UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-09935 PA (JCx)	Date	July 19, 2021
Title	Crystal Vargas, et al. v. State Farm General Insurance Company		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
K. Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: IN CHAMBERS – COURT ORDER

Before the Court is a Motion for Summary Judgment filed by defendant State Farm General Insurance Company ("Defendant" or "State Farm"). (Dkt. No. 27 ("Mot.")). Plaintiffs Crystal Vargas and Javier Martinez ("Plaintiffs") filed an Opposition (Dkt. No. 33 ("Opp.")) and Defendant filed a Reply (Dkt. No. 34). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument.

I. Background

The following facts are undisputed. State Farm issued a homeowner's insurance policy to Plaintiffs effective from November 23, 2018 through November 23, 2019 (the "Policy"). The Policy excluded from coverage loss caused by "continuous or repeated seepage or leakage of water." (Mot., Decl. K. Bray, Ex. A (the Policy)). In addition, the Policy excluded from coverage losses caused by "wear, tear, marring, scratching, deterioration, inherent vice, latent defect and mechanical breakdown."

On the morning of October 13, 2019, Plaintiffs left for a boating trip. When Plaintiffs returned home that evening, they heard a hissing sound coming from their bathroom. When Ms. Vargas inspected the bathroom, she noticed steam, as well as droplets of water on the ceiling. Ms. Vargas discovered that the steam was coming from a water heater located on the outside of their home.

Plaintiffs called a plumber, who came to Plaintiffs' house that night. The plumber repaired the water heater by replacing the hose at the top of the water heater where the water was coming from. The next day, Ms. Vargas saw water inside the den/room addition of the Plaintiffs' home. Plaintiffs called a mitigation contractor, Tip Top Restoration ("Tip Top"), to inspect the home.

On October 14, 2019, Tip Top inspected Plaintiffs' home and reported water damage in the bedroom, bathroom, kitchen, den, and in the crawlspace beneath the home. Tip Top started dry-out and mitigation efforts on October 14, and continued these mitigation efforts through October 30, 2019.

Plaintiffs subsequently filed a claim with State Farm under the Policy. On October 19, 2019, State Farm approved the claim and told Plaintiffs the loss was covered because it was an accidental direct physical loss. (Decl. Crystal Vargas, ¶ 4, Ex. A.) On October 23, 2019, State Farm sent another

letter to Plaintiffs stating that "the cost associated with repairing the failure of [Plaintiffs'] water heater hose [was] not covered under [the Policy] but that "the resulting water damage [was] covered." (Id. ¶ 6, Ex. C.) On October 25, 2019, before State Farm sent anyone to Plaintiffs' property to inspect the damage, Ms. Vargas called State Farm's claims department and discovered that her claim had been denied. Ms. Vargas states that "[a]fter making a number of complaints to State Farm that the claim should not have been denied without them conducting an investigation, State Farm . . . sent an adjustor by the name of Mark Hulbert to Plaintiffs' property to make an investigation." (Id. ¶ 9.)

On October 30, 2019, Mr. Hulbert met with Ms. Vargas and an employee from Tip Top named Joel Atir. Mr. Atir showed Mr. Hulbert where the hot water was spraying from the water heater. Ms. Vargas also showed Mr. Hulbert a video of the water coming out of the water heater. (Id. ¶ 9.)

After inspecting the property for approximately 30 minutes to one hour, Mr. Hulbert left. He subsequently denied Plaintiffs' claim that same day, stating in a letter to Plaintiffs:

> In our discussion, you stated that no water was coming out of the enclosure and you showed me a video of the steam and mist coming from the supply line. Your mitigation vendor did not test for moisture and stated that he did not have a meter to test for moisture being present but did not think anything would still be wet. . . .
>
> From our investigation it would appear that the water from the leak saturated the soil in the crawlspace next to the water heater. The water leak created a warm, moist environment with high vapor levels which resulted in the damages you are experiencing. Our investigation has determined that the predominant cause of loss is wear, tear, marring, scratching, deterioration, inherent vice, latent defect or mechanical breakdown of the supply line which resulted in a repeated leakage and seepage of water or steam as evidenced by the small amount of water present, the distance away from the leak the damage was found and the fact [that] no water actually contacted the damaged areas.

