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DISTRICT II

September 11, 2024

To:

Hon. James K. Muehlbauer
Circuit Court Judge
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Rick E. Hills
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Anthony David Butze
P.O. Box 159
Butler, WI 53007

You are hereby notified that the Court has entered the following opinion and order:

2023AP1937

Anthony David Butze v. Progressive Insurance (L.C. #2022CV484)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Anthony D. Butze, pro se, appeals from a circuit court order granting Progressive Insurance's motion for summary judgment and concluding that Butze failed to state a claim upon which relief may be granted in his complaint alleging breach of contract and bad faith against Progressive.¹ Based upon our review of the briefs and Record, we conclude at conference that

¹ Progressive Insurance is properly known as Artisan and Truckers Casualty Company but, for the sake of simplicity, we refer to the company as "Progressive" for purposes of this opinion.

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).² We summarily affirm.

In 2020, Butze was involved in a motor vehicle accident. The other driver involved in the accident sued Butze, seeking to recover for various injuries allegedly caused by the accident. Progressive, which was Butze’s automobile insurer at the time of the accident, settled the case against Butze for near the policy limits of \$25,000. Apparently unhappy with Progressive’s decision to settle, Butze filed a civil complaint against Progressive. Butze’s complaint read in its entirety as follows:

Failure to Protect Your client.
when knowing with Evidence
He was 100% not at Fault.
Breach of contract/Bad Faith
upon winning case Judgment awarded \$?³
400 K Plus

Progressive filed an answer to Butze’s complaint and raised Butze’s failure to state a claim as one of its affirmative defenses. Progressive subsequently moved for summary judgment, arguing that Butze failed to state a claim upon which relief could be granted, there were no genuine issues of material fact, and Progressive was entitled to judgment in its favor as a matter of law. Progressive also submitted an affidavit of counsel attaching Butze’s insurance policy and highlighting the following policy language: “We will settle or defend, at our option, any claim for damages.” (Emphasis omitted). In response, Butze argued that Progressive

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

³ The circuit court found that the figure after the dollar sign was an “8.” It appears to this court to be a “?” but this discrepancy is not relevant to our analysis.

“neglected proper investigation, To save money,” “settled claims, Civil lawsuits without me signing off on them,” “tainted evidence,” and “did nothing to protect their client.”

After briefing was completed, the circuit court issued a decision and order, which it subsequently amended, granting Progressive’s motion for summary judgment. In its amended decision and order, the court set forth the relevant legal principles, including summary judgment standards and standards governing the sufficiency of a complaint. Applying these standards, the court determined that “Butze’s [c]omplaint fails to state a legally recognizable claim against Progressive/Artisan.” Additionally, observing that Butze’s insurance contract with Progressive authorized the insurer to settle the claims against Butze without Butze’s approval, the court concluded that “no breach of contract or ‘bad faith’ claim is possible under the facts presented.” Butze appeals.

Our review of a circuit court’s summary judgment decision is de novo, applying the same methodology as the court. *Springer v. Nohl Elec. Prods. Corp.*, 2018 WI 48, ¶9, 381 Wis. 2d 438, 912 N.W.2d 1. “The methodology governing summary judgment is well-established and we need not repeat it in its entirety.” *Progressive N. Ins. Co. v. Jacobson*, 2011 WI App 140, ¶7, 337 Wis. 2d 533, 804 N.W.2d 838. Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2).

Our first step in reviewing the motion for summary judgment is to determine if Butze’s complaint states a claim upon which relief may be granted, which is a matter of law we review de novo. See *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶17, 356 Wis. 2d 665,

849 N.W.2d 693. While “[i]n examining the complaint, we take the allegations as true, construing them liberally in the plaintiff’s favor,” *Broome v. DOC*, 2010 WI App 176, ¶14, 330 Wis. 2d 792, 794 N.W.2d 505, if the complaint ultimately fails to state a claim, we need go no further.

Butze’s complaint first alleged breach of contract. “A complaint states a claim for breach of contract when it alleges: (1) a contract between the plaintiff and the defendant that creates obligations flowing from the defendant to the plaintiff; (2) failure of the defendant to do what it undertook to do; and (3) damages.” *Brew City Redevelopment Grp., LLC v. The Ferchill Grp.*, 2006 WI App 39, ¶11, 289 Wis. 2d 795, 714 N.W.2d 582. Absent a sufficient allegation of each of these elements in the complaint, a claim for breach of contract cannot proceed. *See Data Key Partners*, 356 Wis. 2d 665, ¶21.

Butze’s complaint alleged “Failure to Protect Your client ... knowing with Evidence He was 100% not at Fault.” This is insufficient to support a breach of contract claim. Not only does Butze fail to allege the existence of any contract, he also fails to identify any obligations to Butze that Progressive failed to satisfy and any damages that Butze suffered as a result of an alleged breach. “[W]e will dismiss a complaint if, ‘[u]nder the guise of notice pleading, the complaint before us requires the court to indulge in too much speculation leaving too much to the imagination of the court.’” *Doe 67C v. Archdiocese of Milwaukee*, 2005 WI 123, ¶36, 284 Wis. 2d 307, 700 N.W.2d 180 (second alteration in original; citation omitted). Here, without engaging in much speculation, neither Progressive nor the circuit court would be on notice as to what contract allegedly was breached, much less what specific provision within the alleged contract was allegedly violated. Simply put, Butze’s complaint fails to state a breach of contract claim upon which relief can be granted, and summary judgment as to this claim was warranted.

Butze's complaint also purported to allege bad faith against Progressive. As our supreme court has observed, the following elements are required to establish a bad faith claim:

(1) the terms of the policy obligated the insurance company to pay the claim; (2) the insurer lacked a reasonable basis in law or fact for denying the claim; and (3) the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed.

Brethorst v. Allstate Prop. & Cas. Ins. Co., 2011 WI 41, ¶54, 334 Wis. 2d 23, 798 N.W.2d 467 (citation omitted).

We conclude that, just as Butze's breach of contract claim is insufficient to survive summary judgment, so, too, is his claim of bad faith. The complaint contains no allegations that could establish any of the three elements required for a showing of bad faith. The duty to act in good faith is implied by the terms of the insurance contract, and Butze's complaint fails to identify any such contract. Moreover, none of the factual allegations in his complaint, if proven, would show that Progressive breached a contract, which is a necessary prerequisite for a bad faith claim. *See id.*, ¶65 (explaining that "some breach of contract by an insurer is a fundamental prerequisite for a first-party bad faith claim against the insurer by the insured"). Finally, the factual allegations in Butze's complaint, if proven, would not show that Progressive failed to exercise reasonable diligence in ascertaining facts upon which a good-faith decision to settle or not settle must be based. *See Anderson v. Continental Ins. Co.*, 85 Wis. 2d 675, 691, 271 N.W.2d 368 (1978). Even under the most generous reading of its contents, Butze's complaint is insufficient to survive summary judgment as to his bad faith claim.

For the foregoing reasons, we conclude that Butze's complaint failed to state any claim upon which relief may be granted, which ends our inquiry. Accordingly, the circuit court did not

err in granting Progressive's motion for summary judgment, which resulted in the dismissal of the complaint. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals