

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
James Dustin Lucas,)
Plaintiff,)
v.)
State Farm Mutual Automobile,)
Insurance Company,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE 13th JUDICIAL CIRCUIT
CIVIL ACTION NO. 2022-CP-23-03851

ORDER

RECEIVED
May 26 2023
SC Court of Appeals

On February 17, 2023, this court heard the Defendant’s Motion for Summary Judgment, the Plaintiff’s Motion for Summary Judgment, the Defendant’s Motion to Stay this Case, the Plaintiff’s Motion to Compel Discovery, and the Plaintiff’s Motion to Strike the Defendant’s Answer. For the following reasons, the Defendant’s Motion for Summary Judgment is granted and the Plaintiff’s Motion for Summary Judgment is denied. As a result of this ruling, the Motion to Stay is moot, as is the Plaintiff’s Motion to Compel Discovery and the Plaintiff’s Motion to Strike the Defendant’s Answer. Where parties file cross-motions for summary judgment, the issue is decided as a matter of law, USAA v. Pickens, 862 S.E. 2d 442, 444 (S.C. 2021); South Carolina Public Interest Foundation v. Calhoun County, 854 S.E. 2d 836, 827 (S.C. 2021); Quicken Loans v. Wilson, 823 S. E. 2d 697, 700 (S.C. Ct. App. 2019); Duke Energy v. South Carolina Department of Revenue, 764 S.E. 2d 712, 715 (S.C. Ct. App. 2014) – where cross-motions for summary judgment are filed the parties concede the issue before the Court should be decided as a matter of law.

BACKGROUND

The following facts are undisputed based on the parties' submissions to this Court and oral arguments. In 2017 the Plaintiff was a passenger in a car driven by Meghan Seely. An accident occurred when Seely turned left in front of a vehicle driven by Andre Knox. Knox had liability insurance with State Farm of \$25,000.

In June 2020, the Plaintiff filed suit against Seely and Knox – civil action number 2020-CP-23-02877 (“Underlying Lawsuit”). That lawsuit is pending in Greenville County and is scheduled to be tried in several months.

Knox did not timely respond to the complaint, and in December 2020, Judge Donald Hocker issued an order granting Plaintiff's Motion for Default Judgment against Knox. Counsel for Knox then entered an Appearance, and she and counsel for the Plaintiff exchanged emails. These emails are attached to State Farm's motion for summary judgment as Exhibit B.

The emails exchanged between Plaintiff's counsel and counsel for Knox suggest Lucas agreed to allow Knox to file an answer to Lucas' complaint and State Farm, Knox's liability carrier, would negotiate between its reserve and Knox's liability limits of \$25,000.

In September 2021, the underlying lawsuit was mediated, but did not settle. According to Exhibit A of State Farm's Motion for Summary Judgment – part of the Plaintiff's answers to interrogatories in his case against Knox- at the mediation State Farm "only offered \$1,000." Plaintiff argues the amount offered by State Farm at mediation was so small it amounted to essentially a non-offer.

BREACH OF CONTRACT

Plaintiff argues State Farm breached the contract by not mediating between the reserves and policy limits. The evidence indicates Plaintiff was not an insured of State Farm and, therefore, absent privity of contract, a third party such as the Plaintiff has no direct action against the alleged

tortfeasor's liability insurance carrier. Kleckley v. Northwestern Insurance Company, 526 S.E. 2d 218 (S.C. 2000); Gaskins v. Southern Farm Bureau, 541 S.E. 2d 269 (S.C. Ct. App. 2000)

Plaintiff argues a contract did exist between Plaintiff and State Farm, predicated upon the emails exchanged between the Plaintiff's attorney and the attorney for Knox (Exhibit B to State Farm's Motion for Summary Judgment). An initial review of these emails reflect they could not constitute a contract because the emails do not comply with SCRCP 43(k). This rule states, "[N]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record or reduced to writing and signed by the parties and their counsel." The emails in question satisfy none of these requirements.

The terms of rule 43(k) are mandatory and it is proper for a court to deny enforcement of an alleged agreement not compliant with this rule. South Carolina Human Affairs Commission v. Chen, 846 S.E. 2d 861 (S.C. Ct. App. 2020) The Chen case establishes that the terms of rule 43(k) are mandatory and it is proper for a court to deny enforcement of an alleged agreement not compliant with this rule. This rule precludes a party from turning to contract or equitable principles to vitiate this rule. Substantial compliance is not sufficient.

Even if the emails exchanged between counsel for Lucas and counsel for State Farm did constitute a contract, the emails reveal that "[State Farm] did negotiate between the reserves and the limits, as we agreed to. Given the liability dispute, however, I do not believe this case is worth the limits, which from my understanding, was your only demand." (Exhibit B to State Farm's motion for Summary Judgment).

