

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION—CINCINNATI

ASA DAWSON, et al.

:

Plaintiffs,

: CASE NO. 1:22-cv-0776-DRC

vs.

: Judge Douglas R. Cole

:

**ALLSTATE VEHICLE AND
PROPERTY INSURANCE
COMPANY,**

:

Defendant.

**DEFENDANT ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant Allstate Vehicle and Property Insurance Company (“Allstate”), by and through its undersigned counsel, respectfully moves this Court for an Order of Judgment on the Pleadings, pursuant to Fed. Civ. R. 12(c), on all claims Plaintiffs assert against Allstate in Plaintiffs’ Complaint. A memorandum in support of this motion is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This is a straightforward motion. Plaintiffs Asa Dawson and Kaitlyn Dawson submitted a claim to Allstate seeking coverage for damage resulting from the September 20, 2022 fire at their home. Allstate attempted to investigate the claim by requesting Plaintiffs submit to Examinations Under Oath and producing documents supporting the claim – both express conditions of the subject insurance policy. Plaintiffs ignored the EUO requests and filed suit before producing a single document. By refusing to submit to an EUO, Plaintiffs failed to satisfy a mandatory condition precedent and, as a result, the Policy could not impose on Allstate any duty to provide coverage. The pleadings demonstrate Allstate did not breach the contract or its duty of good faith and is entitled to judgment as a matter of law.

II. FACTS ESTABLISHED BY THE PLEADINGS

Allstate issued Policy No. 826 454 799 (the “Policy”), the Declarations to which identify Plaintiffs as the named insureds. Ex. A to Plts’ Compl. (Doc#: 1-4; PageID 22). The Policy effective period identified on the Policy Declarations is August 2, 2022 through August 2, 2023 at 12:01 a.m. standard time. Id. The Policy identifies the “location of property insured” as 2385 Vista Lake Drive, in Batavia, Ohio 45103-2110. Id.

A fire occurred at 2385 Vista Lake Drive on September 20, 2022. Plts.’ Compl. at ¶ 9 (Doc # 1, PageID # 3). Plaintiffs submitted a claim to Allstate under the Policy seeking coverage for loss to their real property and personal property. Id. at ¶¶ 13-14 (Doc # 1, PageID # 3-4). The Policy contains the following provisions:

House & Home Policy

AVP81

General

Definitions Used In This Policy

Throughout this policy, when the following words appear in bold type, they are defined as follows:

5. **Insured person(s)**—means **you** and, if a resident of **your** household:

a) any relative;

14. **You or your**—means the person listed under Named Insured(s) on the Policy Declarations as the insured and that person's resident spouse.

Insuring Agreement

In reliance on the information **you** have given **us**, **we** agree to provide the coverages indicated on the Policy Declarations. In return, **you** must pay the premium when due and comply with the policy terms and conditions, and inform **us** of any change in title, use or occupancy of the **residence premises**.

This policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations and on that person's resident spouse. These persons are defined as **you** or **your**. This means that the responsibilities, acts and omissions of a person defined as **you** or **your** will be binding upon any other person defined as **you** or **your**.

This policy imposes joint obligations on persons defined as an **insured person**. This means that the responsibilities, acts and failures to act of a person defined as an **insured person** will be binding upon another person defined as an **insured person**.

Section I Conditions

3. **What You Must Do After A Loss**

In the event of a loss to any property that may be covered by this policy,

you must:

b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.

d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.

f) as often as **we** reasonably require:

2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a

transcript of the same.

- 3) produce representatives, employees, members of the **insured person's** household or others to the extent it is within the **insured person's** power to do so; and

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

12. **Action Against Us**

No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which **Section I Conditions** applies, unless:

- a) there has been full compliance with all policy terms; and
- b) the action is commenced within one year after the inception of loss or damage.

Ex. A to Plts' Compl. (Doc#: 1-4; PageID 30-31, 41, 43).

Allstate attempted to investigate Plaintiff's claim after being notified of the fire and, to that end, Allstate requested each Plaintiff submit to an EUO. See First Amended Answer at ¶ 17 (Doc # 14; PageID # 207). Through its legal counsel, Allstate requested each Plaintiff submit to an EUO via letter dated:

- October 04, 2022 (See exhibit to First Amended Answer (Doc # 14, PageID # 214-216);
- October 14, 2022 (Id. at Doc # 14, PageID # 217-219);
- November 02, 2022 (Id. at Doc # 14, PageID # 220-223); and
- December 28, 2022 (Id. at Doc # 14, PageID # 226-227).

Each of the aforementioned letters also requested Plaintiffs produce documents relevant to Allstate's investigation. Id. On November 16, 2022, Plaintiffs' counsel sent an email to Allstate's counsel acknowledging the requests in those letters and seeking an extension of time for Plaintiffs' to comply. See exhibit to First Amended Answer (Doc # 14, PageID # 224. Allstate's counsel

sent a reply email to Plaintiffs' counsel on November 17, 2022 agreeing to the requested extension. Id. at Doc # 14, PageID # 225. Nearly six (6) weeks later, on December 28, 2022, having received nothing more from Plaintiffs, Allstate's counsel sent the December 28 letter, 2022 reiterating the requests for documents and EUO testimony. In response, at 3:55 PM on December 30, 2022, Plaintiffs' counsel sent Allstate's counsel an email which attached, among other things, a time-stamped copy of the Complaint already filed in this matter.

Instead of producing documents and providing EUO testimony as requested in Allstate's letters dated October 04, 2022, October 14, 2022, November 02, 2022, and December 28, 2022, Plaintiffs chose instead to refuse Allstate's EUO requests and file suit.

III. LEGAL STANDARD

“For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment.” *Tucker v. Middleburg-Legacy Place, LLC*, 539 F.3d 545, 549 (6th Cir.), citing *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir.). In ruling on a motion for judgment on the pleadings, courts considers the pleadings, which includes the complaint, answer, and any written instruments attached as exhibits. *Williams v. Sterling Jewelers, Inc.*, 2019 U.S. Dist. LEXIS 188276, *6, citing *Roe v. Amazon.com*, 170 F. Supp. 3d 1028, 1032 (S.D. Ohio 2016); Fed. R. Civ. P. 12(c); Fed. R. Civ. P. 7(a)); and Fed. R. Civ. P. 10(c) (“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.”). A court properly grants a motion for judgment on the pleadings under Civ. R. 12(c) when no material issue of fact exists and the moving party is entitled to judgment as a matter of law.” *Tucker*, 539 F.3d at 549.

IV. **ARGUMENT**

a. **Allstate Is Entitled To Judgment On The Pleadings As To Count I Of Plaintiffs' Complaint (Breach Of Contract) Because Plaintiffs' Failure To Perform The Mandatory EUO Condition Precedent Prevented The Policy From Imposing Any Duty On Allstate To Pay The Claim and the Policy Prohibits The Initiation Of Any Action Absent Full Compliance With All Policy Terms.**

Ohio law defines a condition precedent as that which “is to be performed before the agreement becomes effective.” *United Twenty-Fifth Bldg., LLC v. Ruoff Mortg. Co.*, 2020 U.S. Dist. LEXIS 219123, at *15 (N.D. Ohio Nov. 23, 2020), citing *Mumaw v. Western & Southern Life Ins.*, 97 Ohio St. 1, 119 N.E. 132, 135. A condition precedent “calls for the happening of some event, or the performance of some act, ... before the contract shall be binding on the parties.” *Id.* It is well established that the failure of an insured to submit to an EUO in violation of an insurance policy condition requires a dismissal of a lawsuit. *Vogias v. Ohio Farmers Ins. Co.*, 2008-Ohio-3605, ¶ 35, 177 Ohio App. 3d 391, 400, 894 N.E.2d 1265, 1271.

The Policy expressly provides that Allstate cannot be obligated to provide coverage unless and until Plaintiffs satisfy the mandatory EUO condition. As such, the EUO requirement is a condition precedent to coverage. Plaintiffs failed to satisfy the EUO requirement. See Allstate’s May 02, 2022 letter, attached as exhibit to the First Amended Answer at Doc # 14, PageID # 229 (“Instead of ... submitting to EUOs, you initiated a civil action against Allstate, thereby forcing Allstate to defend an action arising from a claim you prevented Allstate from investigating[.]”); see also Aff. Def. No. 1 (Doc # 14, PageID # 211). Plaintiffs admit they did not satisfy the EUO requirement. Plts.’ Compl. at ¶20 (Doc # 1, PageID # 5).

