Bacon v. 21st Century Ins. Co., 2018 U.S. Dist. LEXIS 198816

United States District Court for the Central District of California

November 20, 2018, Decided; November 20, 2018, Filed

CV 18-5509 PA (MRW)

Reporter

2018 U.S. Dist. LEXIS 198816 *

John Bacon v. 21st Century Insurance Company

Core Terms

Insurer, undersigned, leave to amend, allegations, settlement, motion to dismiss, cause of action, assigns

Counsel: **[*1]** John Bacon, Plaintiff, Pro se, Redondo Beach, CA.

For The 21st Century Insurance Company, Defendant: Christopher S Maile, Heather Mason McKeon, Tharpe and Howell LLP, Sherman Oaks, CA.

Judges: PERCY ANDERSON, UNITED STATES DISTRICT JUDGE.

Opinion by: PERCY ANDERSON

Opinion

CIVIL MINUTES - GENERAL

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court is a Motion to Dismiss filed by defendant 21st Century Insurance Company ("Defendant" or "21st Century") (Docket No. 17). Defendant challenges the sufficiency of the Third Amended Complaint ("3rd AC") filed by plaintiff John Bacon ("Plaintiff"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for November 26, 2018, is vacated, and the matter taken off calendar.

I. Factual and Procedural Background

Plaintiff, who is appearing pro se, filed his original Complaint in this Court on June 20, 2018. Pursuant to the screening procedures of 28 U.S.C. § 1915, and after concluding that Plaintiff had failed to identify a proper statutory or regulatory provision establishing a private right of action against Defendant, the Magistrate Judge assigned to the action provided Plaintiff with an opportunity to file an Amended Complaint. **[*2]** Plaintiff filed an Amended Complaint on July 20, 2018, and a Second Amended Complaint on September 18, 2018. Without obtaining leave as required by Federal Rule of Civil Procedure 15(a)(2), Plaintiff filed the 3rd AC on October 12, 2018.

According to the 3rd AC and the exhibits attached to it, Plaintiff was injured in an automobile accident on February 12, 2012. Plaintiff expended $686.84 to investigate his accident. Plaintiff signed a settlement agreement with 21st Century, which was his insurer, under his uninsured motorist coverage, for $50,000.00, on June 18, 2014. As part of his settlement with 21st Century, Plaintiff signed a UM/UIM Trust Agreement and Release, which provided:

> FOR AND IN CONSIDERATION OF THE SUM OF $50,000.00 (Fifty Thousand Dollars), receipt of which is hereby acknowledged, the undersigned in his/her capacity as the insured, hereby releases, discharges, and for himself/herself, his/her heirs, executors, administrators, successors and assigns, does forever release and discharge 21st Century Insurance Company herein called Insurer, including their agents and assigns, from all rights, claims, demands and damages of any kind, resulting from injuries arising from an accident that occurred on or about February **[*3]** 12, 2012 at or near Los Angeles, CA and being made under the Uninsured Motorist insuring agreement of an automobile policy number 970003066747 issued by the Insurer to John Bacon.
>
> AND FURTHER: In consideration of such payment the undersigned represents and warrants that this is a full and final release applying to all known claims, unknown and anticipated injuries, deaths or damages arising out of this accident, casualty, or event. Additionally, the undersigned expressly, voluntarily, knowingly and advisedly waives any and all rights granted under California Civil Code Section 1542 with respect to any bodily injury(ies) arising from, or in any way related to the subject accident.
>
> Section 1542: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."
>
> . . .

> AND FURTHER, as a condition of the settlement and release the undersigned for himself/herself (and said minor and said estate) represents and warrants that as of the date of this signing, the undersigned for himself/herself (and said minor and said estate) has provided the Insurer including **[*4]** their agents and assigns, all information known to the undersigned about any and all **Medicare** rights to recover. The undersigned for himself/herself and said minor and said estate agrees to reimburse, indemnify and hold harmless the Insurer and its agents and assigns with respect to any and all known or unknown **Medicare** rights to recovery, related to the Subject Accident, for which the federal government may seek repayment as well as any fine or penalty the federal government may seek resulting from the sufficiency and or accuracy of the information the undersigned has provided to the Insurer regarding **Medicare** rights to recovery known as of this date.

(3rd AC at 20.) 21st Century then issued to Plaintiff a check for $50,000.00 made payable to "John Bacon and **Medicare**" on June 23, 2014. (3rd AC at 24.)

21st Century later informed the Centers for **Medicare** & Medicaid Services ("**Medicare**") that it had settled the claim with Plaintiff, had issued a payment in the amount of $50,000.00 in the form of a two party check listing both **Medicare** and Plaintiff as payees, and that the check had not been cashed as of January 20, 2015. (3rd AC at 43 & 44.) **Medicare** sent Plaintiff a Notice in August 2014 that Plaintiff was required **[*5]** to repay **Medicare** the $50,000.00 Plaintiff received from 21st Century to compensate **Medicare** for the $67,685.36 in medical expenses **Medicare** had paid on behalf of Plaintiff arising out of the accident. According to Plaintiff, the United States Department of the Treasury has reduced Plaintiff's Social Security payments by approximately $260.00 each month to satisfy the debt to **Medicare**.