(Def. Mot., Decl. Lola Hogan, Ex. D.) Mr. Hulbert did not include any photos or documentary evidence with his letter. In addition, at his deposition, Mr. Hulbert admitted that he did not know why the water heater line failed. (Pls. Opp., Ex. 5, Dep. Tr. M. Hulbert, 98 L: 23-25 ("So you don't know why it failed? I cannot tell you exactly why the line failed.").) In addition, Mr. Hulbert stated he based his decision to deny the claim on statements and a video shown to him by Ms Vasquez, and what Ms. Vasquez said to her plumber. (Id. 94: L 2-14 ("So you need to have facts to show the cause of the loss; correct? Yes. Where in the claim file did you take pictures that show there was wear? Based on the evidence given by our named insured and what she said [that] her plumber had told her the line had failed. Did you talk to that plumber? No. I did not.").) Other than the video taken by Ms. Vasquez,

which this Court does not have before it, and alleged statements made by Ms. Vasquez, there is no other evidence before the Court regarding why Mr. Hulbert denied Plaintiffs' claim.

On March 23, 2020, Plaintiffs' lawyer, Eric Townsend, sent a letter to State Farm asking for more details as to why Plaintiffs' claim was denied. (Id. Ex. E.) He included photos from Tip Top showing them vacuuming water off of the property in the weeks before State Farm sent Mr. Hulbert to inspect the property. (Id.) On April 3, 2020, State Farm sent a letter responding to Mr. Townsend. In their response, State Farm stated the "hot water from the leak traveled below the hot water heater and into the crawl space below the sub floor. There was not a sudden discharge and/or burst of water that was spraying directly into the finished area." (Id. Ex. F.) Again, State Farm did not provide any documentary evidence for how they reached this conclusion, or any additional facts to demonstrate how they determined that the water damage was not caused by a sudden discharge and/or burst of water.

On October 28, 2020 Plaintiffs filed this complaint against State Farm for breach of contract, breach of the implied covenant of good faith and fair dealing, and punitive damages.

II. Legal Standard

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show an absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party does so, the non-moving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial. Id. at 324. The court does "not weigh the evidence or determine the truth of the matter, but only determines whether there is a genuine issue for trial." Balint v. Carson City, 180 F.3d 1047, 1054 (9th Cir 1999). A "'scintilla of evidence,' or evidence that is 'merely colorable' or 'not significantly probative,'" does not present a genuine issue of material fact. United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir), cert denied, 493 U.S. 809 (1989) (emphasis in original, citation omitted).

The substantive law governing a claim or defense determines whether a fact is material. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 631-32 (9th Cir 1987). The court must view the inferences drawn from the facts "in the light most favorable to the nonmoving party." Id. at 631 (citation omitted). Thus, reasonable doubts about the existence of a factual issue should be resolved against the moving party. Id. at 630-31. However, when the non-moving party's claims are factually "implausible, that party must come forward with more persuasive evidence than would otherwise be [required] . . . ." California Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir 1987), cert denied, 484 U.S. 1006 (1988) (citation omitted). "No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment." Id. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322.

III. Analysis

A. Plaintiffs' Breach of Contract Claim

Defendant argues they are entitled to summary judgment on Plaintiffs' breach of contract claim because the undisputed facts show Plaintiffs' claim is not covered under the Policy. Specifically, State Farm contends that their denial of Plaintiffs' claim was proper because the undisputed facts show that the water damage to Plaintiffs' property was caused by "continuous or repeated seepage or leakage of water" and/or "wear, tear, marring, scratching, deterioration, inherent vice, latent defect and mechanical breakdown," both of which are excluded under the Policy. Plaintiffs argue there is a genuine dispute as to how the water pipe was damaged, and whether the water damage was caused by repeated seepage or leakage of water. The Court agrees with Plaintiffs.

