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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

SEDA RASHIDI et al., Plaintiffs and Appellants, v. STATE FARM GENERAL INSURANCE COMPANY, Defendant and Respondent.	B271945 (Los Angeles County Super. Ct. No. BC497757)

APPEAL from a judgment of the Superior Court of Los Angeles County. Marc Marmaro, Judge. Affirmed.

Law Offices of Jeff A. Lesser and Jeff A. Lesser, for Plaintiffs and Appellants.

Pacific Law Partners and Matthew F. Batezel, for Defendant and Respondent.

Plaintiffs and appellants Seda Rashidi and Jahangir Rashidi sued State Farm General Insurance Company (State Farm or "the company") after the company denied their insurance claim seeking over $300,000 in losses due to the theft of jewelry. The trial court granted State Farm's motion for summary judgment on the ground that the Rashidis failed to satisfy the insurance policy's condition precedent that they submit to examinations under oath. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 2011, the Rashidis had a personal articles insurance policy with State Farm. The policy included three scheduled limits: $308,700 in jewelry, a separate $28,345 in jewelry, and $6,060 in coins. Seda Rashidi was also the insured on a homeowners policy with State Farm.[1]

On August 15, 2011, the Rashidis reported a loss to State Farm. According to Seda, on August 11, her car was broken into while she was attending a family picnic. Seda's purse was stolen from the car. The purse contained jewelry, cash, and the keys to the Rashidis' home. The Rashidis also discovered a bag of jewelry had been stolen from their residence. The bag contained all of the jewelry scheduled under the personal articles policy.

The personal articles policy included a condition that the Rashidis agreed to be examined under oath and subscribe to the same, as often as State Farm reasonably required. The homeowners policy also provided the insured had a duty after a loss to submit to examination under oath, as often as State Farm reasonably required. Both policies prohibited the insureds from

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[1] To avoid confusion we refer to the appellants by their first names.

bringing legal action against the insurance company unless they complied with the policy provisions.

In October 2011, State Farm requested that the Rashidis each submit to an examination under oath. After some initial rescheduling, the examinations were scheduled to take place on February 7, 2012. State Farm began with the examination of Seda but was unable to complete her examination by the end of the business day. The parties agreed to continue the examination at another session. There were also blanks left in the transcript of the first day of Seda's examination for her to provide further information.

Between February and June 2012, counsel for State Farm repeatedly contacted the Rashidis' counsel and requested dates for the continued examination of Seda and for the examination of Jahangir. The Rashidis' counsel provided a number of responses, but did not offer specific dates for the examinations.

For example, by letter dated February 16, 2012, State Farm's counsel informed the Rashidis' counsel that State Farm wished to schedule the continued examination of Seda and to reschedule Jahangir's examination at the Rashidis' earliest opportunity. The letter highlighted additional requests for documents and closed with the statement: "We look forward to hearing from you concerning rescheduling and the additional issues at your earliest opportunity."[2] The Rashidis' counsel responded by letter dated February 17. The letter opened with a

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[2] The Rashidis' evidence in support of the opposition to summary judgment included additional letters to State Farm from early February. The first letter was dated February 6, 2012, one day before the scheduled date for the examinations under oath; the second letter, dated February 15, 2012, did not mention dates for the examinations.

statement that its purpose was to inform State Farm's counsel that the Rashidis' counsel intended to commence legal action against State Farm's counsel for defamation. The letter did not mention the examinations under oath.

By letter dated February 24, State Farm's counsel set forth several categories of information and documentation the company had asked the Rashidis to produce. State Farm's counsel requested that the Rashidis' counsel make contact "at your earliest opportunity with the requested information and documentation and available dates for Mrs. Rashidi's continued examination and Mr. Rashidi's initial examination." The Rashidis' counsel responded by letter dated February 24, in which he categorized State Farm's letter as "an invitation for suit to be filed . . . ." The Rashidis' counsel asserted State Farm was conducting an investigation merely to establish a basis to deny the claim. He further wrote: "[W]e expect that the Examination Under Oath process will continue for some interminable length so as to punish and otherwise beat the insureds into the ground." The letter did not expressly indicate the Rashidis would not submit to examinations, but it provided no available dates or indication that dates would be forthcoming.

