SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1035-15T3

DANE GIBBINS,

Plaintiff-Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO),

Defendant-Respondent.

Argued February 28, 2017 – Decided March 14, 2017

Before Judges Fasciale and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Sussex County, Docket No. L-0023-15.

John P. Graves argued the cause for appellant.

David T. Robertson argued the cause for respondent (Harwood Lloyd, L.L.C., attorneys; Mr. Robertson, of counsel and on the brief).

PER CURIAM

Dane Gibbins (plaintiff) appeals from a September 23, 2015 order granting summary judgment to Government Employees Insurance

Company (GEICO) (defendant)[1] and dismissing plaintiff's complaint with prejudice. We affirm.

On October 31, 2013, plaintiff purchased a pre-owned 2011 Chevrolet Silverado pickup truck from a car dealership. Plaintiff completed an online application for an automobile insurance policy through GEICO.com. Defendant accepted plaintiff's application for insurance coverage and emailed him a "Verification of Coverage" form. The coverage included comprehensive and collision coverage with a $1000 deductible. Defendant also emailed plaintiff a "State of New Jersey Temporary Evidence of Coverage" form, stating the coverage was effective November 1, 2013 through November 21, 2013.

Defendant maintains its online application advises applicants of the requirement to have the vehicle inspected within seven days of the policy's effective date and suggests garage locations for inspection based on the policy zip code. Plaintiff alleges the online application he completed did not advise him of the physical inspection requirement. Defendant provided a screenshot of an example application showing the notification. The screenshot shows the application language stating, "[b]y clicking the continue button below, I acknowledge the vehicle must be inspected

[1] Defendant states that plaintiff named GEICO as the defendant, but the policy was issued by an affiliated entity, GEICO Indemnity Company.

within [seven] calendar days from [application date]. Failure to complete the inspection will result in both comprehensive and collision coverage being removed from my vehicle." Plaintiff would have had to click the "continue" button to complete the application.[2]

On November 1, 2013, defendant mailed plaintiff a notice of the insurance inspection requirement, stating:

> [W]e would like to remind you to complete [two] important state requirements.
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> 1. NEW JERSEY STATE-MANDATED PHOTO INSPECTION New Jersey State Law requires you to have a photo inspection of your vehicle completed at an authorized location. This is not the same as the emissions inspection done at the Motor Vehicle Commission.
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> FAILURE TO COMPLETE THIS MANDATORY INSPECTION WILL RESULT IN THE REMOVAL OF COMPREHENSIVE AND COLLISION FROM YOUR VEHICLE.

The notice states, "IMMEDIATE ACTION REQUIRED TO AVOID LOSS OF INSURANCE COVERAGE" and informed plaintiff of the requirement that the inspection be completed by November 8, 2013, or else the coverage would be suspended on November 9, 2013 at 12:01 a.m. Defendant provided the mail certification for the November 1, 2013

[2] Defendant stated in its certification and brief that after defendant denied plaintiff's claim, plaintiff filed a complaint with the New Jersey Department of Banking and Insurance (DOBI). Defendant asserts that DOBI performed an investigation and concluded that defendant acted in accordance with New Jersey law and dismissed the complaint.

notice. Plaintiff claims he never received the November 1, 2013 notice.

Plaintiff did not complete the required physical inspection of his vehicle. On November 16, 2013, plaintiff's vehicle sustained significant damage when plaintiff swerved off the road. Plaintiff called defendant to report the accident the same day and he claims defendant's employee told him everything "looks good" and that defendant would "assum[e] full responsibility for the loss."

On November 18, 2013, one of defendant's employees in the claims department sent plaintiff an email acknowledging receipt of plaintiff's claim. The email stated: "there are coverage issues on the file to be resolved and we are looking for a copy of the police report in order to resolve everything. Please let me know once you have been able to obtain the police report so that I can complete the coverage investigation on your claim." Plaintiff asserts he sent defendant a copy of the police report.

