

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

AMERICAN EMPIRE SURPLUS LINES INSURANCE COMPANY	:	CIVIL ACTION
	:	
v.	:	NO. 04-CV-518
	:	
ARDSLEY GROUP and ASHTON HALL, INC.	:	
	:	

MEMORANDUM AND ORDER

Kauffman, J.

December 30, 2004

Plaintiff American Empire Surplus Lines Insurance Company (“Plaintiff”) brings this action for breach of contract and declaratory judgment against Defendants Ardsley Group and Ashton Hall, Inc. (“Defendants”). In their answer to Plaintiff’s Complaint, Defendants asserted counterclaims for violations of Pennsylvania insurance law. Now before the Court is Plaintiff’s Motion for Judgment on the Pleadings. For the reasons that follow, Plaintiff’s Motion will be denied as to Plaintiff’s breach of contract and declaratory judgment claims, and granted as to Defendants’ counterclaims.

I. BACKGROUND

Drawing all reasonable inferences in Defendants’ favor, the facts are as follows. On or about March 1, 2002, Plaintiff, an insurance company, issued Defendants a Commercial General Liability/Nursing Home Professional Liability Policy, designated as Policy No. 2EP04053 (the “first policy”). Under the terms of the first policy, the coverage period was to be from March 1, 2002 to March 1, 2003. Defendants’ Memorandum of Law in Opposition to Plaintiff’s Motion (“Defendants’ Memo”). On or about January 31, 2003, Defendants submitted a renewal

application for the first policy. Id. at 2. On or about February 12, 2003, Plaintiff issued a Notice of Cancellation or Nonrenewal. See Defendants' Memo, Exhibit A. According to the Notice, cancellation was to take effect April 1, 2003 – one month after the original expiration date for the policy. Plaintiff's reason for effectively extending the policy for the extra month was its desire to comply with a term of the policy that required forty-five days notice prior to termination. See Defendants' Memo at 2.

At this point, the parties' understanding of the facts diverge. Plaintiff alleges that it quoted terms for a new policy, designated Policy No. 3EP04926 (the "second policy") on February 24, 2003, that Defendants became bound under those terms on February 28, 2003, and that the second policy became effective on March 1, 2003. See Plaintiff's Motion for Judgment on the Pleadings ("Plaintiff's Motion") at ¶ 17. While Defendants admit that Plaintiff quoted terms for the new policy, they deny that they ever agreed to those terms or became bound by them. See Defendants' Response to Plaintiff's Motion at ¶ 17.

The parties also disagree as to how the policies were terminated. Defendants contend that they cancelled coverage under the first policy as of April 1, 2003. Defendants further allege that since they never agreed to be bound by the second policy, the April 1, 2003 cancellation completely terminated their relationship with Plaintiff. See Defendants' Memo at 2. Plaintiff, in contrast, contends that the relationship between the parties did not end until May 21, 2003 when Plaintiff cancelled the second policy due to Defendants' nonpayment of premiums. See Plaintiff's Motion at ¶ 23.

Plaintiff brought this action for breach of contract and declaratory judgment to recover damages arising from Defendants' alleged cancellation of the second policy prior to its expiration

date. See Plaintiff's Motion at ¶ 30. Defendants, in turn, filed counterclaims for violations of Pennsylvania insurance law. Plaintiff has filed a motion for judgment on the pleadings, both as to its own claims and as to Defendants' counterclaims as well.

II. LEGAL STANDARD

Under Rule 12(c), a District Court may not grant a motion for judgment on the pleadings “unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.” Kruzits v. Okuma Machine Tool, Inc., 40 F.3d 52, 54 (3d. Cir. 1994) (quoting Society Hill Civic Ass'n v. Harris, 632 F.2d 1045, 1054 (3d. Cir. 1980)).

III. ANALYSIS

A. Plaintiff's Breach of Contract and Declaratory Judgment Claims

Plaintiff claims that it is entitled to the relief it is seeking under the terms of the second policy. However, there is an issue of fact material to the case about whether the second policy ever became effective. See Defendants' Response to Plaintiff's Motion at ¶ 17. Accordingly, Plaintiff's Motion for judgment on the pleadings as to its breach of contract and declaratory judgment claims will be denied. Kruzits, 40 F.3d at 54.

B. Defendants' Counterclaims

The first of Defendants' counterclaims alleges a violation of Pa. Stat Ann. tit. 40 § 3401. However, Defendants have conceded that they are not entitled to relief for such a violation. See Defendants' Memo at 20 (“[D]efendants are not seeking relief under this section...”) Accordingly, Defendants' first counterclaim fails to state a claim upon which relief may be granted, and will be dismissed.

Defendants' second counterclaim alleges that Plaintiff's conduct constituted bad faith under Pa. Stat Ann. tit. 42 § 8371 ("section 8371"). Section 8371 provides that a court may order an insurer to pay various forms of damages upon a finding that the insurer acted in bad faith. For the purposes of section 8371, bad faith is defined as "any frivolous or unfounded refusal to pay proceeds of a policy[.]" PolSELLI v. Nationwide Mut. Fire Ins., 23 F.3d 747, 751(3d. Cir. 1994). The conduct Defendants allege is entirely unrelated to the paying of any sort of claim. Accordingly, the Court finds that Defendants' second counterclaim fails to state a bad faith claim upon which relief may be granted, and will also be dismissed. An appropriate order follows.

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INC.	:	

ORDER

AND NOW, this 30th day of December, 2004, upon consideration of Plaintiff's Motion for Judgment on the Pleadings (docket no. 9) and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **DENIED** as to Plaintiff's Breach of Contract and Declaratory Judgment claims, and **GRANTED** as to Defendants' Counterclaims. Defendants' Counterclaims are dismissed **WITH PREJUDICE**.

BY THE COURT:

**S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.**