On March 5, the Rashidis' counsel sent State Farm a letter disputing statements in State Farm's prior correspondence and asserting the company was simply trying to deny the claim. The Rashidis' counsel advised State Farm he would be starting an approximately two-week trial in March and, "if you wish to commence another endurance contest of EUO'ing, of either of the insureds, please contact my office."

In response, by letter also dated March 5, State Farm's counsel wrote: "Your March 5, 2012 letter suggests your clients will seek to obtain the requested information and documentation and will be appearing for requested examinations. However, you have not indicated when your clients will be ready to appear, and you have not provided available dates. In order to move ahead in an expeditious manner, my office will call tomorrow to learn when the information and documentation will be available and to obtain your and your clients' availability. If possible, it would be helpful to have three available dates from you so that we can adjust our schedule accordingly. Since the examinations were initially requested on October 26, 2011, we believe it reasonable that your clients complete their cooperation, including appearing at their examinations within the next 30 days. Please keep in mind we have available dates for the examinations immediately."

In another letter dated March 16, State Farm's counsel indicated the company wished to select a date for the two examinations "so that all can hold the dates available pending the anticipated completion of your trial. Please let us know if you are able to schedule available dates in early or mid-April, presuming your trial estimate time will permit. Obviously, if your trial runs longer, we will reschedule as reasonable." The record does not include any response from the Rashidis.

On April 10, State Farm's counsel wrote again, requesting various documents and the examinations under oath. The letter requested that if the Rashidis' counsel's trial was over that he contact State Farm's counsel's office with available dates for the examinations. The letter further noted: "If you are still in trial, we would appreciate the courtesy of notification and an estimate of time when the investigation of this matter can recommence."

By letter dated April 26, State Farm's counsel again requested that the Rashidis' attorney provide available dates for the examinations.

In a May 2 letter, the Rashidis' counsel informed State Farm's attorney that his trial was over. He indicated the parties could discuss the setting of examination dates "in relation to the documents that State Farm claims to be necessary to its investigation." He also explained that he would at that point have greater availability, with the exception of May 17 through May 22. The letter did not, however, provide any actual dates when the Rashidis would be available for the examinations. On May 9, the Rashidis' counsel sent another letter to State Farm's attorney, regarding authorizations State Farm had requested. The letter did not provide dates for the examinations.

On May 10, State Farm's counsel informed the Rashidis' attorney that the company was awaiting contact from the Rashidis regarding the continued examination of Seda and the initial examination of Jahangir. The letter explained: "Since there does not appear to be further benefit in scheduling unilateral dates, we ask that you contact our office with confirmation of your clients' intention to appear with available dates. State Farm has indicated its desire to complete the investigative process at your clients' earliest opportunity, but requires your clients' cooperation to do so." There is no indication in the record that the Rashidis responded to this letter.

On June 4, State Farm denied the Rashidis' claim. The denial letter indicated the Rashidis failed to provide requested information and had failed to submit to, or complete, examinations under oath. The letter specifically quoted the examination under oath condition contained in the personal

articles policy and stated the denial was based on the Rashidis' failure to comply with the provision.

Following the denial, the parties' attorneys exchanged additional correspondence. In a June 6 letter, the Rashidis' counsel made several claims regarding the examinations under oath, including: "While we solicited available dates from you, we have never received any indicated date, assumably [*sic*] after Memorial Day, which had been anticipated." He further asserted Jahangir would have appeared for his examination under oath as scheduled "but had he done so he would have sat outside for the multiple hours as you failed to complete even half of an Examination Under Oath of Mrs. Rashidi, even though all the information relating to the claim had been available to you, substantially prior to that event." The letter concluded by indicating the Rashidis had prepared a set of records in response to one of State Farm's April letters. The Rashidis' attorney wrote: "If you wish to receive these and withdraw the purported denial and 'reopen the claim,' please contact my office as to that. Failing to hear from you, we will assume that it is litigation from hereon out." A second letter on June 13 repeated the Rashidis' belief that State Farm's reliance on the examination under oath provision was merely a pretense to deny the claim.

