SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0699-16T4

MODESTA M. MEZA-ROLE,

Plaintiff-Appellant,

v.

UNITED FIRE GROUP,

Defendant-Appellant.

Argued February 27, 2018 - Decided March 23, 2018

Before Judges Yannotti and Carroll.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Mercer County, Docket No. DC-003276-16.

Modesta M. Meza-Role, appellant, argued the cause pro se.

Laurel A. Wedinger argued the cause for respondent (Barry, McTiernan & Wedinger, PC, attorneys; Laurel A. Wedinger, on the brief).

PER CURIAM

Plaintiff Modesta M. Meza-Role appeals from an order entered by the trial court on October 11, 2016, which granted a motion by

defendant United Fire Group (UFG) to dismiss her complaint with prejudice. We affirm.

Plaintiff filed a complaint against UFG, in which she stated only that she was alleging "breach of contract" and identified a UFG claim number. UFG filed a motion to dismiss the complaint pursuant to Rule 4:6-2(e).

The record shows that plaintiff is a tenant in an apartment in a building owned by Richard Partyka. Plaintiff alleges that on July 10, 2014, she suffered a burn on her back from what she believes was acid. According to plaintiff, her upstairs neighbor was using chemicals to unclog a drain, and the chemicals allegedly leaked through the pipes and discharged into her apartment. Plaintiff claimed she sustained certain personal injuries.

Plaintiff later brought suit against Partyka, and in that action, plaintiff referenced the injuries she allegedly sustained on July 10, 2014, but did not assert a claim for damages on that basis. It appears, however, that plaintiff's former attorney submitted a claim based on the alleged loss to UFG, which provided liability coverage to Partyka and was in effect on the date of plaintiff's alleged loss. In our opinion in Meza-Role v. Partyka, No. A-5015-15, which is also filed on this date, we address the claims asserted in the complaint.

In a certification dated September 19, 2016, which was submitted in response to defendant's motion to dismiss, plaintiff stated that her attorney had entered into an oral agreement with UFG to settle her claim. She claimed her attorney and the attorney for UFG engaged in some "sort of civil or criminal conspiracy," which deprived her of monies due to her under the UFG policy. Plaintiff discharged her attorney in May 2016.

In its submission to the trial court dated October 5, 2016, UFG's attorney argued that plaintiff's complaint should be dismissed because she was not insured by UFG. Counsel noted that plaintiff had not produced a contract showing she is insured under a UFG policy that provides her with first-party coverage.

Counsel further maintained there was no support for plaintiff's assertion that some unnamed UFG adjuster told her former attorney to settle plaintiff's claim. Counsel stated that the allegation was not true, and even if it were, UFG was not bound by any such representation. Counsel also stated that plaintiff's attempt to impugn his character and that of her former attorney was improper and unsubstantiated.

On October 11, 2016, the judge considered UFG's motion and placed an oral decision on the record. The judge noted that plaintiff's complaint only stated "breach of contract" and provided a claim number. The judge found that there was no evidence

of any contract between UFG and plaintiff, and therefore, plaintiff did not have standing to bring a claim against UFG. The judge entered an order dated October 11, 2016, granting UFG's motion, and dismissed the complaint with prejudice. This appeal followed.

On appeal, plaintiff argues: (1) the judge erred by granting UFG's motion; (2) the attorney who represented UFG in the trial court "rigged" the proceedings; (3) UFG's failure to settle her claim proves beyond reasonable doubt that UFG acted in bad faith; and (4) UFG's failure to provide discovery precluded it from participation in the case after October 11, 2016.

We have considered these arguments in light of the record and the applicable law. We are convinced plaintiff's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). However, we add the following brief comments.

In ruling on a motion to dismiss under Rule 4:6-2(e), the trial court must examine "the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart—Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989) (citing Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). The court must determine whether a cause of action is "suggested" by the alleged facts. Ibid. (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). We exercise plenary review of the trial court's order dismissing plaintiffs'

complaint. Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011).

Rule 4:6-2(e) provides, however, that if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by [Rule] 4:46." Rule 4:46-2(c) states that a motion for summary judgment shall be granted if the evidence before the court "show[s] that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." We apply that same standard in reviewing a trial court's order granting summary judgment. Conley v. Guerrero, 228 N.J. 339, 346 (2017); Davis v. Brickman Landscaping, 219 N.J. 395, 405 (2014).

We are convinced that whether UFG's motion is considered a motion to dismiss pursuant to Rule 4:6-2(e) or one seeking summary judgment pursuant to Rule 4:46-2(c), the trial court did not err in granting the motion. As the judge noted, plaintiff failed to allege facts showing that she has a contractual relationship with UFG. The record shows that plaintiff's former attorney had submitted a claim for plaintiff's alleged injuries pursuant to a policy that UFG issued to Partyka. The policy provided insurance to Partyka. There is no evidence that plaintiff was a named insured under that policy. Indeed, it is well-established that third

parties injured by a person or entity with coverage under an insurance policy are precluded from filing direct claims against the insurer unless the insured assigns his or her right under the policy to the claimant. See Murray v. Allstate Ins. Co., 209 N.J. Super. 163, 165-69 (App. Div. 1986).

There also is no basis for plaintiff's contention that she is a third-party beneficiary under the UFG policy. "It is a fundamental premise of contract law that a third party is deemed to be a beneficiary of a contract only if the contracting parties so intended when they entered into their agreement." Ross v. Lowitz, 222 N.J. 494, 514 (2015). Here, there is no evidence that Partyka and UFG intended that plaintiff would be a beneficiary under the UFG policy. See Murray, 209 N.J. Super. at 169 (rejecting argument that injured judgment creditor could maintain suit against the insurer for the tortfeasor based on third-party-beneficiary theory).

In her brief on appeal, plaintiff also argues that her claim should not have been dismissed because UFG allegedly acted in bad faith by failing to settle her claim. In support of that argument, plaintiff cites Pickett v. Lloyd's, Inc., 131 N.J. 457 (1993). However, plaintiff did not assert this claim in her complaint, and she did not allege any facts to support such a claim.

Moreover, Pickett concerned a "first-party" claim which is a "suit [brought] by an insured against his [or her] insurance company because of its failure to settle [the insured's] claim. Id. at 466 (citing T.D.S. Inc. v. Shelby Mut. Ins. Co., 760 F.2d 1520, 1526-27 n.3 (11th Cir. 1985)). Pickett does not recognize a suit by a third-party based on an insurer's alleged failure to settle the third-party's claim in good faith. Therefore, plaintiff's purported claim is not cognizable under Pickett.

Plaintiff further argues that UFG failed to provide discovery. It appears that on October 7, 2016, plaintiff filed a motion to compel discovery. The motion was returnable on October 11, 2016. Rule 1:6-3(a) provides, however, that such a motion must be filed and served no later than sixteen days before the specified return date. Therefore, plaintiff's discovery motion could not be returnable on October 11, 2016, the return date for UFG's motion to dismiss the complaint.

In any event, plaintiff's motion became moot when the trial court granted UFG's motion to dismiss the complaint. Furthermore, the discovery plaintiff was seeking would not have altered the fact that she did not have a contractual relationship with UFG.

Affirmed.