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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SHAUNA S. CALLISON et al., Plaintiffs and Appellants, v. LIBERTY MUTUAL FIRE INSURANCE COMPANY, Defendant and Respondent.	G050633 (Super. Ct. No. 30-2013-00660585) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed.

Law Office of Jeffrey J. Dicks and Jeff Dicks for Plaintiffs and Appellants.

Sheppard Mullin Richter & Hampton, Frank Falzetta and Jeffrey S. Crowe for Defendant and Respondent.

* * *

Plaintiffs Shauna S. and Geoffrey L. Callison appeal from a summary judgment granted to defendant Liberty Mutual Fire Insurance Company (Liberty Mutual). Summary judgment was granted for two reasons: (1) plaintiffs' failure to submit to an examination under oath, as required by the policy; and (2) plaintiffs' failure to file their complaint timely. We affirm the judgment.

PROCEDURAL AND FACTUAL BACKGROUND

Liberty Mutual issued a tenant's policy to plaintiffs effective June 23, 2010 to June 23, 2011. The policy provided "[n]o action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss." On July 1, 2010, plaintiffs submitted a claim under the policy for losses resulting from an electrical fire in their garage. In the course of the claims investigation, Liberty Mutual notified plaintiffs and their representative, in writing of this one-year limitation on four occasions, March 15, 2011, March 30, 2011, July 13, 2011, and October 28, 2011. Under California law, an insurance policy's contractual limitations period is "equitably tolled from the time the insured files a timely notice, pursuant to policy notice provisions, to the time the insurer formally denies the claim in writing." (*Prudential-LMI Com. Ins. v. Superior Court* (1990) 51 Cal.3d 674, 678.)

After Liberty Mutual paid plaintiffs $114,254.89 to remove, store, and replace damaged property and $28,069.89 for additional living expenses, plaintiffs claimed entitlement to additional sums. Liberty Mutual thereupon demanded plaintiffs submit to an examination under oath as required in the policy and under Insurance Code section 2071. A dispute then ensued as to whether Liberty Mutual was entitled to the examination and later plaintiffs failed to respond to demands to present themselves for the examination at specified times and places. On October 28, 2011, Liberty Mutual's

lawyers sent plaintiffs' lawyer a letter denying plaintiffs' claim for further policy benefits based on plaintiffs failure to submit to an examination under oath.

On July 2, 2013, plaintiffs filed their complaint. It alleged five purported causes of action against defendant, in addition to two causes of action against another party, not at issue here. After the trial court sustained demurrers to three of the causes of action, plaintiffs did not amend the complaint. That ruling is not challenged in this appeal. The two remaining purported causes of action, which were resolved on summary judgment, were breach of contract and breach of the covenant of good faith and fair dealing.

DISCUSSION

1. The examination under oath

Plaintiffs assert two grounds for their appeal. In one of these they dispute the right of Liberty Mutual to take their examination under oath because they had earlier given a recorded statement to a representative of Liberty Mutual. Insurance Code section 2071, subdivision (a) sets forth the contents of the standard form fire insurance policy. In part it provides, as did the policy here, "[t]he insured, *as often as may be reasonably required* . . ., shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same." (Italics added.) Although Liberty Mutual disputes the earlier recorded statement qualified as an "examination under oath," it does not matter because state law expressly authorizes multiple "examinations." (Ins. Code, § 2071, subd. (a); *Hickman v. London Assurance Corp.* (1920) 184 Cal. 524, 529-530.) And here, after plaintiffs made additional claims, justification for the demand for the examination is clear. As respondent notes, "[t]he right to require the insured to submit to an examination under oath concerning all proper subjects of inquiry is

reasonable as a matter of law." (*Globe Indemnity Co. v. Superior Court* (1992) 6 Cal.App.4th 725, 731.)

2. The one-year limitation

On October 28, 2011, Liberty Mutual's lawyers sent plaintiffs' lawyer a letter denying plaintiffs' claim for further policy benefits based on their failure to submit to an examination under oath. Considering the limitation period was equitably tolled until Liberty Mutual unequivocally denied the claim for additional compensation, the period expired on October 27, 2012. The complaint was not filed until eight months later.

Plaintiffs first argue their purported cause of action for "bad faith" is not an action "on the policy" and therefore the one-year limitation does not apply. Plaintiffs are wrong. In *Cobb v. Ironwood Country Club* (2015) 233 Cal.App.4th 960, we recently recognized "The covenant operates '"as a *supplement* to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract."'" (*Id.* at p. 966.)

Further, the second cause of action for breach of the covenant is clearly based on Liberty Mutual's alleged failure to pay plaintiffs the policy benefits to which they claim to be entitled. "[R]ather than rely on the title of a cause of action, we shall examine the underlying injury to determine . . . the 'essence' of the cause of action." (*Pichon v. Pacific Gas & Electric Co.* (1989) 212 Cal.App.3d 488, 500.) "'"[T]he rule that one-year suit provision does not apply to bad faith suits [is] inapplicable when insured's bad faith action is a 'transparent attempt to recover *on the policy*, notwithstanding his failure to commence suit within one year of accrual.'"'" (*Jang v. State Farm Fire & Casualty Co.* (2000) 80 Cal.App.4th 1291, 1301.)

Next appellants claim Liberty Mutual failed to advise them of the limitations period. The record clearly demonstrates the falsity of this claim. Liberty

Mutual advised plaintiffs of the limitation, not once, but four different times: letters with this information were sent on March 15, 2011, March 30, 2011, July 13, 2011, and October 28, 2011. The causes of action are barred by the statutory and policy limitation.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.