In a June 19 response, State Farm's counsel informed the Rashidis' counsel that his clients had not complied with their obligations under the policy. Still, the company would reconsider its claim determination upon receipt of the Rashidis' full cooperation. State Farm's counsel requested that if the Rashidis intended to comply, their attorney was to, among other things, provide dates on which the Rashidis would commit to appear for their examinations. In the lengthy back and forth that followed

between June and October 2012, the Rashidis did not provide specific dates for their examinations.

In December 2012, the Rashidis filed a complaint asserting multiple claims against State Farm, a State Farm insurance agent, and Doe defendants. Eventually, the complaint was narrowed to claims for breach of contract and breach of the duty of good faith and fair dealing against State Farm and Doe defendants.

State Farm filed a motion seeking summary judgment. The company argued the Rashidis could not prove a breach related to the insurance contract because they failed to satisfy a condition precedent to coverage. State Farm offered evidence establishing Seda did not complete her examination under oath and Jahangir did not undergo an examination under oath. State Farm further provided evidence establishing that submitting and subscribing to examinations under oath was a condition precedent in the personal articles policy and the homeowners policy.

The Rashidis opposed the motion, arguing they did not fail to appear for their examinations under oath. According to the Rashidis, Jahangir was available on the date scheduled for his examination and did not appear only because State Farm failed to complete Seda's examination that day. They further argued the record did not establish "that State Farm set a date, gave notice of a date, or intended to utilize the absence of a date as drop dead and denial basis." The Rashidis contended State Farm's evidence showing the record of correspondence between the attorneys was incomplete.

The trial court granted the motion. The court concluded State Farm met its burden to show the Rashidis failed to comply with repeated requests to submit to and complete examinations under oath. The court further determined the Rashidis did not meet their corresponding burden to raise a triable issue of fact as to whether they performed under the contract or were excused from performing. The court reasoned the evidence established the Rashidis had a pattern of refusing to comply with State Farm's requests for an examination under oath. State Farm established there was no possibility of coverage, which was fatal to both of the Rashidis' claims. This appeal followed.

DISCUSSION

I. The Trial Court Properly Granted Summary Judgment

A. Standard of Review

"Summary judgment is proper where there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) To prevail on a summary judgment motion, the moving defendant has the initial burden to show a cause of action has no merit because an element of the claim cannot be established or there is a complete defense to the cause of action. (*Id*. subd. (o); *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) To satisfy this burden, the defendant must present evidence which either conclusively negates an element of the plaintiff's cause of action, or which shows the plaintiff does not possess, and cannot reasonably obtain, needed evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.) Once the defendant has made this showing, the burden shifts to the plaintiff to set

forth specific facts which show a triable issue of material fact exists. [Citation.]

"We review the trial court's decision de novo, considering all the evidence presented by the parties (except evidence properly excluded by the trial court) and the uncontradicted inferences reasonably supported by the evidence. [Citation.] The evidence is viewed in the light most favorable to the plaintiff, liberally construing the plaintiff's submissions while strictly scrutinizing the defendant's showing, and resolving any evidentiary doubts or ambiguities in the plaintiff's favor. [Citation.]" (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1581.)

B. Discussion

It is well established that "[a]n insured's compliance with a policy requirement to submit to an examination under oath is a prerequisite to the right to receive benefits under the policy. (*Hickman v. London Assurance Corp.* (1920) 184 Cal. 524, 534 (*Hickman*).)" (*Brizuela v. CalFarm Ins. Co.* (2004) 116 Cal.App.4th 578, 587 (*Brizuela*).) Here, the personal articles policy and the homeowners policy included an examination under oath condition, pursuant to which the Rashidis agreed they would submit to examinations under oath as often as State Farm reasonably required. State Farm met its burden on summary judgment to show the Rashidis cannot establish they satisfied this condition.

The evidence is undisputed that Seda did not complete her examination under oath and Jahangir never underwent an examination under oath. On this record, the relevant legal authorities all support the conclusion that the Rashidis failed to satisfy a condition precedent to coverage. For example, in

Hickman, the insured was charged with arson in connection with a loss by fire that was the subject of the insurance claim. At the insurance company's demand, and pursuant to the insurance policy, the insured appeared for an examination under oath, answered questions about his name, age, and address, but refused to answer any further questions to avoid self-incrimination. (*Hickman, supra,* 184 Cal. at pp. 525, 527–528.) He offered to stipulate that he submit to an examination after the conclusion of the criminal prosecution, but not before.

The *Hickman* court concluded the insured forfeited the right to policy benefits by refusing to submit to an examination. The Fifth Amendment right against self-incrimination did not justify the insured's refusal to comply with the contractual obligation that he submit to an examination under oath. (*Hickman*, *supra*, 184 Cal. at p. 532.) *Hickman* illustrates that actual compliance with the examination under oath condition is required; the insured must appear and answer questions in accordance with the provision in the insurance contract. We note that here, the insurance policies not only required the insured to submit and subscribe to an examination, they also required that the insured do so as often as State Farm reasonably required. The mere fact that Seda *began* her examination under oath, or that Jahangir made himself *available* to be examined on a single day, did not satisfy the policy condition.

Abdelhamid v. Fire Ins. Exchange (2010) 182 Cal.App.4th 990, is also instructive. In *Abdelhamid*, the insured appeared for an examination under oath, but refused to answer questions about her business or personal finances, asserting she was acting on legal advice. (*Id.* at p. 996.) The insurance company denied her claim in part on the ground that her failure to answer

questions during the examination breached a condition precedent to her recovery under the policy. (*Ibid.*) The trial court granted summary adjudication on the insured's breach of contract claim. (*Id.* at p. 998.) The reviewing court affirmed, rejecting the argument that the insured was excused from answering questions based on the advice of counsel. The court summarized earlier cases, concluding: "While these cases do not directly address the precise issue before us, they reflect a strong insistence on an insured's performance of the contractual conditions required for coverage, even when the insured might have a legitimate legal basis for not wanting to comply." (*Id.* at p. 1004.) The insured was required to answer material questions at the examination under oath. The insurance company was not required to accept her partial compliance.

Brizuela is even more on point. In *Brizuela*, as in this case, the insured did not provide dates when he would be available for an examination under oath, despite repeated requests from the insurance company. The insured's counsel exchanged correspondence with insurance counsel after the insured failed to attend a scheduled examination. But the insured did not agree to submit to an examination "on any particular date at any time thereafter, notwithstanding [the insurance company's] repeated requests over a six-month period that [the insured] make himself available for such an examination. [The insured] did not respond in a timely manner to [the company's] proposal offering six alternative dates in December, 1999." (*Brizuela, supra,* 116 Cal.App.4th at pp. 588–589.) The court concluded: "[The insured's] failure, six months after [the insurance company's] initial request for the examination, to propose any dates for an examination, to respond in a timely manner to [the insurance

company's] proposed dates, and to submit to an examination constituted a refusal to submit to [an] examination under oath." (*Id.* at p. 589.) The *Brizuela* court's reasoning is equally applicable here.

The Rashidis argue *Hickman* and *Brizuela* are distinguishable because in each case there was a complete failure to submit to an examination under oath. We do not find the Rashidis' conduct in this case significantly different from that of the insureds' in *Hickman* and *Brizuela.* The policies at issue required that the insured and members of the household be examined under oath and subscribe to the same as often as State Farm reasonably required. As to Seda, while she submitted to an examination on one day, it is undisputed that the examination was not complete. The parties in fact agreed to end the examination when they did because it was clear more time would be needed. Seda, through counsel, agreed to schedule a second day. Yet, over the next four months, the Rashidis failed to provide any dates for the continued examination.[3] (See 13 Couch

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[3] The Rashidis have not argued that State Farm was unreasonable in requesting that Seda make herself available to complete the examination under oath. Instead, as we understand their arguments, they contend only that her submission to a partial examination under oath was sufficient to satisfy the policy condition. Indeed, the Rashidis proffered no evidence that would support a finding that State Farm was unreasonable in requesting that Seda complete an examination, or that Jahangir submit to an examination on a rescheduled date. (See *West v. State Farm Fire and Cas. Co.* (1989) 868 F.2d 348, 350–351 [reasonableness of request for examination under oath becomes a question of law appropriate for resolution on motion for summary judgment when only one conclusion about the conduct's reasonableness is possible].)

on Insurance (3d ed. 1999) § 196:24, p. 196–32, citing *Catalogue Service of Westchester, Inc. v. Insurance Co. of North America* (N.Y. Ct. App. 1980) 425 N.Y.S.2d 635, 637 [insureds' "failure to submit to a second examination, as agreed to at the close of the first examination, constituted a failure to fully comply with their obligations" to submit to an examination under oath as often as may reasonably be required].)

