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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DAVID WATTS, Plaintiff and Appellant, v. SAFECO INSURANCE COMPANY OF ILLINOIS, Defendant and Respondent.	B276123 (Los Angeles County Super. Ct. No. BC583909)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert L. Hess, Judge. Affirmed.

Bendel Law Group and Jason R. Bendel for Plaintiff and Appellant.

Lindahl Beck, Kelley K. Beck and John T. Lupton for Defendant and Respondent.

Plaintiff David Watts appeals the trial court's grant of summary judgment on his claims for breach of contract and breach of the implied covenant of good faith and fair dealing against his insurance company, defendant Safeco Insurance Company of Illinois (Safeco). Watts sued after Safeco denied coverage under his homeowner's policy for a full time rental home in Palm Springs during the time his vacation home was uninhabitable and undergoing repairs due to water damage. Instead, Safeco paid for all of his hotel stays and meals whenever he went to the area. The trial court held his claims were barred by the policy's one-year limitation period to bring any action after a loss. We agree and affirm.

BACKGROUND

Watts owned a vacation home in Palm Springs insured by a homeowners insurance policy from Safeco. The policy contained multiple property and liability coverages. This case concerns Coverage D—Loss of Use, which states, "If a loss covered under this Section makes that part of the *residence premises* where you reside uninhabitable we cover Additional Living Expense, meaning any necessary increase in living expenses you incur so that your household can maintain its normal standard of living." The policy contains a clause applicable to the property coverages (including the Loss of Use coverage) entitled "Suit Against Us," which states, "No action shall be brought against us unless there has been compliance with the policy provisions and the action is started within one year after the loss or damage."

On December 23, 2011, Watts discovered significant water damage to his home from a leak from a burst pipe. On the same day, he submitted a claim to Safeco under his homeowners policy. Claims Team Manager and Senior Inside Property Loss

Specialist Angela Harmon handled the claim, and she spoke with Watts that day. Watts indicated the Palm Springs home was his vacation home and he had not been there since Thanksgiving. He asked if Safeco would pay for the cost of a hotel comparable to his house, and Harmon said it would, up to $500 per night.

Harmon sent Watts a letter on December 27, 2011 outlining coverage available under the policy, including the Coverage D—Loss of Use coverage. A Safeco field adjuster conducted a field inspection on December 29, 2011. Watts said his housekeeper notified him of the standing water, as he had been at his primary residence in Los Angeles at the time. The adjuster indicated Safeco would facilitate the selection of a contractor through a referral program in partnership with a company named Innovation Property. She gave Watts a brochure containing a "President's Guarantee" that the contractor would be "monitored to ensure they uphold our high expectations of service, quality and speed."

Watts called Harmon on January 3, 2012, telling her he had receipts for hotels and food, and asking about going to Palm Springs in the future. He explained the house was a second home and he visited at least every other weekend. Harmon told him Safeco would pay for hotels and meals while he was there, and that he could call CRS Temporary Housing to help set up hotels as needed so Safeco could be billed directly.

Watts stated in his declaration in opposition to summary judgment that, during the call on January 3, 2012, he also requested Safeco rent him a comparable house full time so he could maintain his normal standard of living. He claimed Harmon advised him Safeco would only pay for hotels and meals. He stated that as his claim progressed, he repeatedly asked for a

comparable full-time rental, and Safeco continually refused. He also claimed the process of renting a home or hotel was burdensome and did not allow him to maintain his normal standard of living.

In a June 3, 2013 email to Harmon, Watts again requested a full-time rental home, writing: "I'd still like to address the loss of use of my home with you. I have been unable to use my home since December 2011 and I'm asking for Safeco to pay me for loss of use since then minus what you have paid for hotel stays and house rentals since then. Let me know if you want me to research what a house rental would have cost. I think this is a very reasonable request given the extreme circumstances."

Harmon denied Watts' request in a June 10, 2013 email, stating his policy "covers loss of use for Additional Living Expense, meaning any necessary increase in living expenses you incur so that your household can maintain its normal standard of living. Therefore, we have been paying for your hotel expenses as needed when you go to the area, since the home is not habitable due to the needed repairs. Under the policy we don't owe for your normal expenses of running the home and we don't owe for the inability to use your home."

Harmon sent a formal letter to Watts the same day denying his request for the same reason. It further explained: "Based upon the above facts and policy language we must respectfully deny the request for loss of use that hasn't been incurred over your normal living expenses." The letter then quoted the one-year limitation period in the "Suit Against Us" clause in the policy, and pointed out "that the one-year period in the above policy provision begins to run when the damage first manifests,

is tolled or suspended during the insurer's investigation and recommences when the insurer denies the claim in writing."

Watts reiterated his request for a full-time rental in an email later that day. Watts and Harmon discussed the issue over the phone on June 13, 2013. Harmon explained Safeco owed him for the loss of use expenses he incurred from renting a hotel or house when going to the area. Watts said he "understood." Watts emailed Harmon later that day asking if Safeco would pay for a stay in San Diego, and Harmon said it would only pay for stays in Palm Springs, where his house was located.

Up to the last payment under the Loss of Use coverage on March 20, 2014, Safeco paid for all of Watts' hotel stays or house rentals whenever he visited Palm Springs. Safeco continued to make payments pursuant to other coverages in the policy through June 2015.

Watts filed this lawsuit on June 3, 2015. As relevant here, he alleged claims for breach of contract and breach of the implied covenant of good faith and fair dealing based on factual allegations that Safeco failed to monitor the contractor, which caused delay that prevented him from using the home between December 2011 and late March 2014, and Safeco refused to pay for an equivalent full-time house for him to use.[1]

Safeco moved for summary judgment on the grounds that Watts' claims were untimely under the one-year statute of limitations in the policy and Watts suffered no damages.

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[1] Watts also alleged a claim pursuant to Business and Professions Code section 17200, but the trial court struck that claim and he has not addressed it on appeal.

The court granted the motion on the statute of limitations issue and entered judgment for Safeco. Watts timely appealed.

DISCUSSION

I. Standard of Review

A defendant moving for summary judgment must show "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Summary judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (*Id.* subd. (c).)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542 (*Perry*); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) It is no longer called a "disfavored" remedy. "Summary judgment is now seen as 'a particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Perry*, at p. 542.)

On appeal, "we take the facts from the record that was before the trial court . . . . [Citation.] ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' [Citation.]" (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

II. Watts' Claims Are Untimely Under the Policy

Though the language varies slightly, the one-year "Suit Against Us" provision in the policy is substantively the same as

the one-year contractual limitations period included in the Standard Fire Policy form authorized by the Legislature in Insurance Code section 2071. That clause states, "No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss." (Ins. Code, § 2071, subd. (a).) This limitation period applies to both contract and tort causes of action attempting to recover benefits on the policy. (*Jang v. State Farm Fire & Casualty Co.* (2000) 80 Cal.App.4th 1291, 1301 (*Jang*).)

This one-year limitation period begins to run "when appreciable damage occurs and is or should be known to the insured, such that a reasonable insured would be aware that his notification duty under the policy has been triggered." (*Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 678 (*Prudential-LMI*).) The period is equitably tolled, however, "from the time the insured files a timely notice, pursuant to policy notice provisions, to the time the insurer formally denies the claim in writing." (*Ibid.*)

Watts essentially argues his lawsuit was timely under the policy because he only ever made one "claim" on his policy—the claim for the water leak on December 23, 2011. He contends both the limitations period and equitable tolling began on that date, and the tolling period never ended because his request for payment for a full-time rental was not a stand-alone "claim" under his policy, and Safeco continued to pay policy benefits under a single claim number up to the filing of his complaint.

In contrast, Safeco contends the limitations period began on June 3, 2013, the first time Watts requested coverage for a

full-time rental home. Watts disputed the June 3, 2013 date; he stated in his declaration in opposition to summary judgment that he requested a full-time rental as early as January 3, 2012. On summary judgment, we must assume his date is the correct one. In any case, Safeco argues that whatever the start date of the limitations period and the equitable tolling period, any tolling ended when Safeco sent Watts the June 10, 2013 letter unequivocally denying his request for a full-time rental in writing, at which point Watts had one year to file suit for the denial of that coverage. We agree with Safeco's position.

Watts has provided no legal authority for his formal "claim" approach to either the one-year limitations period or equitable tolling. The Loss of Use clause in the policy does not use the term "claim"; it refers to *coverage* of *losses*: "If a *loss covered* under this Section makes that part of the *residence premises* where you reside uninhabitable we *cover* Additional Living Expense, meaning any necessary increase in living expenses you incur so that your household can maintain its normal standard of living." (First and third italics added.) The one-year limitations clause also requires actions to be brought "within one year after the *loss* or damage." (Italics added.)

Similarly, while the court in *Prudential-LMI* described the end of the equitable tolling period at the outset of the opinion as the "time the insurer formally denies the *claim* in writing" (*Prudential-LMI, supra,* 51 Cal.3d at p. 678, italics added), later when discussing policy considerations supporting equitable tolling, the court described the end date for tolling as the date "*coverage* is denied" (*id.* at p. 693, italics added). This at least suggests that the equitable tolling doctrine could apply to specific requests for coverage, rather than only a single overall claim

under the policy. (See *Jang, supra,* 80 Cal.App.4th at p. 1302, [noting equitable tolling "require[s] the policy's one-year statute of limitations to be tolled from the time the insured timely files a claim until the insurer gives notice that it is denying *coverage*," italics added].)

Contrary to Watts' view, this approach does not run counter to the policy rationales underlying equitable tolling. One such rationale is that equitable tolling "allows the claims process to function effectively, instead of requiring the insured to file suit *before* the claim has been investigated and determined by the insurer." (*Prudential-LMI, supra,* 51 Cal.3d at p. 693.) Although Watts continued to receive other payments under the policy, his request for coverage for a full-time rental was clearly and unequivocally denied in writing, leaving nothing more for Safeco to investigate and determine. Safeco's continued payment for other coverage did not place Watts in the bind of having to file a suit before coverage was denied. (See *Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135, 142 ["Once a claim has been made, the carrier has pursued its investigation, and the claim has been denied, the policies behind allowing equitable tolling have been fulfilled. The carrier's right to notice, and its ability to investigate and marshal any evidence it may need to defend, have been preserved. The insured has been provided at least some grounds, upon the denial, before being required to sue the carrier. Thereafter, however, the enforcement of the one-year limit works no injustice to either party."].)

There is no question Safeco formally denied coverage for a full-time rental home in writing in the June 3, 2013 letter. It also reminded Watts that he had one year under the contract to file suit. Watts' entire lawsuit is based on the alleged damages he

sustained by Safeco's denial of his request to pay for a full-time rental. His argument that this was not a "claim" under the policy for the purpose of equitable tolling exalts form over substance. Thus, Watts' claims were untimely and summary judgment was proper.

III. Watts Did Not Suffer "Delay Damages"

Watts contends his claims survive the limitations period because they were also based on damages he allegedly suffered due to Safeco's "unreasonable delay" in handling his claim, which would not be barred by the one-year limitations period. We reject this argument for several reasons.[2]

First, Watts' discovery responses unequivocally eliminated any damages separate from his time-barred claim for payment for a full-time housing rental. Safeco's Special Interrogatory No. 1 asked, "Detail each and every policy benefit you contend to be unpaid and owed to you by [Safeco] in this action." Watts first identified Safeco's failure to pay for a full-time rental home under the Loss of Use clause. He then stated, "Pursuant to the terms and conditions of the Policy, and the implied covenant of good faith and fair dealing in the Policy, Safeco owed [Watts] a duty not to delay in the investigation and adjustment of [Watts'] insurance claim. Safeco caused unnecessary and unreasonable delay in the adjustment of [Watts'] insurance claim by falsely representing to [Watts] that Safeco would monitor the contractor recommended by Safeco and failing to do so. This delay caused

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[2] Watts asserts that neither the trial court nor Safeco addressed this issue at summary judgment. The record plainly demonstrates the parties briefed this issue, even though the trial court did not expressly address it in ruling on summary judgment.

the Property to be uninhabitable longer than it should have been. *As a result of Safeco causing an unreasonable delay, Safeco is responsible to pay for additional living expenses for the entire time that the Property was uninhabitable, which was from December 2011 to March 2014*." (Italics added.) Watts has identified no "additional living expenses" that would support his response, other than the cost of a full-time rental home, which is barred as untimely.

Watts' position was made even clearer by his response to Special Interrogatory No. 2, which asked him to identify the specific policy provisions that support his claim of unpaid benefits. He identified Coverage D—Loss of Use, and he stated, "While the property was being repaired, and the subsequent delay that resulted from [Safeco's] failure to honor its promise to monitor the contractor completing the repairs, [Watts] was deprived [of] the benefit of the Property from December 2011 to March 2014 and *Safeco unreasonably refused to provide [Watts] with the rental of a comparable home*." (Italics added.)

Second, Watts' authority does not support a stand-alone claim for "delay damages." He cites the model jury instruction in CACI No. 2331, which sets forth the elements of a claim that an insurer breached the implied covenant of good faith and fair dealing by "failing to pay" or "delaying payment of . . . benefits due under the insurance policy." (See *Waters v. United Services Auto. Assn.* (1996) 41 Cal.App.4th 1063, 1070 (*Waters*) [gravamen of a first-party lawsuit is "a breach of the implied covenant of good faith and fair dealing . . . by unreasonably delaying payments due under the policy"].) However, Watts does not identify any benefits Safeco delayed in paying, other than the denial of payment for a full-time rental home, which is time-

barred. Instead, he takes issue with Safeco's failure to monitor the contractor responsible for the repairs on his home, which allegedly caused delay in completing those repairs. He has not identified any cognizable damages stemming from that delay.

The only other damages Watts identified were emotional distress damages based on the alleged delay in repairs. He cannot recover emotional distress damages for his bad faith claim because he offered no evidence of the necessary predicate financial loss. (*Waters, supra,* 41 Cal.App.4th at p. 1078 ["actual (not merely potential) financial loss must be established before an insured can recover emotional distress damages in a bad faith case"]; see *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1215 ["The delayed payment of benefits, standing alone, without resulting economic damages, is insufficient to support an award of emotional distress damages."].)

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J. GOODMAN, J.*

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.