

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
MARCELA RAMIREZ, as parent, and natural guardian
of her infant daughters, E.F. and M.F.,

Plaintiff,

-against-

FELIPE VAQUERO-TLATELPA and
ALLSTATE INSURANCE COMPANY,

Defendants.

-----X
GOLDBERG-VELAZQUEZ, J.

The papers filed electronically as NYSCEF DOC# 31-39 and 52-88 were read on the motion brought by Allstate Insurance Company to dismiss the complaint for failure to state a cause of action.

BACKGROUND

Plaintiff brings this action against Allstate and its named insured, Felipe Vaquero-Tlatelpa (“Vaquero”) seeking to collect on a judgment she obtained on behalf of her infant daughters representing damages for bodily injuries they sustained from exposure to lead in the premises owned by Vaquero. The complaint alleges causes of action sounding in breach of contract, bad faith and punitive damages.

DISCUSSION

Allstate moves pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against it on the ground that it fails to state a cause of action and that a defense is founded upon documentary evidence. Allstate contends that plaintiff and her daughters are not, as a matter of law, third-party beneficiaries under the Allstate policies and thus, have no right to enforce them.

Plaintiff contends that she and her daughters are third-party beneficiaries under the Allstate policy because of their claim against Vaquero, the insured. The complaint alleges that the policy issued by Allstate to Vaquero provided coverage for bodily injury arising out of lead in residences that underwent lead abatement procedures, had been inspected by a certified contractor and was found to be lead safe. Although plaintiff and her infant daughters are not named in the policy, they assert benefits thereunder as third-party beneficiaries.

On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v. Martinez*, 84 N.Y.2d 83, 87–88 [1994]).

Plaintiffs' cause of action for breach of contract against Allstate is premised upon the theory that, in view of the policy's endorsement for Coverage X and Coverage Y the purpose of which is to cover bodily injury to family and guests arising out of lead paint in any residence that have undergone lead abatement procedure and has been inspected by a certified contractor and found to be lead-safe, plaintiff and her daughters, as guests of Vaquero's residence, were necessarily intended to benefit from the insurance policy and that Allstate deprived plaintiffs of this benefit when it allegedly breached its contractual duties to Vaquero by denying his claim.

The complaint alleges that pursuant to Coverage X Family Liability Protection of the Policy Allstate will pay damages that Vaquero is obligated to pay because of bodily injuries arising from lead exposure. Further, pursuant to Coverage Y Guest Medical Protection of the policy Allstate is to pay for the expenses incurred by the infant plaintiffs for the bodily injuries arising from lead exposure as both were permitted to be in the residence by Vaquero. Nowhere in the complaint it is alleged that the infant plaintiffs were the express and intended beneficiaries of Vaquero's insurance policy with Allstate.

Guest medical coverage is also known as goodwill coverage and is meant to prevent any legal complications between an insured and their guest. The benefit of such coverage is to Vaquero, not guests, as he would be ultimately responsible. No where in the policy does it name, describe or otherwise refer to the infant plaintiffs as an insured and there is no obligation by Allstate to defend or indemnify them (*Catholic Health Servs. of Long Is. V National Union Fire Ins. of Pittsburgh*, 46 ADE3d 590, 592 [2d Dept 2007]).

At most, the policy contemplates that some unknown claimant who may, in the future, obtain a judgment or settlement against Vaquero or be injured while on the insured premises seeking coverage from Allstate which is insufficient to establish rights as a third-party beneficiary (*see Stainless v Employers Fire Ins. Co.*, 69 AD2d 27 [1st Dept 1979] *aff'd* 49 NY2d 924 [1980]). The only intended beneficiary to the policy is the named insured, Vaquero.

Plaintiff's first cause of action fails to state a claim for breach of contract. Contrary to the plaintiff's contention, she fails to plead any facts demonstrating that the infant plaintiffs were intended third-party beneficiaries of the Allstate policy. The case cited by plaintiff bolster's Allstate's position. In *Greater Bright Light Home Care Servs. v Jeffries-El*, 151 AD3d 818 (2d

Dept 2017), the court found El Equity to be an intended third-party beneficiary of an agreement between plaintiff and Sandsport Data Services (“SDS”) as the agreement specifically mentions El Equity in connection with a defined escrow agreement entered into between the plaintiff and El Equity. There, unlike here, there is no question that the agreement contemplated El Equity as a third-party beneficiary. Here, the infant plaintiffs are not third-party beneficiaries. Plaintiff has no standing to bring this action against Allstate.

The Court has considered the parties' remaining contentions and deems them to be moot or to lack merit in light of the foregoing. It should be noted that plaintiff's request for leave to amend and to replead her complaint has not been considered as procedurally improper. Plaintiff has failed to file a motion seeking such relief and has failed to submit the proposed amended or supplemental pleading to her papers (*see* CPLR §§2211, 3025[b]).

Accordingly, it is hereby

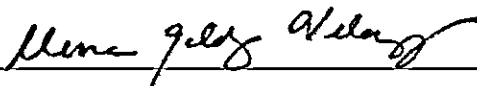
ORDERED that defendant's, Allstate Insurance Company, motion to dismiss the complaint is granted and the complaint is dismissed insofar as asserted against it.

This decision constitutes the order of the Court.

E N T E R

Dated: October 30, 2023

Goshen, New York



HON. ELENA GOLDBERG-VELAZQUEZ, J.S.C.

TO: Counsel of Record via NYSCEF