As to Jahangir, he may have been ready to proceed with his examination under oath on one particular day, but when the examination could not proceed that day he never provided dates for it to be rescheduled. The Rashidis offer no legal authority to support their argument that merely being available for examination under oath is sufficient when the examination cannot be conducted on the scheduled day, and the insured fails to make himself available at any other specific date or time. The policy language contains no such limitations, but instead requires the insureds to submit to examination under oath as often as State Farm reasonably requires. There is no basis to conclude it was unreasonable for State Farm to seek to reschedule Jahangir's examination after it could not go forward on the February 7 date. Jahangir's mere readiness to proceed on one day was not sufficient to satisfy the condition that he be examined under oath as often as State Farm reasonably required.

The Rashidis' claim that they did not fail to attend or complete their examinations under oath is belied by the record. Between the February 7 initial examination of Seda and the June 4 denial of the claim, State Farm repeatedly asked the Rashidis to provide dates when they were available for the examinations. While they argue the record of correspondence State Farm offered to support the motion is incomplete, the additional evidence the

Rashidis offered did not include any letter or other contact in which they indicated they were available on specific dates for the examinations under oath.

The Rashidis cannot point to a single instance in which they provided a specific date. As in *Brizuela,* the Rashidis' failure to propose any dates for the continuation of Seda's examination, or for an initial examination of Jahangir, constituted a refusal to submit to an examination under oath as often as State Farm reasonably required. Under the terms of the policies and relevant case authority, State Farm was entitled to deny the claim for policy benefits due to the Rashidis' failure to submit to a policy condition for examination under oath. (*Brizuela, supra,* 116 Cal.App.4th at p. 590.)

As we understand the remainder of the Rashidis' arguments, they contend 1) there was evidence the denial of their claim was for reasons other than the failure to submit to examinations under oath; and 2) the trial court improperly considered evidence of the correspondence between the parties after the June 4 denial. Neither argument calls for a different result.

As explained above, the record leading up to the June 4 denial establishes the Rashidis did not satisfy the condition that they submit to and subscribe to examinations under oath. State Farm was entitled to summary judgment on that record alone. We affirm the trial court's judgment on any correct legal theory; thus we need not address the Rashidis' claim that the trial court should not have considered the post-denial correspondence. (*California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22.)

Moreover, even if the Rashidis raised a triable issue of fact as to whether there were additional reasons for the denial of their claim, this would not change our analysis. It is undisputed that after Seda's incomplete examination, the Rashidis did not provide additional specific dates on which they were willing or available to appear for the examinations under oath. It is also undisputed that State Farm repeatedly asked for such dates. There is no evidence that the Rashidis' failure to respond with specific dates was excused or justified.

The record thus lends itself to only one interpretation. The Rashidis did not submit to or subscribe to examinations under oath as often as State Farm reasonably required. This was a condition precedent to coverage under the policies. Even if State Farm had other reasons for questioning coverage, it was entitled to argue the Rashidis' suit is barred because of their failure to satisfy this condition precedent. (*Hickman, supra,* 184 Cal. at p. 530 [insured must comply with examination demand and answer all material questions, even if insured believes the insurance company's object is to "find a loophole whereby it might evade payment of the policy"].) The evidence is undisputed that State Farm repeatedly demanded the Rashidis' full compliance with the examination under oath condition. State Farm's June 4 denial letter identified the Rashidis' failure to satisfy the condition as a basis for the denial of their claim.

As the trial court concluded, the Rashidis' failure to satisfy the examination under oath condition forfeited their rights under the policy. (*California Fair Plan Assn. v. Superior Court* (2004) 115 Cal.App.4th 158, 167.) Since no policy benefits were due, the Rashidis' bad faith claim also failed. (*Brizuela, supra,* 116

Cal.App.4th at pp. 594–595.) The trial court properly granted summary judgment.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

BIGELOW, P.J.

We Concur:

RUBIN, J.

GRIMES, J.