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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 THREE

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| HAIK KIVORKIAN,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>STAR INSURANCE COMPANY,<br><br>Defendant and Respondent. | B272162<br><br>Los Angeles County<br>Super. Ct. No. BC582176 |

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Johnson, Judge. Affirmed.

Haik Kivorkian, in pro. per., for Plaintiff and Appellant.

Woolls Peer Dollinger & Scher and Lisa Darling-Alderton for Defendant and Respondent.

## INTRODUCTION

Plaintiff suffered personal injuries when an uninsured motorist rear-ended his car at a red light. After presenting a coverage claim to his insurer, Defendant Star Insurance Company (Star), Plaintiff made a demand for arbitration under the uninsured motorist provision of his policy. At arbitration, Plaintiff claimed damages in excess of his $1,000,000 policy limit. The arbitrator awarded Plaintiff $70,000 on the claim. Plaintiff petitioned the superior court to vacate the arbitration award on the ground that Star engaged in misconduct to procure it. The court denied the petition, and Star paid the arbitration award in full.

Following the ruling on his petition to vacate the arbitration award, Plaintiff filed this action, alleging Star breached the implied covenant of good faith and fair dealing by unreasonably withholding policy benefits. The trial court sustained Star's demurrer to the operative first amended complaint, concluding the bad faith action constituted an improper collateral attack on the arbitration award and that the complaint's allegations were insufficient to state a claim for relief based on Star's pre-arbitration conduct. Plaintiff appeals the judgment of dismissal. We affirm.

## FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we draw our statement of facts from the allegations of Plaintiff's operative first amended complaint and other matters properly subject to judicial notice. (*Rappaport-Scott v. Interinsurance Exchange of the Automobile Club* (2007) 146 Cal.App.4th 831, 836 (*Rappaport-Scott*).) We assume the truth of the properly pleaded factual

allegations and construe the pleading in a reasonable manner, reading the allegations in context. (*Ibid.*)

On January 3, 2008, an uninsured motorist rear-ended Plaintiff's car while it was stopped at a red light. As a result of his claimed injuries, Plaintiff underwent various treatments, including a series of epidural injections and lumbar decompression surgery.

On January 8, 2008, Plaintiff reported the accident to Star, and initiated a claim for property damage and bodily injuries.

On January 29, 2008, Star acknowledged Plaintiff's coverage claim. However, Star advised Plaintiff that his policy covered only his bodily injuries claim, but not the damage to his vehicle. Star did not inspect the vehicle after receiving notice of Plaintiff's claim.

On November 16, 2009, Plaintiff's attorney presented Star with medical records and bills detailing the seriousness of Plaintiff's injuries, together with a $100,000 settlement demand. Star did not respond. In December 2009, Plaintiff's attorney made a demand for arbitration under the uninsured motorist provision of Plaintiff's policy. In January 2010, Star acknowledged Plaintiff's demand.

On January 14, 2010, Plaintiff's attorney provided Star with photographs of the damage to Plaintiff's vehicle and damage repair estimates. On April 29, 2010, Plaintiff attended a defense medical examination. On May 4, 2010, Plaintiff provided additional information regarding his injuries in response to Star's discovery requests. And, on May 6, 2010, Star deposed Plaintiff regarding the accident and the extent of his injuries.

In December 2010, Star made its first and only settlement offer in the amount of $25,000.

In July 2012, Plaintiff made a policy limit demand of $1,000,000. Star rejected the demand, and advised Plaintiff that it disputed the rear-end collision caused his claimed injuries.

The two-day arbitration on Plaintiff's uninsured motorist claim commenced on September 4, 2014. Plaintiff claimed the auto accident caused "life altering cervical, thoracic and lumbar injuries," and he sought to recover medical expenses, future life care plan costs, and loss of future earnings, in addition to general damages, totaling $2,770,296. Star maintained the accident was a "very minor low speed rear-end" collision that could not have caused Plaintiff's back injuries.