State Farm argues that Plaintiff's allegations and arguments are based upon occurrences during a mediation in the underlying lawsuit and consequently violate the confidentiality of ADR Rule 8(a). This rule provides that "[A]ny... communication disclosed during mediation, including,

but not limited to, oral, documentary or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation, except as permitted under this rule or by statute." Although there are some limited exceptions to this rule, none of those exceptions are applicable here. Additionally, ADR Rule 8(h), which the Plaintiff asserted in opposition to State Farm's motion for summary judgment, is inapplicable as the rule provides that information admissible or subject to discovery does not become inadmissible or protected from discovery simply by reason of its disclosure or use in a mediation.

In support of its position, Plaintiff relies on communications during the mediation when it argues the amount offered by State Farm at mediation was so small it amounted to essentially a non-offer. In response to interrogatories in the underlying lawsuit, Plaintiff disclosed that State Farm offered \$1,000 during mediation. (Exhibit A to State Farm's Motion for Summary Judgment). Additionally, Plaintiff's argues that State Farm continued to engage in fraudulent activity during the mediation. In order to prove its case, Plaintiff must present evidence of confidential communications during mediation, which is prohibited. Even if Plaintiff was allowed to use confidential communications from mediation, the evidence indicates State Farm negotiated between the reserves and the limits. (Exhibit B to State Farm's Motion for Summary Judgment). Defendant is entitled to summary judgment as to breach of contract.

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

The Plaintiff's second cause of action alleges breach of contract accompanied by a fraudulent act. Proof of a contract is a prerequisite to proving a breach of contract accompanied by a fraudulent act. Armstrong v. Collins, 621 S.E. 2d 368 (S.C. Ct. App. 2005). As discussed above, Plaintiff has failed to show he had a contract with State Farm. Additionally, Plaintiff did not present evidence of a fraudulent act. It appears from the evidence that State Farm agreed to participate in a mediation, and negotiated between the reserves and the limits. (Exhibit B to State Farm's Motion

for Summary Judgment.) The Plaintiff's evidence does not support a breach of contract accompanied by a fraudulent act, and Defendant is entitled to summary judgment.

FRAUD

The third cause of action alleges fraud. There are nine elements to this cause of action, and failure to prove any of these elements is fatal to the claim. Allegro v. Scully, 762 S.E. 2d 54 (S. C. Ct. App. 2014) The nine elements of fraud are: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. M.B. Kahn v. South National Bank of Charleston, 271 S.E.2d 414, 415 (S.C. 1980) The evidence does not show a false statement. Further, the hearer's reliance on the truth cannot be established as it is speculation what Plaintiff's case against Knox would have settled for even if State Farm did what Plaintiff claims it should have done, namely, negotiated between its reserve and the limits of Knox's liability coverage. The evidence does not prove a consequent and proximate injury, nor does any alleged statement relate to a present or pre-existing fact. A false statement cannot be predicated on unfulfilled promises. Making a statement to do something in the future – negotiate between the reserve and the policy limits – does not meet the element. Foxfire Village v. Black, 404 S.E. 2d 912 (S.C. Ct. App. 1991) Beneficial Finance v. Windham, 847 S.E. 2d 793 (S.C. Ct. App. 2020) Any statement by State Farm about what it would do at mediation cannot be the basis of a claim of fraud. Defendant is entitled to summary judgment on this cause of action.

DAMAGES

On the issue of damages as to all causes of action, the evidence does not show what Plaintiff's case would have settled for had there been an enforceable contract. The amount of Plaintiff's damages is speculative. Plaintiff has the burden of proving damages for breach of contract. Depositions And...Inc. v. Campbell, 406 S.E. 2d 390, 391 (S.C. Ct. App. 1991). Generally, for damages to be recoverable, the evidence should be such as to enable a court or jury to determine the amount thereof with reasonable certainty or accuracy. The existence, causation, and amount of damages cannot be left to conjecture, guess, or speculation. Winthrop University v. Pickens Roofing, 791 S.E. 2d 152, 167 (S.C. Ct. App. 2016).

Settlement negotiations, in the context of mediation or otherwise, depend upon a myriad of factors. Even if a valid contract between the Plaintiff and State Farm existed, it is impossible to state with certainty what the underlying case would have settled for. The basis for Plaintiff's lawsuit is an assumption that if State Farm had negotiated between two figures – the amount of State Farm's reserve and the amount of Knox's liability limits – the underlying case would have settled for some amount. That amount is, however, speculative. It is theoretically possible that in the trial of his case against Knox, the Plaintiff could recover more than the amount the Plaintiff would have received had the Plaintiff's case against Knox resolved at mediation.

CONCLUSION

State Farm's motion for summary judgment is granted, and Plaintiff's Motion for summary judgment is denied.

G.D. Morgan, Jr., Presiding Judge

Greenville, S.C.
_____, 2023



Greenville Common Pleas

Case Caption: James Dustin Lucas vs. State Farm Mutual Automobile Insurance Company
Case Number: 2022CP2303851
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So Ordered

G.D. Morgan Jr.

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