

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ALVA L. WHITENITE,	:	
Plaintiff	:	DOCKET NO. 12-00,818
	:	CIVIL ACTION – LAW
vs.	:	
	:	
OHIO CASUALTY INSURANCE COMPANY,	:	
Defendant	:	

OPINION AND ORDER

AND NOW, this 18th day of September, 2012, following oral argument on Defendant’s Preliminary Objections to strike Plaintiff’s Complaint, it is hereby ORDERED and DIRECTED that Defendant’s objections are SUSTAINED. In her complaint, Plaintiff brought a claim, as a third party beneficiary, against Ohio Casualty Insurance Company (“Ohio Casualty”), for breach of contract. However, Plaintiff was not insured by Ohio Casualty at the time of her injury, and, under the law of the Commonwealth and the facts alleged, she cannot properly bring a claim against Ohio Casualty, the insurer of an alleged tortfeasor.

I. Factual and Procedural Background

A brief factual background is as follows. On May 8, 2010, Plaintiff was struck and injured by a warehouse door while she was shopping for a new air conditioner at Beiter’s Home Center. As a result of this incident, Plaintiff underwent surgery to repair the tibial component of her right knee, and she incurred medical expenses over \$61,000.00. At the time of the incident, Plaintiff alleges that Ohio Casualty insured Beiter’s South Williamsport Realty, LLC, and Beiter’s, Inc., and that one or both of these organizations own and control Beiter’s Home Center.

Plaintiff filed suit against Ohio Casualty as a third party beneficiary; Plaintiff alleged that Ohio Casualty breached its insurance contract with Beiter’s, Inc., by failing to pay its policy

limits towards Plaintiff's medical expenses. Ohio Casualty filed preliminary objections in the nature of a demurrer to Plaintiff's claim.

II. Discussion

When considering a demurrer, the Court considers all of the material facts plead, as well as all reasonable inferences derived from those facts, as true. *Burks v. Fed. Ins. Co.*, 883 A.2d 1086, 1087 (Pa. Super. Ct. 2005).

Generally, an injured third party cannot maintain an action against a tortfeasor's insurance company; the third party cannot maintain a direct action against the insurance company unless this right is provided for by statute or within the policy itself. *Dercoli v. Pa. Nat'l Mut. Ins. Co.*, 535 A.2d 163, 165 (Pa. Super. Ct. 1987). In order to have standing to recover under an insurance contract, the third party must be an intended, third party beneficiary. *Scarpitti v. Weborg*, 609 A.2d 147, 149 (Pa. 1992); *Burks*, 883 A.2d at 1088. In order to be an intended third party beneficiary, the intention must have been present on behalf of both of the contracting parties and the intention must be present in the contract itself. *Scarpitti*, 609 A.2d at 149; *Guy v. Liederbach*, 459 A.2d 744, 750 (Pa. 1983); *Spires v. Hanover Fire Ins. Co.*, 70 a.2d 828, 830-31 (Pa. 1950).

In this instance, Plaintiff, as an injured third party, is seeking to recover against the insurance contract between Beiter's, Inc., and/or Beiter's South Williamsport, Realty, LLC, and Ohio Casualty. Plaintiff's claim fails on three grounds: 1. Plaintiff is not a party to the insurance contract; 2. Plaintiff is not a third party beneficiary to the insurance contract; and 3. due to the lack of a contractual relationship, the insurance company owes no duty to Plaintiff, and, therefore, it did not breach such duty. *See Brown v. Candelora*, 708 A.2d 104, 108 (Pa. Super. Ct. 1998).

The Court finds *Burks v. Fed. Ins. Co.*, 883 A.2d 1086 (Pa. Super. Ct. 2005), controlling in the pending matter. In *Burks*, the plaintiff brought an action against a tortfeasor's insurance company for payment of medical bills after plaintiff fell on the tortfeasor's property; the plaintiff sought to collect this payment under the insurance policy between the tortfeasor and its insurance company. *Id.* at 1087. The plaintiff alleged that an individual working for the tortfeasor told her to deliver her medical bills to the tortfeasor's office for payment and that the insurance company refused to pay the bills. *Id.* The trial court granted the insurance company's demurrer request on the basis that the plaintiff was not a third party beneficiary to the insurance contract, and, therefore, she could not bring a cause of action under the contract.

On appeal, our Superior Court affirmed. The Superior Court held that the plaintiff did not have the standing to bring the cause of action because the contracting parties did not intend for the plaintiff to be a beneficiary of the contract. *Id.* at 1089. Particularly, the Court determined that, through the insurance contract, the tortfeasor intended to "procure medical payment coverage that would permit [tortfeasor] to compensate an individual for bodily injury sustained on its premises *if it chose to*, and independent of its actual legal liability to compensate the individual.... To hold otherwise would be to confer a blanket accidental medical insurance policy to all individuals that sustain bodily injury that arise out of [tortfeasor's] operation of its premises for which it has bodily injury liability coverage." *Id.* at 1091 (emphasis in original).

In the instant matter, the Court finds that Plaintiff is not a third party beneficiary to the insurance contract between Beiter's, Inc. and/or Beiter's South Williamsport Realty, LLC. These organizations procured insurance so that it could choose when to provide medical payment to those injured on its premises. Plaintiff was not an intended beneficiary at the time of

contracting, and, therefore, she cannot bring an action arising out of the insurance contract.
Therefore, Plaintiff's claim must be dismissed.

ORDER

AND NOW, this 18th day of September, 2012, for the reasons stated above, it is hereby
ORDERED and DIRECTED that Defendant's objections are SUSTAINED. Plaintiff's
complaint is DISMISSED

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

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