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Scalia v. Erie Insurance Exchange

RICHARD T. SCALIA and
SERENA M. SCALIA, his wife, Plaintiffs,
v. ERIE INSURANCE EXCHANGE, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,

Franklin County Branch
Civil Action — Law, No. 1999–20339, Jury Trial Demanded

*Breach of contract action for insurer's refusal to pay proceeds*

1. A motion for judgment notwithstanding the verdict is an attack on the sufficiency of the evidence; the court grants the motion only where, after considering the evidence in the light most favorable to the verdict winner, no two minds could differ that, as a matter of law, the losing party failed to make out his case.

2. A motion for a new trial is an attack on the weight of the evidence; the court grants the motion only where the evidence supporting the verdict was so inherently improbable or at variance with admitted or proven facts or with ordinary experience as to render the verdict shocking to the court's sense of justice.

3. The court denied the plaintiffs' post-verdict motions where the defendant-insurer presented extensive evidence that the plaintiffs themselves intentionally set the fire which damaged their home, and that they fraudulently misrepresented their financial condition to the insurer's investigators, and that these actions relieved the insurer from its duty to pay policy proceeds.

Appearances:

Richard C. Angino, Esq., *Counsel for Plaintiffs*

Stephen L. Banko Jr., Esq., *Counsel for Defendant*

OPINION

Herman, J., October 7, 2003

Introduction

Plaintiffs filed a breach of contract action when defendant refused to pay proceeds under plaintiffs' homeowner's insurance policy after a fire damaged their residence. After a five-day trial, a jury found that defendant did not breach the contract. Plaintiffs filed post-trial motions seeking judgment notwithstanding the verdict, or, alternatively, a new trial, alleging the evidence was insufficient to support the verdict and that the verdict was against the weight of the evidence. Defendant answered the motion and counsel filed written argument. This matter is ready for decision.

Discussion

The policy provided that defendant would pay plaintiffs the replacement value of the home and damaged contents once plaintiffs made repairs. However, defendant was not obligated to pay if plaintiffs or someone acting at their direction intentionally caused the damage. Defendant also was not required to pay if the insured intentionally concealed or misrepresented any material fact or circumstance concerning insurance coverage, or engaged in fraud or false swearing about any matter relating to the insurance coverage.

A fire occurred at plaintiffs' home on July 1, 1998. Defendants' representatives began an investigation upon obvious signs that the fire had been intentionally set. After interviewing plaintiffs and other parties with relevant information, and after reviewing plaintiffs' personal and business records, defendant refused to pay the claim for two reasons. First, defendant concluded that plaintiffs deliberately set the fire. Second, defendant concluded that plaintiffs intentionally concealed their poor financial condition so as to mislead defendant into believing they lacked a motive to set the fire.

Plaintiffs stipulated at trial that the fire had been deliberately set, but denied they were the ones who set it. Therefore, one issue placed before the jury by the defendant was the sequence of events shortly before the fire, specifically, the whereabouts of each plaintiff as it related to whether either had the opportunity to set the fire. Another issue was whether plaintiffs deliberately lied by telling investigators that their business and personal finances were solid. In addition, the jury had to decide whether plaintiffs intentionally padded their repair claim by including costs associated with their business, and costs associated incurred in upgrading the home beyond its original condition at the time of the fire.

A motion for a judgment notwithstanding the verdict is an attack on the sufficiency of the evidence supporting the verdict. The trial court should grant this relief only if, after considering all the evidence in the light most favorable to the verdict winner, it is clear that no two minds could differ that, as a matter of law, the losing party has failed to make out his case. Maravich v. Aetna Life and Casualty Co., 504 A.2d 896 (Pa.Super. 1986). The court must not grant this relief where the jury's assessment of witness credibility was key to resolving the issues in the case. Arcadia Co. v. Peles, 576 A.2d 1114 (Pa.Super. 1990).

