BENEFICIAL FINANCE COMPANY, PLAINTIFF vs. MILLVILLE MUTUAL INSURANCE COMPANY, DEFENDANT, Franklin County Branch, Civil Action - Law, No. A.D. 1995 - 93

BENEFICIAL FINANCE CO. V. MILLVILLE MUTUAL INSURANCE CO.

Attorney's Fees - Pre-judgment Interest

1. An award of attorney's fees is not automatically granted to the prevailing party. The award is made only upon express statutory authorization, clear agreement of the parties, or another established exception.

2. The purpose of an award of counsel fees is to sanction a party who raises, in bad faith, frivolous claims for no purpose other than harassing the other party or delaying or obstructing litigation.

3. The award of attorney's fees may also be used to sanction a party who raises a frivolous defense that is arbitrary, vexatious, or in bad faith.

4. After the court determined that a defendant insurance company had no grounds to deny payment of a claim and the only defense that was raised was that the insurance company was not notified of a bankruptcy sale of the subject property which took place many months after the loss, the insurance company's behavior was found to be vexatious, obdurate and dilatory.

5. Because the insurance company did not act in good faith and unnecessarily protracted litigation, the plaintiff is entitled to reasonable attorney's fees pursuant to 42 Pa.C.S.A. §2503.

6. Because payment of a claim was wrongfully withheld by the defendant insurance company, pre-judgment interest shall be paid from the date payment was wrongfully withheld to the date when the claim was finally paid.

Donald L. Kornfield, Esq., Attorney for Plaintiff.
Martin A. Durkin, Jr., Esq., Attorney for Defendant

OPINION AND ORDER

Kaye, J., May 14, 1997:

OPINION

In the instant proceeding, Beneficial Finance company ("Beneficial") seeks an award against Millville Mutual Insurance Company ("Millville") for counsel fees expended in litigation to recover monies due to Beneficial under an insurance policy issued by Millville on a residence owned by third parties not involved in the matter *sub judice,* for interest on the award. Beneficial held a mortgage on the property which was destroyed by fire, and was a designated loss payee under the insurance policy.

In related litigation, we granted Beneficial's Motion for Summary Judgment on January 11, 1996. That holding was upheld on appeal to Superior Court on January 24, 1997 [No. 00129 HBG 1996], and no further appeal was taken, so that determination is now final.

Beneficial seeks an award of counsel fees under 42 Pa. C.S.A. §2503 which provides, in part, as follows:

> The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:
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> (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.
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> (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.
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In addressing the issue of the award of counsel fees, we must begin by recognizing the established principle in American, and specifically Pennsylvania, jurisprudence that "...a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception. *Snyder v. Snyder*, 533 Pa. 203, 212, 620 A.2d 1133, 1138 (1993), citing *Chatham Communications, Inc. V. General Press Corp.*, 463 Pa. 292, 300-01, 344 A.2d 837, 842 (1972); *Shapiro v. Magaziner*, 418 Pa. 278, 280, 210 A.2d 890, 892 (1965). Also, we observe that the award of counsel fees certainly is not automatic simply because one party prevails on a claim since this would have a chilling effect on the filing of suits which have a chance of ultimately being successful

Santilo v. Robinson, 383 Pa.Super. 604, 557 A.2d 416 (1989). The purpose of the imposition of counsel fees "...to sanction those who knowingly raise, in bad faith, frivolous claims which have no reasonable possibility of success, for the purpose of harassing, obstructing or delaying the opposing party." *Dooley v. Rubin*, 422 Pa.Super. 57, 64, 618 A.2d 1014, 1018 (1993). Moreover, we note that while much of the statutory authority for the awarding of counsel fees, and the case law arising therefrom, is addressed toward conduct invoked by the initiating party of a claim, the phrase "or otherwise" in the statutory citation noted above has been construed to apply to proscribed conduct in the raising of defenses. *Norris v. Commonwealth*, 159 Pa.Cmwlth. 23, 29, 634 A.2d 673, 676 (1993). Thus, the same standard for the award of counsel fees is applicable to the defense of a claim as would be the case with a party asserting a claim that is found to be arbitrary, vexatious or in bad faith.

An action has been held to be "vexatious" where it is instituted without sufficient grounds and which served only to cause annoyance. *Springfield Township, Bucks County Board of Supervisors v. Gonzales*, 158 Pa.Cmwlth. 664, 632 A.2d 1363 (1993), appeal denied 538 Pa. 618, 645 A.2d 1321. "Bad faith" actions have been defined as being filed for purposes of fraud, dishonesty or corruption. *Thunberg v. Strause*, 545 Pa. 607, 682 A.2d 295 (1996).

