

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARCIA CONFER,	:	NO. 16 - 0719
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
FAIRFIELD AUTO DEALERSHIP, INC.	:	
t/d/b/a FAIRFIELD TOYOTA and	:	
TOYOTA MOTOR SALES, U.S.A., INC.,	:	
Defendants	:	
	:	
vs.	:	
	:	
PENNSYLVANIA NATIONAL MUTUAL	:	
CASUALTY INSURANCE,	:	
Additional Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections filed on October 24, 2016 by Additional Defendant (“Penn National”) to the Joinder Complaint filed by Defendants (“Toyota”) on September 23, 2016. Argument was heard December 13, 2016.

In her Complaint, Plaintiff alleges that (1) she leased a vehicle from the dealership and, after her daughter drove through standing water, the vehicle experienced engine failure which Plaintiff claims is due to a defect in the vehicle, (2) after inspection, Toyota claimed the engine failure was caused by water intrusion rather than any defect and refused to repair the vehicle under the warranty, and (3) after such refusal, Plaintiff contacted her insurance carrier, Additional Defendant herein, which sent a mechanic to inspect the vehicle and the mechanic concluded the failure was not caused by water intrusion. Plaintiff claims that Toyota’s refusal to repair the vehicle under the warranty constitutes

breach of the contract and express warranties, and violations of the Magnuson Moss Act and the Lemon Law.

In the Joinder Complaint, Toyota alleges that if Plaintiff is successful in her claims against them, her damages are the direct result of Penn National's conduct in refusing to pay for the repairs as they had an obligation under Plaintiff's insurance policy to do so. Toyota makes claims for breach of contract (the insurance policy), bad faith and negligence, all of which are based on Penn National's refusal to pay for the repairs.

In its preliminary objections, Penn National asserts that (1) Toyota lacks standing to sue, (2) Toyota is not a party to the contract of insurance, (3) as a third party Toyota cannot bring a suit for bad faith, (4) no facts have been pled to show breach of a duty or harm to Toyota, (5) the gist of the action doctrine prevents the negligence claim and (6) the Joinder Complaint was improperly verified. Rather than discuss these individually, the court finds it sufficient to simply analyze the matter under Pa.R.C.P. 2252 (governing joinder of additional defendants) as the rule appears to incorporate all of the specific principles raised in the first four objections.¹

Rule 2252 provides in pertinent part as follows:

Rule 2252. Right to Join Additional Defendants

(a) ... any party may join as an additional defendant any person not a party to the action who may be

(1) solely liable on the underlying cause of action against the joining party, or

¹ As for the objection to the verification and the objection based on the gist of the action doctrine, dismissal for improper joinder renders them moot but, in any event, a proper verification was filed on November 28, 2016, and alleged negligence in refusing to pay under a contract is clearly precluded by the gist of the action doctrine.

Note: The term "underlying cause of action" refers to the cause of action set forth in the plaintiff's complaint or the defendant's counterclaim.

...

(4) liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.

Pa.R.C.P. 2252. In other words, a party may be joined where that party is (1) liable to Plaintiff on Plaintiff's cause of action or (2) liable to or with Defendant on a cause of action arising out of the occurrence which gave rise to Plaintiff's cause of action. Joinder is *not* allowed where the allegations in the two complaints "relate to different harms to be proven with different evidence as to different occurrences happening at different times." Goodman v. Kotzen, 647 A.2d 247 (Pa. Super. 1994), *citing and quoting* Olson v. Grutza, 631 A.2d 191, 195-96.

Here, Plaintiff's cause of action is for breach of the contract between Plaintiff and Toyota, breach of the express warranties given to Plaintiff by Toyota, and violation of laws which apply to Toyota. Penn National cannot be liable to Plaintiff on any of these claims as Penn National is not a party to the referenced contract or warranties and not subject to the referenced laws. Thus, Penn National may not be joined under the first prong of the Rule.

With respect to the second prong, Toyota makes its claim against Penn National based on Penn National's refusal to pay for repairs. Although arising out of the occurrence which gave rise to Plaintiff's claims against Toyota, and although potentially providing a basis for liability of Penn National *to Plaintiff*, that refusal does *not* provide a basis for liability of Penn National *to Toyota*.

Toyota is not a party to the insurance contract and therefore may not sue for breach of that contract or bad faith with respect to that contract. Likewise, and for the same reason, Toyota cannot be liable to Plaintiff for Penn National's refusal to pay for repairs and thus Penn National cannot be liable *with Toyota*. Joinder under the second prong is therefore also not permitted.

Toyota's reliance on Gordon v. Sokolow, 642 A.2d 1096 (Pa. Super. 1994), is misplaced. There, the plaintiffs filed a legal malpractice action against the attorney who represented them in a real estate transaction. The attorney was permitted to join the proposed buyer and its agent based on allegations of fraud and intentional/negligent misrepresentation as the court found those allegations to provide a basis for liability of the buyer and agent to the attorney. In the instant case, as outlined above, there is no basis for such liability.

Rather, the facts in this case are more analogous to those in Austin J. Richards, Inc. v. McClafferty, 538 A.2d 11 (Pa. Super. 1988). There, the plaintiff filed a claim for interference with contract and slander of title based on the defendant's having filed a *lis pendens* on property she was attempting to sell to a third party. The defendant attempted to join the plaintiff's attorney, alleging malpractice with respect to advice given to the plaintiff regarding settlement offers involving the real estate transaction. In holding the attempted joinder "clearly improper", the Court stated "[t]he Plaintiff did not assert a claim for malpractice against her attorneys, and the defendant will not be allowed to force her to do so in her action against the defendant." Id. at 16.²

² This court acknowledges that Plaintiff in the instant matter cannot be considered to be being forced by Toyota to assert a claim against her insurance company as she has filed a separate Joinder Complaint against the company, asserting "the causes of action set forth in [Toyota]'s Joinder Complaint." See Plaintiff's Joinder/Cross-claim Against Third Party Defendant Pennsylvania National Mutual Casual Insurance Company, filed October 13, 2016 at p. 1, paragraph 2. Without such, however, the Court's observation in Austin J. Richards, Inc. would hold true.

As the Court noted in Goodman in its discussion of Austin J. Richards, “[s]imply stated, a claim based on interference with contract and slander of title is not the same as a claim based on legal malpractice.” Goodman, *supra* at 252. There, the Court went on to find that while the complaint before it related to the defendants’ actions with regard to the handling of the plaintiff’s estate plan, the cause of action set forth in the joinder complaint related to the additional defendants’ handling of the subsequent settlement, and that “[t]hose causes of action are not one and the same. Although both the Goodmans and [defendants] allege professional malpractice, those claims have different factual bases. Therefore, the allegations relate to different harms to be proven with different evidence as to different transactions and occurrences happening at different times.” Id.

In the instant case, Plaintiff’s claims for breach of a vehicle lease agreement, breach of express warranties on that vehicle and violations of laws governing sales and leases of vehicles, are not the same as Toyota’s claims for breach of the insurance contract and bad faith with respect to that contract.³ The former are based on Toyota’s failure to repair the vehicle and the provisions of writings which allegedly required that repair, and the latter are based on Penn National’s failure to pay for the repairs and the provisions of different writings, which allegedly required that payment. As in Goodman, “the allegations relate to different harms to be proven with different evidence as to different transactions and occurrences happening at different times.”

In closing, it appears that an even simpler way to look at the matter is to consider Toyota’s initial premise: Toyota alleges that if Plaintiff is successful in

³ Setting aside for the moment, of course, the fact that Toyota has no standing to assert such claims.

her claims against them, her damages are the direct result of Penn National's conduct. If Plaintiff is successful in her claims against them, however, that is because there was a defect in the vehicle. If there was a defect in the vehicle, Penn National has no obligation to pay under the policy and would be liable to no one. On the other hand, if Plaintiff is not successful in her claims against Toyota, Toyota has no basis to seek anything from Penn National.

Accordingly, joinder is improper and the court will enter the following:

ORDER

AND NOW, this day of December 2016, for the foregoing reasons, Additional Defendant's preliminary objections to Defendants' Joinder Complaint are sustained. The Joinder Complaint filed by Defendants on September 23, 2016 is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

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