A motion for a new trial is an attack on the weight of the evidence supporting a verdict. Granting a new trial is appropriate where "the injustice of the verdict [stands] forth like a beacon." Elza v. Chovan, 152 A.2d 238, 240 ( Pa. 1959); Dranzo v. Winterhalter, 577 A.2d 1349 (Pa.Super. 1990). The court should not grant a new trial unless the evidence supporting the verdict is so inherently improbably or at variance with admitted or proven facts or with ordinary experience as to render the verdict shocking to the court's sense of justice. Thompson v. City of Philadelphia, 493 A.2d 669 ( Pa. 1985). As with a request for judgment notwithstanding the verdict, the court should not grant a new trial merely because the evidence is conflicting and the jury could have decided for the other party. Baldino v. Castagna, 478 A.2d 807 ( Pa. 1984).

Although the court has reviewed the transcripts and exhibits, we need not do an exhaustive recitation of all the evidence presented during the five-day trial at which both parties presented much testimony and a large number of documents. As to be expected, there were conflicts in certain aspects of the evidence. Nevertheless, it is clear from our careful review of the record that the evidence was more than sufficient to support the verdict. The evidence presented was also clearly weighty enough to support the verdict, which in no sense shocked the court. In this connection, it is important to note that a key factor was plaintiffs' credibility and it was the sole province of the jury to evaluate the credibility of the testimony presented and to accept or reject such evidence. Mitzelfelt v. Kamrin, 584 A.2d 888 ( Pa. 1990).

Defendant presented extensive evidence of plaintiffs' poor finances during the months leading up to the July 1, 1998 fire. Plaintiff-husband's business had severe cash flow problems, was the target of an I.R.S. levy for back taxes, interest and penalties, and lost one of its major customers only a few weeks before the fire. Plaintiffs' personal finances were also in dire straits. They were behind on their mortgage, had credit card debts, and generally engaged in a long-standing practice of living beyond their means. Plaintiffs built the home in 1996 and 1997, but it remained unfinished and their attempt to sell it beginning in early 1998 met with no results. Plaintiff-wife was newly pregnant with the couple's third child at the time of the fire, and plaintiff-husband had developed a taste for gambling. Defendant's investigation revealed that altogether plaintiffs had approximately $320,000 in pre-fire debts. Nevertheless, plaintiffs told investigators that their business was thriving and denied being behind on their mortgage. Defendant presented this evidence to show that plaintiffs had a strong financial motive to set the fire.

Defendant also presented evidence of plaintiffs' attempts to have defendant reimburse them for certain repair costs which were unrelated to restoring the home to its pre-fire condition. For example, plaintiffs submitted bills for the installation of a swimming pool which they added to their property after the fire and

which was not part of the original construction. In addition, plaintiffs requested payment of bills associated with their business which had no connection with their personal residence. Defendant presented this evidence to show that plaintiffs committed insurance fraud, a ground for relieving defendant of its obligation to pay under the policy.

Defendant presented evidence to show that plaintiff-wife had the opportunity to set the fire. She left the house at approximately 8:00 a.m., locking the doors behind her. Smoke was seen coming from the home at approximately 8:15 a.m. Investigators found no sign of forced entry. In addition, there had been a smaller fire in the basement of plaintiffs' home one week before the July 1st fire. Plaintiff-husband told investigators looking into the July 1st fire that he had accidentally ignited the insulation with a space heater while doing repairs, but investigators concluded that the basement fire had also been intentionally set. Defendant presented this evidence to show that plaintiffs had the personal determination necessary to set fire to their home.

The jury was presented with a verdict slip in the form of separate interrogatories. The first was "Do you find the Defendant, Erie Insurance Exchange, breached its contract to Plaintiffs?" The jury checked "no," which ended their need to answer the remaining interrogatories. By arriving at that answer, the jury indicated its conclusion that defendant was not obligated to pay plaintiffs because plaintiffs themselves had failed to abide by one or more of the policy's conditions, as set forth above. The court's review of the record reveals no basis for granting either of plaintiffs' post-trial motions.

ORDER OF COURT

Now this 7th day of October 2003, the court hereby denies plaintiffs' post-trial motion for judgment notwithstanding the verdict, or alternatively, for a new trial.

Plaintiffs also raised a bad faith claim, but it was severed for purposes of trial. The trial therefore concerned only the breach of contract claim.

Pioneer 21 st Century Home Protector Insurance Policy, 2005 Ultracover Edition, Erie Insurance Group. Plaintiffs' exhibit #1, paragraphs 4(a), 4(b), 16.