

BAD FAITH BLOG

Insurer's Conduct Created Issues of Fact as to Non-Party's Right to Bring Bad Faith Claim

AUTHOR: MEGHAN E. LEWIS

The Oklahoma Supreme Court held that whether a property owner under a contract for deed is owed a duty of good faith and fair dealing by an insurer of previous owner's insurance policy is a question of fact.

Hensley v. State Farm Fire and Casualty Company, 398 P.3d 11 (Ok. 2017)

State Farm Fire and Casualty Company ("State Farm") issued a homeowners policy to named insured Kenneth Hensley and his wife ("Hensleys"). In 2000, the Hensleys moved and sold the property to Bob Douglas ("Douglas") using a contract for deed. The contract for deed required Douglas to keep the premises insured; Douglas made monthly payments to the Hensleys which included insurance premiums. In 2008, Douglas made a claim for theft and vandalism with State Farm under the Hensleys' policy, which State Farm denied. Douglas was not named as an insured and the policy had not been endorsed to reflect the contract for deed.

Douglas and Mr. Hensley brought suit against State Farm for breach of the policy and breach of the implied duty of good faith. Douglas alleged he possessed an insurable interest and was an additional insured under the policy. State Farm filed a motion for summary judgment, contending Douglas was a stranger to the policy and lacked standing to bring claims against State Farm. The trial court granted summary judgment in State Farm's favor, which was affirmed by the Oklahoma Court of Civil Appeals. The Oklahoma Supreme Court reversed summary judgment and remanded the case for further proceedings due to the existence of unresolved factual issues as to Douglas' rights under the policy.

Douglas relied on the policy's "loss payment" provision to confer standing under the policy. The provision stated:

10. Loss Payment. We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable:

a. within 60 days after we reach an agreement with you or there is a filing of an appraisal award with us; or

b. within 30 days after there is entry of a final judgment.

The Supreme Court found Douglas held an equitable title to the property arising from the contract for deed, with Douglas and the Hensleys' relationship akin to a mortgagor/mortgagee. Douglas' equitable title, though, was "insufficient *by itself* to confer upon him a policy-created right of insurer's duty of good faith created by the insurance contract when Douglas is not expressly named in the policy as a lienholder, insured, loss payee, or third party beneficiary, or when the contract for deed is not expressly referenced in a part of the insurance policy." (emphasis original). It reiterated an action based on the duty to deal fairly and act in good faith will not lie against a stranger to the contract. (citing *Trinity Baptist Church v. Brotherhood Mut. Ins. Services, L.L.C.*, 2014 OK 106, ¶ 11, 341 P.3d 75, 79). It further held "an alleged breach of an insurer's promise to pay, whether express or implied, is not sufficient to show a breach of the implied duty of good faith because the implied-in-law duty of good faith and fair dealing *does not extend to a person merely because that person is entitled to payment from insurance proceeds.*" (emphasis original).

However, the Supreme Court found questions of fact existed as to whether Douglas was a third-party beneficiary to the policy. Specifically, Douglas presented facts indicating State Farm construed the policy to include Douglas as an insured or beneficiary beyond Douglas' unilateral expectation, including:

1. State Farm treating Douglas as insured for the purpose of submitting proof of loss for a claim on the policy and referring to him and his wife as an insured in correspondence;
2. Douglas' equitable interest in the property legally entitled him to receive the insurance proceeds which was known by State Farm for several years prior to the claim at issue; and
3. The policy covered the very harm for which the risk was assumed and the interest insured was for the entire property, as opposed to the amount of Hensley's insurable interest.

The Court noted "[w]hen a third party beneficiary status is dependent upon whether contracting parties intended to benefit the third party, that determination of an actual intent is an issue of fact to be determined by the trier of fact." Accordingly, whether Douglas was a third party beneficiary and an insured under the policy depended upon an adjudication of disputed material facts, making summary judgment inappropriate.

The Oklahoma Supreme Court's decision in Hensley opens the door to potentially viable bad faith claims by a non-party to the policy under certain facts, particularly when the insurer engages in conduct evidencing an intention to treat the non-party as an insured.