On October 10, 2014, the arbitrator issued a lengthy opinion discussing the parties' contentions and the evidence presented. The arbitrator found the "automobile accident was not a major rear-end accident," and that the "speed and impact" were "not . . . sufficient to cause serious, acute spinal trauma." The arbitrator did find, however, that Plaintiff had established "sprain/strain soft tissue injuries as diagnosed by the medical professionals and biomechanical experts," which "continue[d] to contribute somewhat to [Plaintiff's] current pain." Thus, the arbitrator rejected Plaintiff's damages claims for the cost of his spinal fusion surgery and loss of earnings, but awarded Plaintiff $70,000 as the "full value of the case."

On January 28, 2015, Plaintiff filed a petition in the superior court to vacate the arbitration award on the grounds that (1) Star improperly disclosed settlement negotiations during the arbitration; (2) Star tampered with a key witness (the uninsured motorist); (3) Star unreasonably failed to make its medical expert available for deposition; (4) Star engaged in delay tactics to push resolution of the case beyond the applicable

statute of limitations; (5) the arbitrator improperly ruled on Star's motion to compel; and (6) Star failed to preserve the vehicles involved in the accident and raised the issue of causation after the parties disposed of the evidence. On March 26, 2015, the court denied the petition in a written ruling addressing each of Plaintiff's contentions.

On May 18, 2015, Plaintiff filed the current action against Star. The operative first amended complaint alleges Star "engaged in a series of bad faith conduct that deprived PLAINTIFF of the benefits under his insurance contract and prevented a proper recovery in the uninsured motorist arbitration," citing the same facts and contentions that were the basis for Plaintiff's petition to vacate the arbitration award. The complaint also alleges Star "failed to conduct a proper investigation" of Plaintiff's claim in advance of the arbitration by (1) failing to notify Plaintiff whether the claim was accepted or denied; (2) failing to acknowledge the claim until Plaintiff retained an attorney; (3) failing to inspect the damage to Plaintiff's vehicle after receiving notice of his bodily injury claim; (4) failing to send timely correspondence to Plaintiff regarding the investigation or evaluation of his claim; (5) failing to affirm or deny coverage in writing within a reasonable time; and (6) delaying payment for Plaintiff's medical expenses by approximately three years.

Star demurred to the complaint on the grounds that (1) the action constituted an impermissible collateral attack on the arbitration award; and (2) the allegations and judicially noticeable facts showed a genuine dispute existed about the amount recoverable on the insurance claim prior to arbitration. In support of these contentions, Star requested the trial court

take judicial notice of (1) the arbitration award; (2) Plaintiff's petition to vacate the award; and (3) the ruling denying Plaintiff's petition to vacate.[1]

The trial court sustained Star's demurrer without leave to amend. The court agreed the allegations charging Star with bad faith conduct in the arbitration proceeding constituted an impermissible attempt to relitigate issues that were finally adjudicated in the ruling denying Plaintiff's petition to vacate the award. As for the non-arbitration related allegations, the court reasoned that, "when the allegations relating to the arbitration conduct are excluded," the complaint's allegations merely "describe reasonable pre-arbitration steps in investigating, processing and evaluating Plaintiff's claim." The court concluded these allegations were insufficient to support a legal cause of action.

The trial court entered a judgment of dismissal, from which Plaintiff appeals.

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[1] Plaintiff contends Star's request for judicial notice was improper because the records were generated in a different judicial proceeding. We disagree. Evidence Code section 452, subdivision (d) authorizes the court to take judicial notice of "[r]ecords of (1) *any* court of this state." (Italics added.) Judicial notice was especially appropriate in this case, as the records evidenced a prior final adjudication of a controverted issue between the same parties to this action. (See *Frommhagen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1299 ["In ruling on a demurrer based on res judicata, a court may take judicial notice of the official acts or records of any court in this state."].)

## DISCUSSION

### 1. *Standard of Review*

On an appeal from a judgment of dismissal following an order sustaining a demurrer without leave to amend, "[w]e independently review the ruling . . . and determine de novo whether the pleading alleges facts sufficient to state a cause of action. [Citation.] We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and facts of which judicial notice can be taken. [Citation.] We construe the pleading in a reasonable manner and read the allegations in context." (*Rappaport-Scott, supra,* 146 Cal.App.4th at p. 836.)

### 2. *The Finality of Judgments Doctrine Precludes the Claims Based Upon Star's Alleged Misconduct in Connection with the Arbitration*

We agree with Star's contention and the trial court's conclusion that the claims based on Star's alleged conduct in connection with the arbitration constitute an impermissible collateral attack on the arbitration award. The doctrine of finality of judgments "precludes a collateral attack on a prior judgment even where [the judgment] has been procured by perjured testimony or false evidence." (*Rios v. Allstate Ins. Co.* (1977) 68 Cal.App.3d 811, 818 (*Rios*).) The doctrine is "grounded on the salutary policy that disputes should be put to final rest by a valid judgment rendered by a court of competent jurisdiction after a hearing conducted pursuant to procedural due process." (*Id.* at pp. 817-818.) To avoid a multiplicity of suits, the doctrine "requires a party to meet and expose intrinsic fraud either when it is perpetrated or at least before the judgment becomes final." (*Id.* at pp. 818-819.)

In *Rios*, the plaintiff brought an action against his automobile insurer, Allstate, alleging Allstate's conduct in connection with an earlier uninsured motorist arbitration breached his insurance policy's implied covenant of good faith and fair dealing. (*Rios, supra,* 68 Cal.App.3d at pp. 814-816.) Much like Plaintiff here, the plaintiff in *Rios* alleged that "Allstate embarked on a calculated scheme to defeat plaintiff's claim by concealing from plaintiff the identities of eyewitnesses, by obtaining from those witnesses signed statements . . . which Allstate knew to be false and by harassing and intimidating the witnesses so as to cause them to be confused and reluctant to testify to the true facts" during the arbitration. (*Id.* at p. 817.) Invoking the doctrine of finality of judgments, the *Rios* court held the plaintiff could not maintain a subsequent bad faith cause of action that would effectively "compensate[ ] [him] for damages sustained by reason of Allstate's alleged oppressive conduct" without first exposing the misconduct "in the proceeding in which [it was] perpetrated" through a successful petition to vacate the arbitration award. (*Id.* at pp. 818-819.) Because the plaintiff failed to vacate the award, which had since become final, the finality of judgments doctrine precluded him from collaterally attacking it in a subsequent bad faith action. (*Id.* at pp. 818-820; see *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 10 [approving *Rios* court's application of finality of judgments doctrine to insurance bad faith action]; *Buesa v. City of Los Angeles* (2009) 177 Cal.App.4th 1537, 1547 [acknowledging the court in *Corral v. State Farm Mutual Auto. Ins. Co.* (1979) 92 Cal.App.3d 1004 disagreed with *Rios*, and concluding the Supreme Court resolved the conflict in favor of *Rios* in *Cedars-Sinai*].)

The same reasoning applies to Plaintiff's claims based on Star's alleged misconduct in connection with the arbitration. Plaintiff petitioned the superior court to vacate the arbitration award, asserting many of the same grounds alleged in the complaint to support his claim that Star engaged in "bad faith conduct" to prevent him from obtaining "a proper recovery in the uninsured motorist arbitration." Because the court conclusively resolved those matters against Plaintiff in denying his petition to vacate, the finality of judgments doctrine precludes him from collaterally attacking that decision by reasserting those claims in a subsequent insurer bad faith action. (*Rios, supra,* 68 Cal.App.3d at pp. 818-819.)

While Plaintiff acknowledges the doctrine applies to arbitrations to the same extent as judicial proceedings (see *Thibodeau v. Crum* (1992) 4 Cal.App.4th 749, 755), he argues the arbitration in this case did not result in a final judgment *on the merits* as is required to give the award preclusive effect. However, Plaintiff's argument relies on the same collateral attack on the proceeding that the finality of judgments doctrine precludes—namely, that the arbitration could not have resulted in a judgment on the merits because it was allegedly infected by Star's fraud and misconduct. Because this issue was already finally resolved by the court's ruling on Plaintiff's petition to vacate the arbitration award, Plaintiff cannot reassert it to obtain greater compensation in a separate bad faith action. (*Rios, supra,* 68 Cal.App.3d at pp. 818-819.) The trial court properly sustained the demurrer to the extent the complaint seeks relief based on Star's conduct in connection with the arbitration.