In California, a claim for breach of contract requires a plaintiff to establish: (1) a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damages to plaintiff. Wall Street Network, Ltd. v. New York Times Co., 164 Cal. App. 4th 1171, 1178 (2009). The parties present competing factual evidence regarding whether Plaintiffs' claims fell under the Policy at issue. Specifically, the parties present competing factual evidence regarding what caused the leak, and how long the leak occurred.

Defendant presents as evidence the expert report of David Suggs, a general contractor and certified waterproofing applicator with over 30 years of experience. (Dkt. No. 27-4 (Decl. D. Suggs).) According to Suggs, "the extent of Tip Top's claimed dryout, water removal, and extensive muckout / flood loss cleanup is only consistent with a water loss that was a continuous or repeated leakage." (Id. ¶ 6.) Suggs states that, "[t]he water loss as described - steam and mist from a water heater located outside the home - was not a sudden discharge of water that would cause damage immediately." (Id.)

According to Plaintiffs' expert, Sandra Watts, who has worked as a claims specialist and restoration professional for 33 years, "it is clear to [her] that the damages observed and reported by [Ms. Vargas], and the restoration efforts performed by Tip Top [] - including water extraction inside the home, removal of saturated soil in the crawlspace, dehumidification and air movement - are consistent with a sudden and accidental loss, and not with a long term leakage situation as alleged by State Farm." (Dkt. No. 33, Decl. S. Watts.) In addition, Plaintiffs cite to the declaration of Ms. Vargas, who states that water was coming out heavily from the pipe, and that the water damage was observed over a period of one day. Finally, Plaintiffs cite the deposition transcript of the State Farm inspector Mr. Hulbert, who states that he based his conclusion that the damage was not covered solely off of statements made by Ms. Vargas and a video that Ms. Vargas showed him, which is not before this Court.

To support their argument that they are entitled to summary judgment, State Farm cites to a number of cases that are distinguishable from the present case. For example, Defendant cites to Brown v. Mid-Century Ins. Co, 215 Cal. App. 4th 841 (2013). In Brown, the plaintiffs suffered water damage to their house caused by a broken hose on a hot water heater. Mid-Century denied the plaintiffs' claim,

finding that the damage fell under an exclusion in the policy for "water, or the presence of water, over a period of time from any constant or repeating gradual, intermittent or slow discharge, seepage, leakage, trickle, collecting infiltration, or overflow of water from any source." Id. at 846. The Court affirmed summary judgment in favor of Mid-Century, finding that the damage resulted over a period of time, and was caused by a slow discharge of water from the pipe. The plaintiffs admitted that they had seen "the existence of the effects of the water for at least a month or two," and there was extensive mold damage to the property which suggested water damage over an extended period of time. Id. at 851. This type of evidence is not present here. Plaintiffs here state the water damage occurred over one day, not over one month, and there is no evidence of mold to suggest damage over an extended period of time.

Similarly, in Freedman v. State Farm Ins. Co., plaintiffs suffered water damage to their house caused by a nail that was driven through a water pipe several years before the damage occurred. 173 Cal. App. 4th 957. State Farm denied the claim, stating the same exclusion at issue here for continuous or repeated seepage or leakage of water. Id. at 964. An inspection of the damage showed that one wall was discolored, the "drywall fell apart on touch, and mold was seen on pieces of the wall." Id. The trial court granted summary judgment in favor of State Farm, and the appellate court affirmed, finding the evidence demonstrated that the damage occurred over an extended period of time rather than spontaneously. Again, none of this factual evidence is present here. There is no evidence of mold on the walls, or that the drywall in Plaintiffs' house fell apart on touch, both of which would be indicative of water damage that occurred over an extended period of time.