Plaintiffs’ failure to satisfy the EUO condition precedent prevents the Policy from imposing any duty on Allstate to pay the claim and, as in *Vogias*, requires “dismissal of [Plaintiffs’] lawsuit.” Further, the Policy precludes Plaintiffs from initiating action against Allstate absent “full

compliance with all policy terms.” Plaintiffs did not fully comply with all Policy terms and so had no right to initiate the instant action.

b. Allstate Is Entitled To Judgment On The Pleadings As To Count II Of Plaintiffs’ Complaint (Declaratory Judgment) Because Plaintiffs’ Failure To Perform The Mandatory EUO Condition Precedent Prevented The Policy From Imposing Any Duty On Allstate To Pay The Claim and the Policy Prohibits The Initiation Of Any Action Absent Full Compliance With All Policy Terms.

The same reasons entitling Allstate to judgment on the pleadings as to Count I of Plaintiffs’ Complaint also entitle Allstate to judgment on the pleadings as to Count II of Plaintiffs’ Complaint. Specifically, Allstate is entitled to declarations that (i) Plaintiffs’ failure to satisfy the mandatory EUO condition precedent precluded the Policy from imposing any duty on Allstate to pay the claim and (ii) that Plaintiffs had no right to initiate the instant action because they did not “fully comply with all Policy terms.”

c. Allstate Is Entitled To Judgment On The Pleadings As To Count III Of Plaintiffs’ Complaint (Bad Faith) Because Plaintiffs’ Failure To Perform The Mandatory EUO Condition Precedent Prevented The Policy From Imposing Any Duty On Allstate To Pay The Claim.

Plaintiffs assert Allstate acted in bad faith by (i) requesting documents (Plts.’ Compl. at ¶¶ 38-39, 42; Doc # 1, PageID # 09-10), (ii) engaging in “foot dragging” and “intentional delay” (Id. at ¶¶ 37, 43; Doc # 1, PageID # 09-10), and (iii) “not indemnifying its insured for their loss.” (Id. at ¶ 45; Doc # 1, PageID #10).

By asserting that Allstate engaged in bad faith merely by requesting documents, Plaintiffs are asking this Court to hold that the exercising of one’s contractual rights could constitute bad faith. But Ohio law rejects that proposition:

Though Ohio courts recognize an implied duty of good faith and fair dealing inherent in every contract, "Ohio law is crystal clear that an actor does not act in 'bad faith' when it decides to enforce its contractual rights [and a] party may even enforce contractual rights to the 'great discomfort' of the other party without violating its duty of good faith."

Chillicothe Tel. Co. v. Variable Annuity Life Ins. Co., 2007 U.S. Dist. LEXIS 7038, at *14 (S.D. Ohio Jan. 31, 2007), citing *Oak Ruber Co. v. Bank One, N.A.*, 214 F. Supp. 2d 820 (N.D. Ohio 2002).

Allstate had a contractual right to request documents and to request EUO testimony. Ohio law is “crystal clear” that Allstate’s election to exercise those rights – even to Plaintiffs’ “great discomfort” – did not violate Allstate’s duty of good faith.

Plaintiffs’ allegations of “foot dragging” and “intentional delay” defy the most basic notions of good faith and fair dealing. Allstate repeatedly and continuously requested documents and EUO testimony from the Plaintiffs in the multiple letters and emails Allstate’s counsel sent between October 4, 2022 and December 28, 2022. Plaintiffs never responded to the EUO requests and Plaintiffs never produced a single document until after filing suit. The pleadings demonstrate it was Plaintiffs who dragged their feet and stonewalled Allstate’s investigation, and it was Plaintiffs who intentionally delayed the claim investigation.

In light of the fact that Plaintiffs did not produce documents until after filing suit, and given Plaintiffs’ admitted refusal to submit to EUOs, Plaintiffs’ cannot reasonably maintain that Allstate acted in bad faith by “not indemnifying” them. Again, the Policy cannot obligate Allstate to provide coverage because Plaintiffs failed to satisfy the mandatory EUO condition precedent and Plaintiffs had no right to initiate this action because of their failure to “fully comply with all Policy terms.”

V. **CONCLUSION**

For the foregoing reasons, Allstate asserts it is entitled to judgment as a matter of law as to all causes of action Plaintiffs assert against it in their Complaint.

Respectfully submitted,

/s/ Jason P. Walker

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that today, May 31, 2023, I electronically filed ***Defendant's Motion for Judgment on the Pleadings*** with the Clerk of the Court using the ECF system; and notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Jason P. Walker

Jason P. Walker (0079535)