

Rampart Brokerage Corp. v Ribs NY LLC

2014 NY Slip Op 31772(U)

July 2, 2014

Sup Ct, NY County

Docket Number: 652385/2013

Judge: Melvin L. Schweitzer

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written confirmation of coverage and a policy number even though the policy was never issued, and neglecting to disclose the lack of coverage to Rampart; providing a fraudulent binder by signing an endorsement without authority; and obtaining policies with coverage deficiencies in terms of effective date, amount of coverage, and items to be covered.

Based on these allegations, Rampart brought causes of action for gross negligence and consequential damages, among other claims. The defendants involved in this motion (RIBS NY and RIBS, INC., hereinafter, the Moving Defendants), moved to dismiss both of these claims for failure to state a claim pursuant to CPLR 3211 (a) (7). The court did not dismiss either the gross negligence or the consequential damages cause of action, and the Moving Defendants have moved to reargue their motions to dismiss both of these claims.

Discussion

Gross Negligence

On review of the parties' submissions, the court finds that the claim for gross negligence was properly pled by the plaintiff. The Moving Defendants assert that Rampart's gross negligence claim was based on duties arising out the contractual relationship between the parties, and therefore should be dismissed as duplicative. However, the court, upon the original motion to dismiss, found a common-law duty on which plaintiff's negligence claim could be based. This common-law duty is that of insurance agents to obtain requested coverage for their clients within a reasonable time, or to inform the client of their inability to do so. *Chase Scientific Research v NIA Group*, 96 NY2D 20, 30 (2001); *Murphy v Kuhn*, 90 NY2D 266, 270 (1997). Because this common-law duty serves as a basis for Rampart's gross negligence claim, it is not the case that the claim is duplicative of its breach of contract claim.

The court also found that the plaintiff sufficiently pleaded facts supporting the allegation that the Moving Defendants acted with the requisite intent and recklessness on which to base a claim of gross negligence. *See Abacus Fed. Sav. Bank v ADT Sec. Servs., Inc.*, 18 NY3d 675, 683-684 (2012). Consequently, because the gross negligence claim was adequately pled by Rampart, Moving Defendants' motion to reargue with respect to that claim is denied.

Consequential Damages

As to Rampart's claim for consequential damages, plaintiff did not plead either of the elements that are required in order to recover such damages. In order to be entitled to consequential damages, plaintiff was required to plead that those damages were the natural and probable consequences of the breach, and that they were contemplated at the time the contract was executed. *Atkins Nutrionals v Ernst & Young* (301 AD2d 547, 549 [2d Dept 2003]). Rampart's complaint merely sought "all damages," which may be construed to include consequential damages. However, Rampart failed to plead either of the requisite elements of a consequential damages claim, a fact that was demonstrated by Moving Defendants in the previous motion, but was overlooked by the court (*see* CPLR 2221(d)(2)). Therefore, the consequential damages claim does not stand with respect to the Moving Defendants, and as such their motion to reargue their motion to dismiss this claim is granted.

Conclusion

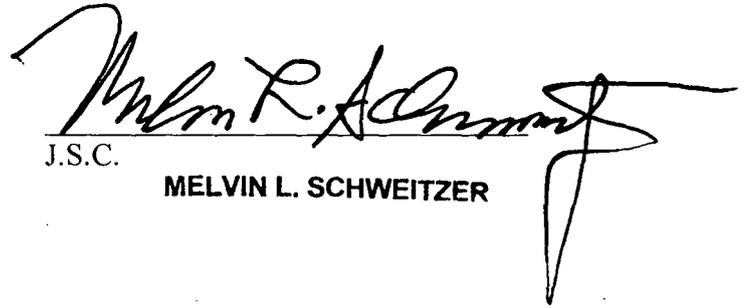
Accordingly, it is

ORDERED that Moving Defendants' motion to reargue its motion to dismiss Rampart's gross negligence claim is denied; and it is further

ORDERED that Moving Defendants' motion to reargue its motion to dismiss Rampart's consequential damages is granted.

Dated: July 2, 2014

ENTER:



A handwritten signature in black ink, appearing to read 'Melvin L. Schweitzer', is written over a horizontal line. The signature is stylized and extends to the right of the line.

J.S.C.

MELVIN L. SCHWEITZER