

2016 WL 8938412 (Colo.Dist.Ct.) (Trial Order)  
District Court of Colorado.  
Jefferson County

ECOBLAST, LLC d/b/a High Impact, Plaintiff,  
v.  
COUNTRY MUTUAL INSURANCE CO., an Illinois Corporation, Defendant.

No. 2015CV30787.  
October 18, 2016.

**Order Re: Defendant's Motion to Dismiss**

[Tamara S. Russell](#), Judge.

\*1 This matter comes before the Court on the Defendant's Motion to Dismiss, filed June 15, 2016. The Court, after reviewing the pleadings and applicable rules and law hereby issues the following Order:

**I. BACKGROUND**

This case concerns the Defendant Country Mutual Insurance Company's payment under an insurance policy to Plaintiff High Impact. Plaintiff, a construction and roofing company, was hired by Lee Dodgion, Country Mutual's insured, to repair damage to his home caused by a hailstorm on July 7, 2014. Due to disagreements as to whether Defendant was required to pay for overhead and profit on the claim, payment of the claim to Plaintiff was delayed. On May 6, 2015, Plaintiff filed this action asserting that Defendant unreasonably delayed payment under the policy in violation of [C.R.S. § 10-3-1115](#).

Defendant filed this Motion on June 15, 2106, arguing Plaintiff's Complaint fails to state a valid claim for relief and is subject to dismissal under [C.R.C.P. 12\(b\)\(5\)](#). Defendant asserts Plaintiff lacks standing under the statute, [C.R.S. 10-3-115](#), because Plaintiff is not an insured under the policy and the statutory penalties in the statute are not assignable. Plaintiff filed a Response to Defendant's Motion on July 6, 2016, and Defendant filed a Reply on July 13, 2016.

**II. LEGAL STANDARD**

[Colorado Rule of Civil Procedure 12\(b\)\(5\)](#) provides that a claim may be dismissed by the Court for failure to state a claim upon which relief can be granted. [Rule 12\(b\)\(5\)](#) tests the formal sufficiency of the complaint. *Coors Brewing Co. v. Floyd*, 978 P.2d 663, 665 (Colo. 1999). In reviewing a motion to dismiss under [C.R.C.P. 12\(b\)\(5\)](#), the trial court must accept all allegations of material fact as true and view the allegations in the light most favorable to the plaintiff. *Id.* A motion to dismiss for failure to state a claim is viewed with disfavor and should be granted only if it clearly appears that the plaintiff would not be entitled to any relief under the facts pleaded. *National Sur. Corp. v. Citizens State Bank*, 593 P.2d 362, 364 (Colo. 1978), *aff'd*, 612 P.2d 70 (Colo. 1980); *Davidson v. Dill*, 503 P.2d 157, 162 (Colo. 1972). When reviewing a motion to dismiss a complaint, the court may only consider matters stated within the pleading itself, and may not consider information outside of the confines of that pleading. *Public Service Co. of Colo. v. Van Wyk*, 27 P.3d 377, 386 (Colo. 2001).

### III. ANALYSIS AND CONCLUSION

Defendant argues that Plaintiff's Complaint fails to state a valid claim for relief because Plaintiff lacks standing under C.R.C. § 10-3-1115. Defendant interprets C.R.S. § 10-3-1115 to only allow claims by those directly insured under a policy absent an assignment, and argues that claims under the statute are statutory penalties that are not assignable. In support of this, Defendant cites cases from the United States District Court for the District of Colorado.

Colorado Revised Statute section 10-3-1115 states “a person engaged in the business of insurance shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party claimant.” C.R.S § 10-3-1115. A “first-party claimant” is defined in the statute as “an individual, corporation, association, partnership, or other legal entity asserting an entitlement to benefits owed directly to or on behalf of an insured under an insurance policy.” C.R.S. § 10-3-1115(1)(b)(I). The Colorado Court of Appeals has held that “vendors such as a roofer who are authorized to assert, and do assert, claims on behalf of insureds” are first-party claimants under C.R.S. § 10-3-1115. *Kyle W. Larson Enterprises, Inc. v. Allstate Ins. Co.*, 305 P.3d 409, 411 (Colo. App. 2012).

\*2 The Court finds that Plaintiff has stated a claim that may be entitled to relief under C.R.S. § 10-3-1115. As discussed above, the Colorado Court of Appeals has found that a contractor may be a first-party claimant for purposes of C.R.S. § 10-3-1115. Based on the allegations in the Complaint, the Court finds that Plaintiff may be a first-party claimant under the statute. Therefore, the Court **DENIES** Defendant's Motion to Dismiss.

Done in Golden, Colorado on October 18, 2016.

BY THE COURT:

<<signature>>

Tamara S. Russell

District Court Judge