Plaintiff's 3rd AC alleges a single claim against 21st Century pursuant to the **Medicare** Act's **Medicare Secondary Payer** ("MSP") private cause of action provision contained in 42 U.S.C. § 1395y(b)(3)(A). According to Plaintiff, he is entitled to double the amount 21st Century has failed to pay to **Medicare**.

II. Legal Standard

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12 (b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit **[*6]** is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248-49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561, 127 S. Ct. at 1968 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556, 127 S. Ct. at 1965. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555, 127 S. Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable **[*7]** to the nonmoving party.'") (quoting

Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555, 127 S. Ct. at 1964-65 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 664 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

III. Analysis

In its Motion to Dismiss, 21st Century contends that Plaintiff has, despite three opportunities to do so, failed to state a viable claim against it. Specifically, 21st Century asserts that Plaintiff's claim brought pursuant to section 1395y(b)(3)(A) fails because the facts alleged in the 3rd AC and documents attached to it establish that 21st Century has not failed to reimburse **Medicare** for the amount **[*8]** 21st Century owes to **Medicare**. Instead, according to 21st Century, Plaintiff's allegations in fact establish that 21st Century, by settling with Plaintiff, and issuing a check made payable jointly to both Plaintiff and **Medicare**, has satisfied its obligations under the **Medicare** Act's MSP provisions. As a result, it is Plaintiff, and not 21st Century, that has failed to repay **Medicare**.

Section 1395y(b)(3)(A) states: "There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) . . . ." This private cause of action "allows **Medicare** beneficiaries and healthcare providers to recover medical expenses from primary plans." Parra v. PacifiCare of Arizona, Inc., 715 F.3d 1146, 1152 (9th Cir. 2013). In Parra, the Ninth Circuit explained that section 1395y(b)(3)(A) "was intended to allow private parties to vindicate wrongs occasioned by the failure of primary plans to make payments. This statute, which allows recovery of double damages, was not intended to apply to a primary plan which, for all intents and purposes, has interpleaded a sum subject to conflicting claims." Id. at 1154-55. Instead, where the insurer "tendered the sum claimed . . and simply protected **[*9]** itself against a conflicting claim," no recovery is allowed under section 1395y(b)(3)(A). Id. at 1154.

Here, 21st Century tendered the $50,000.00 it was potentially liable for to Plaintiff and **Medicare**. By failing to endorse the settlement check and forward it to **Medicare**, it is Plaintiff, and not 21st Century, who has failed to reimburse **Medicare**. By entering into the settlement agreement with Plaintiff and tendering the sum to him and **Medicare** through the two-party check, 21st Century has done all that the **Medicare** Act's MSP provisions require. Plaintiff's section 1395y(b)(3)(A) claim therefore fails to state a viable claim.

Ordinarily, because Plaintiff is appearing pro se, the Court would dismiss his claim with leave to amend. Here, however, the Court concludes that leave to amend would be futile because Plaintiff has already amended his Complaint three times, agreed to a general release absolving 21st Century of further liability, and has failed in his Opposition to identify evidentiary facts he could allege to state a viable claim against 21st Century. See Flowers v. First Hawaiian Bank, 295 F.3d 966 (9th Cir. 2002) ("A pro se litigant must be given leave to amend his or her complaint unless it is obviously clear that the deficiencies in the complaint could not be cured by amendment . . . . **[*10]** A district court . . . does not abuse its discretion in denying leave to amend where amendment would be futile."). For all of the foregoing reasons, the Court therefore dismisses Plaintiff's 3rd AC without leave to amend.

Conclusion

For all of the foregoing reasons, the Court dismisses Plaintiff's 3rd AC without leave to amend and the action with prejudice. The Court will issue a Judgment consistent with this Order.

IT IS SO ORDERED.

JUDGMENT

Pursuant to the Court's November 20, 2018, Minute Order granting the Motion to Dismiss filed by defendant 21st Century Insurance Company ("Defendant"), which dismissed the Third Amended Complaint filed by plaintiff John Bacon ("Plaintiff") with prejudice and without leave to amend,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant shall have judgment in its favor against Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff take nothing and that Defendant shall have its costs of suit.

IT IS SO ORDERED.

DATED: November 20, 2018

/s/ Percy Anderson

Percy Anderson

UNITED STATES DISTRICT JUDGE

Content Type:

Terms:

Narrow By: -None-

Date and Time: Nov 26, 2018 09:29:28 a.m. EST