

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE MANTAKOUNIS : CIVIL ACTION
t/a MANTIS PAINTING COMPANY :
 :
v. :
 :
AETNA CASUALTY & SURETY CO. :
d/b/a TRAVELERS AETNA PROPERTY & :
CASUALTY CORPORATION : 98-4392

MEMORANDUM AND ORDER

J. M. KELLY, J.

MARCH , 2000

Presently before the Court is a motion by Plaintiff, George Mantakounis (“Mantakounis”), for a new trial pursuant to Federal Rule of Civil Procedure 59. The motion raises numerous arguments stemming from the Court’s partial grant of summary judgment to the Defendant, Aetna Casualty and Surety Company (“Aetna”), the trial held on this matter October 18-20, 1999, before this Court, as well as the Court’s December 9, 1999 Order granting Aetna’s motion for judgment as a matter of law. For the following reasons, Mantakounis’ motion is denied.

I. BACKGROUND

This case was originally filed as an action for breach of contract, breach of fiduciary duty, bad faith pursuant to 42 Pa. Cons. Stat. Ann. § 8371 (1991), violations of the Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. Ann. § 201.2, and wrongful use of civil process in violation of the Dragonetti Act, 42 Pa. Cons. Stat. Ann. § 8351. It arose out of a dispute between Mantakounis and his insurance company, Aetna, over the deductible amount owed by the Plaintiff for claims made on his commercial general liability policy for damage allegedly caused by his spray painting business. In October of 1991, Aetna filed suit in Delaware

Superior Court and following a nonjury trial, the Delaware court held in favor of Mantakounis. On August 20, 1998, two years after the resolution of the Delaware case, Mantakounis filed this suit.

In response, Aetna filed a Motion for Summary Judgment on all counts which, in a Memorandum and Order dated August 10, 1999, this Court granted in part and denied in part. The motion was granted as to Mantakounis' claims for breach of fiduciary duty, bad faith and violations of the Consumer Protection Law. Mantakounis' breach of contract and Dragonetti Act claims were tried before a jury in this Court. At the close of Mantakounis' case, Aetna moved for Judgment as a Matter of Law pursuant to Rule 50(a) on the breach of contract claim, asserting it was barred by the applicable statute of limitations. The Court took the matter under advisement and allowed the Defendant's case to proceed. At the close of trial, Aetna renewed its motion for judgment as a matter of law. The Court reserved its decision until after trial and submitted the case to the jury subject to the parties' written argument on Aetna's motion. The Court refused, however, to instruct the jury on punitive damages relating to Mantakounis' Dragonetti Act claim. The jury returned a verdict in Mantakounis' favor on the breach of contract claim for \$50,000, and in Aetna's favor on the Dragonetti Act claim. Following trial, Aetna moved for judgment as a matter of law on the breach of contract claim. By an Order dated December 9, 1999, this Court granted the Defendant's motion, finding the claim was barred by the applicable statute of limitations, and entered judgment in favor of Aetna. Subsequently, Mantakounis filed the instant motion for a new trial.

II. STANDARD OF REVIEW

The purpose of a motion for a new trial, pursuant to Federal Rule of Civil Procedure 59,

is to allow the court to reevaluate the bases for an earlier decision. See Tevelson v. Life & Health Ins. Co., 643 F. Supp. 779, 782 (E.D. Pa. 1986), aff'd, 817 F.2d 753 (3d Cir. 1987).

Because granting a motion for a new trial acts to overturn a jury verdict, the court will not set aside the jury's verdict unless “manifest injustice will result if the verdict is allowed to stand.” Emigh v. Consolidated Rail Corp., 710 F. Supp. 608, 609 (W.D. Pa. 1989). To grant a motion for a new trial, the court must find “that the verdict is against the clear weight of the evidence, or is based upon evidence which is false, or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict.” Nebel v. Avichal Enters., Inc., 704 F. Supp. 570, 574 (D.N.J. 1989). Therefore, a new trial may be granted even where judgment notwithstanding the verdict is inappropriate. See Roebuck v. Drexel Univ., 852 F.2d 715, 735-36 (3d Cir. 1988).

III. DISCUSSION

Mantakounis presently raises five arguments in support of its motion for a new trial. First, he argues that the Court erred in granting Aetna’s motion for summary judgment on the breach of fiduciary duty claim. Second, the Court erred in granting summary judgment on the bad faith claim. Third, the Court was incorrect in refusing to instruct the jury on punitive damages regarding the Dragonetti Act claim. Fourth, the Court erroneously accepted the jury’s verdict when on its face it was clear the jury did not understand the Court’s charge. Fifth and finally, Mantakounis argues the Court erred in granting Aetna’s motion for judgment as a matter of law pertaining to the breach of contract claim. The Court will address each of Mantakounis’ arguments in turn.

