farmers] has failed to consider any relevant evidence or documentation concerning

your claim, you have a period of an additional fourteen (14) days from the date of this letter to submit any additional evidence or documentation you wish for [Farmers] to consider." Not only did this statement reiterate that the letter represented Farmers's final decision, it also made clear that Farmers was not *demanding* or *requiring* that Elias provide any additional documents or information -- it was just giving him the *opportunity* to do so.

Third, the sentence on which Elias relied was also followed by the express advisement that he had "one year from the date of this letter to commence suit against [Farmers] should [he] wish to pursue this matter in litigation." This, too, confirmed that the claim was denied and Farmers was not demanding or requiring any further information from Elias.

For all of these reasons, Elias's argument that the one-year limitations period did not begin to run as of the May 23 letter because the letter required him to provide further information is without merit.

We agree with Elias's assertion that *Singh v. Allstate Insurance Co.* (1998) 63 Cal.App.4th 135 is relevant here, but we disagree with him as to *how* it is relevant. In *Singh*, the insureds argued that "not only was the one-year [limitations] period equitably tolled while Allstate investigated and initially denied their claim, but there was a second period of equitable tolling because Allstate reconsidered their claim." (*Id.* at p. 137.) The appellate court disagreed, concluding that "[t]he justifications for equitable tolling are absent, once the

carrier has initially denied the claim. The policies supporting the shortened limitation period are then fully applicable, and no reason for further tolling exists." (*Id.* at p. 142.)

Elias contends *Singh* is distinguishable on its facts because there the appellate court concluded that "Allstate's letter of November 9, 1994, could hardly be a more unequivocal denial. There was nothing tentative or conditional about it. Allstate's investigation was thorough and complete." (*Singh v. Allstate Insurance Co., supra*, 63 Cal.App.4th at p. 143.) According to Elias, "[h]ere, however, as of May 23rd the investigation by Farmers was not complete, [and the denial] was tentative and conditional." We disagree. In his attempt to distinguish *Singh*, Elias ignores language from the case which shows that the denial letter there was essentially identical to the May 23 letter here. Specifically, the *Singh* court noted that "Allstate's letter told plaintiffs their claim was denied, but stated that, if plaintiffs had any further information they would like Allstate to consider, to bring the information to Allstate's attention." (*Ibid.*) That is exactly what Farmers's May 23 letter did here. In *Singh*, the court concluded that "[t]he extension of a courtesy, to look at anything else that plaintiffs might have to offer, did not render the denial equivocal." (*Ibid.*) That conclusion applies with equal force here. The fact that Farmers gave Elias the courtesy of two additional weeks to supply Farmers with additional information *if* he had any did not undercut the finality of Farmers's denial of his claim. Just like the denial in *Singh*, the May 23 letter

here "could hardly be a more unequivocal denial. There was nothing tentative or conditional about it." (*Singh*, at p. 143.)

Because Elias has failed to persuade us that a triable issue of fact remained as to whether the May 23 letter was an unequivocal denial of his claim, we conclude the trial court did not err in granting summary judgment in favor of Farmers on the ground that the one-year limitation period ran before Elias filed this action.

DISPOSITION

The judgment is affirmed. Farmers shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

_____ ROBIE _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ MURRAY _____, J.