On November 26, 2013, defendant's Inspection Unit mailed plaintiff a letter entitled "NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE." The letter stated that plaintiff's comprehensive and collision coverage was suspended on November 9, 2013, due to failure to comply with the physical inspection requirement per N.J.A.C. 11:3-36.3 and -36.7. On December 4,

2013, defendant denied plaintiff's claim for property damage. Plaintiff asked defendant for proof showing defendant advised him of the physical inspection requirement and defendant mailed him a copy of the November 1, 2013 notice. Plaintiff claims this was the first time he had seen the November 1, 2013 notice.

In January 2015, plaintiff filed a four-count complaint and jury demand against defendant alleging he was entitled to (1) a declaratory judgment requiring defendant to provide physical damage coverage for the damage to plaintiff's vehicle resulting from an accident on November 16, 2013 (Count One); (2) damages because defendant breached its insurance contract with plaintiff when defendant denied plaintiff's claim for the physical damage to his vehicle (Count Two); (3) damages because defendant breached the implied covenant of good faith and fair dealing when defendant denied plaintiff's claim for the physical damage to his vehicle (Count Three); and (4) damages because defendant acted in bad faith when defendant denied plaintiff's claim for physical damage to his vehicle (Count Four). In July 2015, defendant filed its motion for summary judgment and certified that it advised plaintiff of the physical inspection requirement "both online and by correspondence dated November 1, 2013."

In September 2015, the court granted defendant's motion for summary judgment, stating:

> In the present matter, [defendant] must mandate under N.J.A.C. 11:3-36 that [p]laintiff's [vehicle] with comprehensive and collision coverage be inspected within seven (7) days of the policy's effective date. After [p]laintiff purchased the policy on October 31, 2013, [defendant] mailed [p]laintiff Notice of Inspection the next day on November 1, 2013 via post office receipt secured mail. The notice advised [p]laintiff that if the inspection was not completed by November [8], 2013, the comprehensive and collision coverage for the [vehicle] would be removed effective 12:01 A.M. on November 9, 2013. Therefore, [defendant] followed the notice requirements under N.J.A.C. 11:3-36.6.
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> Following proper notice under N.J.A.C. 11:3-36.6, [p]laintiff had until November 8, 2013 to complete inspection of the [vehicle] in order to be covered under [defendant's] comprehensive and collision coverage. Plaintiff failed to have his vehicle inspected by November 8, 2013 and there is no evidence to suggest [defendant] acted in bad faith . . . . Accordingly, [defendant] followed the suspension requirements of N.J.A.C. 11:3-36.7 and does not owe coverage to [p]laintiff.

On appeal, plaintiff argues defendant was required to contemporaneously notify him of the inspection requirement when he completed the online insurance application and defendant was required to mail him a notice of inspection form; defendant violated N.J.A.C. 11:3-36.5(c)(2) by failing to advise him of the mandatory physical damage inspection when he completed the online application on October 31, 2013; defendant's summary judgment motion should have been denied because defendant failed to show

it advised plaintiff of the inspection requirements in a November 1, 2013 letter; plaintiff is entitled to summary judgment on all counts of his complaint; and, if he is not entitled to summary judgment on Counts Three and Four, he has made a prima facie showing that defendant denied his claim for physical damage coverage in bad faith.

Summary judgment should be granted when, considering the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. R. 4:46-2(c); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion." Puder v. Buechel, 183 N.J. 428, 440-41 (2005). When reviewing an order granting summary judgment, this court applies "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div.), certif. denied, 216 N.J. 86 (2013). This court owes no deference to the motion judge's conclusions on issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Applying these standards, we conclude there was no error.

Defendant complied with the physical inspection notification requirements and subsequent suspension procedures pursuant to

N.J.S.A. 17:33B-34 and N.J.A.C. 11:3-36. See N.J.A.C. 11:3-36.1 (stating that "[t]he purpose of this subchapter is to provide rules for the inspection of automobiles in connection with the issuance of physical damage insurance coverage by insurers pursuant to N.J.S.A. 17:33B-33 through 17:33B-40").