In the matter now before the court, we determined that, as a matter of law, Millville had no grounds to deny payment to Beneficial. The insured house was destroyed in a fire, the amount of the loss was not in dispute, the requisite notice of loss was made and Beneficial was designated as a loss payee under the policy. The only defense asserted against payment was that Beneficial failed to notify Millville of a sale of the real estate which occurred many months *after* the fire, and which was conducted pursuant to an order of the Bankruptcy Court following an adjudication of bankruptcy of the owners of the property.

A provision in the insurance contract provided as follows:

> 14. Mortgage Clause

The word "mortgagee" includes trustee.

a. If a mortgagee is named on the Declarations, a loss payable under Coverage A or B will be paid to the mortgagee and *you* as interest appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If *we* deny *your* claim, that denial does not apply to a valid claim of the mortgagee, if the mortgagee has:

(1) notified *us* of change of ownership, occupancy or substantial risk of which the mortgage became aware;

(2) paid the premiums due under this policy on demand if an *insured* neglected to pay the premium; and

(3) submitted a signed, sworn proof of loss within sixty (60) days after receiving notice from *us* if an *insured* has failed to do so.

All *terms* of this policy apply to the mortgagee unless changed by this clause.

[Defendant's "Answer and New Matter ¶17]

As we noted in our prior opinions, the only germane provision in the foregoing that Millville relied on in its defense was subparagraph (1) therein. Also, as noted previously:

1/ The fire loss occurred months before the sale, and thus the amount of loss payable to Beneficial was known long before the sale even occurred;

2/ The language clearly contemplates notification *subsequent* to change of ownership, and does not set forth a time limit for the giving of such notice;

3/ Millville did not so much as aver that the alleged breach of this condition by Beneficial was material to the payment of the claim, or that it was even slightly prejudiced in the matter.

From the commencement of this case to its conclusion, we have waited to hear what Millville's defense to non-payment of the claim was, and we are still waiting. Millville, after all, is an

insurer against the loss sustained herein, and yet had attempted to play a game of avoiding and evading its contractual obligations to Beneficial, which simply has been made to wait while Millville sought -in vain - to find some loophole to avoid paying what was, from the inception of this litigation, a clear obligation to a party against whom there is not, and never was, any arguable defense.

Millville's attempts to avoid its obligation patently were vexatious, obdurate, and dilatory. The suit itself should not have been necessary, but our focus is on what happened thereafter, not before. When the suit was filed, Millville still did not pay the claim, but engaged in a series of legal maneuvers that give our legal system an undeserved bad reputation for unnecessary delay and protracted litigation. The suit should have been settled immediately, but instead Millville persisted in asserting its unfounded and unsupportable defense, ultimately to Superior Court. This whole process unnecessarily cost both litigants money and wasted finite judicial resources. We think that such behaviors are precisely what was intended to result in the sanctions provided for in 42 Pa.C.S.A. §2503 and we will do so.

However, we have not had testimony on the reasonableness of the fees requested, so we will permit Millville to request a hearing limited to that issue if it thinks the fees sought to be unjustified.

The remaining matter is whether the Court should award pro-judgment interest on the unpaid claim. As held in *Dasert Mining Corporation v. Industrial Fuels Corporation*, 326 Pa.Super. 14, 35, 473, A.2d 584, 595 (1984), "[i]n claims that arise out of a contractual right, interest has been allowed at the legal rate from the date that payment was wrongfully withheld, where the damages are liquidated and certain, and the interest is readily ascertainable through computation" [citation omitted]. In *Dasert*, Superior Court limited the rate of interest recoverable to 6% per annum. 329 Pa.Super. 39, 473 A.2d at 597. The loss sustained herein was stipulated to be $ 49,059.06, and the fire occurred on October 13, 1993. As the matter did not proceed to trial, nor were we privy to information as to when (if?) the loss was paid, we are not able to determine the amount of pre-judgment interest now payable. We will direct that it be paid at the lawful rate from the date it was payable to the date paid. If the parties are

unable to agree to this, we will hold a hearing to make this determination upon application of either party.

ORDER OF COURT

NOW, May 14, 1997, the Motion of plaintiff for an award of counsel fees and pre-judgment interest is GRANTED pursuant to the terms set forth in the opinion appended hereto.