The Court finds there is a genuine issue of material fact whether State Farm's denial of benefits breached the Policy. State Farm's motion for judgment as a matter of law on Plaintiffs' claim for breach of contract is denied.

B. Plaintiffs' Claim for Breach of the Covenant of Good Faith and Fair Dealing

In addition, the Court finds that Defendant is not entitled to summary judgment on Plaintiffs' breach of the covenant of good faith and fair dealing claim. "There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement. This principle is applicable to policies of insurance." Amadea v. Principal Mut. Life Ins. Co., 290 F.3d 1152, 1158 (9th Cir. 2002). Under California law, a breach of the implied covenant of good faith and fair dealing in the insurance context has two elements: "(1) benefits due under the policy must have been withheld and (2) the reason for withholding benefits must have been unreasonable or without proper cause." Nationwide Mutual Insurance Company v. Ryan, 36 F. Supp. 3d 930, 941 (N.D. Cal. 2014). "The test for determining whether an insurer is liable for breach of the implied covenant turns on whether the insurer's alleged refusal or delay was unreasonable." Id.

Again, the parties have presented competing factual evidence as to whether State Farm complied with industry standards in denying Plaintiffs' claims. Defendant presents the expert testimony of Lola Hogan, who has been in the insurance claims industry for over 30 years. According to Hogan, "[t]he

adjusters and supervisors involved met all the requirements of the Fair Claims Practices Act," and were "consistent with the custom and practice in the industry and well within the standard of care." (Dkt. No. 27-2, Decl. L. Hogan ¶ 16.) However, Plaintiffs present the expert testimony of Sandra Watts, who, in her expert opinion states that "State Farm failed to conduct or diligently pursue a thorough, fair and objective investigation of the claim." (Dkt. No 33, Decl. S. Watts.) According to Ms. Watts, when Mr. Hulbert inspected the home he failed to (1) interview Ms. Vargas regarding the facts of the loss, (2) attempt to contact the plumber who repaired the supply line, (3) contact Tip Top to confirm or discuss the cause of loss, (4) identify any specific indicator of repeated leakage or seepage, or (5) conduct any other investigation to determine or confirm the cause of the loss. (Id.) According to Ms. Watts, "[i]t is well established that repeated leakage and seepage is generally identified by indicators of a continuing problem - such as deterioration of building components, or wet or dry rot - none of which have been noted or observed at the insured's home."

The Court finds there is a genuine issue of material fact whether State Farm breached the implied covenant of good faith and fair dealing. State Farm's motion for judgment as a matter of law on Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing is denied.

C. Plaintiffs' Claim for Punitive Damages

Finally, Plaintiffs allege State Farm acted with fraud, malice or oppression when State Farm breached the implied covenant of good faith and fair dealing by wrongfully denying them benefits under the Policy. State Farm argues they did not act with fraud, malice or oppression when they denied benefits because the undisputed facts show that they complied with industry standards in investigating and subsequently denying Plaintiffs' claim.

"A plaintiff may recover punitive damages in connection with non-contractual claims if he proves 'by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice.'" Nationwide Mutual Insurance Co., 36 F. Supp. at 941 (citing Cal. Civ. Code § 3294). "An insured alleging the insurer breached the implied covenant of good faith and fair dealing may seek punitive damages in connection with that claim." Id. (citing Kransco v. Am. Empire Surplus Lines Ins. Co., 23 Cal. 4th 390, 400 (2000).

As discussed, a genuine issue of material fact exists whether State Farm's denial of the benefits was reasonable and in good faith. As such, a genuine issue of material fact exists as to whether State Farm's conduct was oppressive, fraudulent, or malicious. State Farm's motion for judgment as a matter of law on Plaintiffs' request for punitive damages is denied.

Conclusion

For all of the foregoing reasons, the Court denies State Farm's Motion for Summary Judgment.

IT IS SO ORDERED.