N.J.S.A. 17:33B-34(a) states "[a] newly issued policy shall not provide coverage for automobile physical damage perils prior to an inspection of the automobile by the insurer." See also N.J.A.C. 11:3-36.3 (explaining the mandatory inspection requirements). An insurer may waive the mandatory inspection only in specific circumstances delineated in N.J.A.C. 11:3-36.4, none of which apply here. N.J.A.C. 11:3-36.5(a) allows an insurer to delay the mandatory inspection "for seven calendar days following the effective date of coverage, upon an insured's requests for coverage for automobile physical damage insurance." The insurer must provide the insured with a "Notice of Inspection in the form set forth in Appendix B or an Acknowledgement of Requirement for Insurance Inspection as set forth in Appendix A," which both outline the deadlines for the inspection and warn about losing coverage. N.J.A.C. 11:3-36.6(d). The regulations do not specifically contemplate online insurance applications, but rather consider in-person or telephonic applications. See N.J.A.C. 11:3-36.5(c)(1)-(2).

Here, defendant certified that it notified plaintiff that he must have his vehicle inspected by November 8, 2013, through the online application and by the November 1, 2013 mailed notice. The November 1, 2013 notice complies with N.J.A.C. 11:3-36 Appendix B. The regulations required plaintiff to have the car inspected within seven days. Although plaintiff claims he never saw the online notice or the mailed November 1, 2013 notice, defendant provided the post office certification that the November 1, 2013 notice was mailed. Although defendant did not provide a copy of plaintiff's exact online application, it provided an example application with the warning that the applicant must have the vehicle inspected in seven days.

Even viewing the facts in the light most favorable to plaintiff, we conclude that defendant complied with the mandatory inspection notice requirements. In terms of suspending coverage, N.J.A.C. 11:3-36.7 provides:

> (a) If the inspection is not conducted prior to the expiration of the deferral period or the expiration of the policy in the case of renewals, the insurer shall suspend automobile physical damage coverage on the automobile at 12:01 A.M. of the day following the last day for inspection. Suspension of coverage shall apply to all insureds, owners and lienholders.
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> (b) Whenever physical damage coverage is suspended, the insurer shall:

> 1. No later than the 30th calendar day after the effective date of the suspension, mail to the insured, the producer of record and any lienholders a Notice of Suspension of physical damage coverage (as set forth in Appendix D incorporated herein by reference);
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> 2. Obtain a certificate of mailing or other evidence of mailing of the Notice of Suspension to the insured and shall retain the certificate and copy of the Notice in the insurer's file on the insured; and
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> 3. Make a pro-rata premium adjustment (premium refund or credit) whenever there is a suspension of physical damage coverage for more than 10 days. A refund of premium, if applicable, shall be sent to the insured within 45 days of the effective date of suspension.

Defendant complied with all the procedures to suspend coverage. It suspended coverage at 12:01 a.m. on November 9, 2013, in accordance with the regulations. Defendant sent the letter notifying plaintiff of the suspended coverage on November 26, 2013 (before the thirtieth calendar day after the effective date of the suspension), and the letter is marked "POST OFFICE RECEIPT SECURED." Finally, defendant certified that it credited plaintiff's account for $540.81, the total amount charged for comprehensive and collision coverage.

Plaintiff also alleges defendant denied his claim in bad faith. "As a preliminary matter, the insured who alleges bad faith by the insurer must establish the merits of his or her claim for benefits. If there is a valid question of coverage, i.e., the claim is 'fairly debatable,' the insurer bears no liability for bad faith." Wacker-Ciocco v. Gov't Emps. Ins. Co., 439 N.J. Super. 603, 611 (App. Div. 2015) (quoting Pickett v. Lloyd's, 131 N.J. 457, 473-74 (1993)). Plaintiff's claim is not "fairly debatable"; defendant was entitled to deny it outright. Defendant complied with all notice and suspension procedures provided in the regulations. It did not have discretion to provide coverage when plaintiff did not comply and have the vehicle inspected. There is no evidence of bad faith on behalf of defendant.

We conclude that plaintiff's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.