A. Grant of Summary Judgment on Breach of Fiduciary Duty Claim

In Mantakounis' Complaint, he alleged Aetna breached its fiduciary duty to him in failing to promptly, swiftly and reasonably investigate and evaluate the claims made against his insurance policy. Breach of fiduciary duty, as a form of tortious conduct, is subject to a two-year statute of limitations. See 42 Pa. Cons. Stat. Ann. § 5524(7). As applied to the instant case then, any conduct occurring prior to August 20, 1996 is barred by the statute of limitations. In the Delaware action, Mantakounis filed a motion for summary judgment on November 1, 1995. In that motion, he claimed that "Aetna breached its fiduciary duties by not making an individual determination whether each of the 433 vehicles was damaged by his painting operations." Aetna Cas. & Sur. Co. v. Mantakounis, No. CIV. A. 91C-10-142-JO, 1996 WL 190046, at *2 (Del. Super. Ct. 1996). On this basis, this Court previously found that as of November 1995, Mantakounis had sufficient knowledge upon which to base a breach of fiduciary duty claim and that the instant claim was thus time-barred.

Mantakounis argues presently that he did not have knowledge of his potential breach of fiduciary duty claim prior to August 1996. He points to the fact that his summary judgment motion was denied by the Delaware court and states "[h]ow more resounding can a party be told that you are incorrect in your position about what you believe, namely [that] the Defendant . . . violated its duty to its insured[,] than to have the trial Court reject the Motion for Summary Judgment." Plaintiff's Motion for New Trial, at 5. The Plaintiff misinterprets the significance of the denial of his motion. In denying a motion for summary judgment, a court is not generally commenting on the correctness or incorrectness of the moving party's position. A court is merely holding that there remain genuine issues of material fact which preclude judgment as a

matter of law. Accordingly, based on the allegations made in his summary judgment motion before the Delaware court, and notwithstanding the denial of that motion, this Court finds that Mantakounis had sufficient knowledge upon which to base his breach of fiduciary duty claim prior to August 1996. His motion is therefore denied as to this issue.

B. Grant of Summary Judgment on Bad Faith Claim

Mantakounis also alleged in his Complaint that Aetna behaved in a grossly negligent manner intended to deprive, delay or compromise his rights under the insurance policy and that it attempted to extort more money than was owed under the contract. This conduct, he argues, along with Aetna's breach of fiduciary duty and initiation of the Delaware action, constituted bad faith in violation of Pennsylvania law. The Court previously found, and the parties do not dispute, that a two-year statute of limitations applies to bad faith claims. See Mantakounis v. Aetna Cas. & Sur. Co., No. CIV. A. 98-4392, 1999 WL 600535 (E.D. Pa. Aug. 10, 1999) (mem.). As above, then, any conduct occurring prior to August 20, 1996 is barred by the statute of limitations. The conduct that Mantakounis complained of occurred between 1989 and, at the latest, 1992. Therefore, the Court found his bad faith action to be time-barred.

Mantakounis argues instantly that if, per the Court's December 9, 1999 Order, knowledge of a potential claim against Aetna for breach of contract can be imputed to him as of August 20, 1994, then such knowledge must similarly be imputed to Aetna. Therefore, he asserts, Aetna pursued its claims against Mantakounis even though it knew it had breached both the insurance contract and its fiduciary duty, a clear act of bad faith. The Plaintiff's argument is insufficient for two reasons. First, the conduct that Mantakounis raises in his Complaint occurred prior to and including the filing of the complaint, or put another way, before 1992. Second, the Court's

finding for the purposes of the discovery rule that Mantakounis knew or should have known of facts giving rise to a potential cause of action does not immediately translate into knowledge on the part of Aetna that it breached the contract and its fiduciary duty, let alone that such causes of action, if pursued by the Plaintiff, would be successful. Therefore, the Court finds that Mantakounis' bad faith claim is time-barred and his motion is denied as to this issue.

C. Failure to Instruct Jury on Punitive Damages

Mantakounis' third argument in support of his motion for a new trial is that the Court erred in denying his request to instruct the jury on punitive damages. Punitive damages are appropriate only where a party's conduct is outrageous, or done with an evil motive or reckless indifference to the rights of others. See Halstead v. Motorcycle Safety Found., 71 F. Supp. 2d 455, 463 (E.D. Pa. 1999); Trotman v. Mecchella, 618 A.2d 982, 985 (Pa. Super. Ct. 1992). The instant case went to trial on the Plaintiff's breach of contract and Dragonetti Act claims and of these two claims, punitive damages were available only on the latter. See Superior Precast, Inc. v. Safeco Ins. Co., 71 F. Supp. 2d 438, 452 (E.D. Pa. 1999) (holding that under Pennsylvania law, punitive damages are not available in breach of contract actions); Johnson v. Hyundai Motor Am., 698 A.2d 631, 639 (Pa. Super. Ct. 1997), appeal denied, 712 A.2d 286 (Pa. 1998). While the Dragonetti Act does provide for punitive damages, 42 Pa. Cons. Stat. Ann. § 8353(6), their award would have been inappropriate in this case. First, the only evidence upon which the jury could evaluate a claim for punitive damages was Aetna's decision to pursue litigation against Mantakounis in Delaware. There was no evidence that this decision was made with evil motive or reckless disregard for the Plaintiff's rights. Indeed, one aspect of a successful Dragonetti Act claim is that the lawsuit was initiated merely to harass or maliciously injure the other party.

Mantakounis, however, did not prevail on his Dragonetti Act claim which affirms the Court's decision that there was not evidence from which to find evil motive sufficient for the award of punitive damages. Second, as noted, the jury found in favor of Aetna on this claim. Therefore, even had the Court instructed the jury on punitive damages, Mantakounis would not have been entitled to their award. Accordingly, any error on the part of the Court in refusing to so instruct the jury was harmless and the Plaintiff's motion is denied.

D. Jury's Understanding of Charge

Mantakounis argues next that a new trial should be granted because the Court erroneously accepted the jury's verdict when on its face it was clear the jury did not understand the charge. During the jury charge, the Court instructed the jury that if they found in favor of Mantakounis on the breach of contract claim, it could award only the attorneys' fees incurred by him in the Delaware action, which the parties stipulated were \$33,162,92. The jury, however, awarded Mantakounis \$50,000.00 on that claim. He argues, therefore, that the jury was confused as to how to determine liability and that a new trial is necessary.

On the jury interrogatory form, however, the jurors were asked in separate questions about liability and damages. In Question 1, the jurors were asked, "Do you find that Aetna breached its contract with George Mantakounis?," which they answered in the affirmative. Question 2 asked, "Do you find that Aetna wrongfully instituted civil proceedings against Mr. Mantakounis?," which they answered in the negative. The jury was then instructed to proceed to Question 3, pertaining to damages, if they answered "yes" to Question 1, 2 or both. It was in response to Question 3, "State the amount of damages, if any, proved by Mr. Mantakounis as a result of Aetna's breach of contract and/or wrongful use of civil proceedings," that the jury

responded “\$50,000.00.”

Based on the jury’s answers to the liability questions, the Court is confident that the jury understood its charge with regard to the determination of liability on the two counts and that their confusion was limited to the calculation of damages. As such, even if the Court had denied Aetna’s motion for judgment as a matter of law on the breach of contract claim, the instant matter could nevertheless have been corrected pursuant to Federal Rule of Civil Procedure 59(e). Rule 59(e) empowers the court to alter or amend a verdict which represents a manifest error of fact or law. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); Klee v. Lehigh Valley Hosp., No. Civ. 97-4642, 1998 WL 966011, at *1 (E.D. Pa. Nov. 30, 1998), aff’d, Table No. 98-2155 (3d Cir. Nov. 5, 1999). Pursuant to this power, the Court could have modified the jury’s verdict to make it consistent with the charge and the parties’ stipulated amount of damages, obviating the need for a new trial. Therefore, Mantakounis’ motion on this issue is denied.

E. Grant of Aetna’s Motion for Judgment as a Matter of Law

Mantakounis argues finally that the Court erred in granting Aetna’s motion for judgment as a matter of law. Similar to his argument above, he disputes the Court’s previous finding that he had knowledge of his injury as early as July 1992, pointing to the Delaware court’s denial of his summary judgment motion as evidence of such. Mantakounis claims the Court erred because it imputes knowledge of facts, namely that the contract had been breached, which were not established until after the conclusion of the Delaware case.

The Plaintiff’s argument misconstrues the discovery rule. As this Court has twice noted in this case, under the discovery rule, a party need only have notice that he has been injured and

that his injury has been caused by another party's conduct. See *Urland v. Merrell-Dow Pharm.*, 822 F.2d 1268, 1271 (3d Cir. 1987). The party need not have actual knowledge that he has a cause of action, and certainly need not know that such cause of action would be successful.

Based on Mantakounis' uncontroverted testimony at trial, this Court finds that the Plaintiff knew that he had been injured by Aetna as early as July 1992, or at least that through the exercise of diligence, such was knowable to him. This is the case even though the Delaware court denied his summary judgment motion. Accordingly, the motion is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE MANTAKOUNIS	:	CIVIL ACTION
t/a MANTIS PAINTING COMPANY	:	
	:	
v.	:	
	:	
AETNA CASUALTY & SURETY CO.	:	
d/b/a TRAVELERS AETNA PROPERTY &	:	
CASUALTY CORPORATION	:	98-4392

ORDER

AND NOW, this day of March, 2000, in consideration of the Plaintiff, George Mantakounis' Motion for a New Trial (Doc. No. 31) and the response thereto of the Defendant, Aetna Casualty and Surety Company, it is **ORDERED** that the motion is **DENIED**. Judgment shall be entered in favor of the Defendant, Aetna Casualty and Surety Company.

BY THE COURT:

JAMES McGIRR KELLY, J.