### 3. *The Complaint Does Not Allege Sufficient Facts to State a Claim Based Upon Star's Pre-arbitration Conduct*

Notwithstanding the finality of judgments doctrine, Plaintiff contends the alleged facts are sufficient to state a claim for insurer bad faith based on Star's alleged failure to thoroughly investigate his claim prior to arbitration. In support of this contention, Plaintiff cites a list of allegations regarding Star's pre-arbitration conduct, including allegations that Star failed to inspect the damage to Plaintiff's vehicle, and that Star failed to make a settlement offer after liability had become reasonably clear. The trial court rejected the contention, reasoning that without the arbitration related conduct, the allegations merely described reasonable pre-arbitration steps to investigate, evaluate, and process Plaintiff's claim. We agree with the court's analysis, and also conclude a genuine dispute existed before arbitration over the amount Plaintiff should recover on his uninsured motorist claim.

"While an insurance company has no obligation under the implied covenant of good faith and fair dealing to pay every claim its insured makes, the insurer cannot deny the claim 'without fully investigating the grounds for its denial.' [Citation.] To protect its insured's contractual interest in security and peace of mind, 'it is essential that an insurer fully inquire into possible bases that might support the insured's claim' before denying it. [Citation.] By the same token, denial of a claim on a basis unfounded in the facts known to the insurer, or contradicted by those facts, may be deemed unreasonable. 'A trier of fact may find that an insurer acted unreasonably if the insurer ignores evidence available to it which supports the claim. The insurer

may not just focus on those facts which justify denial of the claim.' " (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720-721 (*Wilson*).)

On the other hand, "an insurer's denial of or delay in paying benefits gives rise to tort damages only if the insured shows the denial or delay was unreasonable. [Citation.] As a close corollary of that principle, it has been said that 'an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured's coverage claim is not liable in bad faith . . . .' [Citation.] This 'genuine dispute' or 'genuine issue' rule was originally invoked in cases involving disputes over policy interpretation, but in recent years courts have applied it to factual disputes as well." (*Wilson, supra,* 42 Cal.4th at p. 723, citing *Nager v. Allstate Ins. Co.* (2000) 83 Cal.App.4th 284, 288 and *Walbrook Ins. Co. v. Liberty Mutual Ins. Co.* (1992) 5 Cal.App.4th 1445, 1455-1456.)

Plaintiff argues *Maslo v. Ameriprise Auto & Home Ins.* (2014) 227 Cal.App.4th 626 (*Maslo*) supports his claim for insurer bad faith. The plaintiff in *Maslo* was injured when an uninsured motorist rear-ended his vehicle, causing it to collide with a third vehicle. (*Id.* at p. 630.) An orthopedic surgeon diagnosed the plaintiff with severe shoulder injuries and the plaintiff underwent two surgeries to repair the damage. (*Ibid.*) After supplying his insurer with all his medical records, the plaintiff sought settlement of his uninsured motorist claim in the amount of the $250,000 policy limit. (*Ibid.*) The insurer did not respond to the demand, refused to mediate the plaintiff's claim, failed to depose the plaintiff's treating physicians or to request a defense medical examination, and refused to make a settlement offer

prior to arbitration. (*Id.* at pp. 630-631.) Although the arbitrator awarded the plaintiff only $164,000 on his $250,000 claim, the *Maslo* court held the insurer could not avail itself of the genuine dispute defense, because the complaint's allegations showed the insurer could not have had a good faith basis for disputing the claim amount, given its complete failure to conduct a meaningful investigation. (*Id.* at p. 636.) Specifically, the court emphasized that "despite being provided with 'all documents concerning liability and damages . . . needed to fully and fairly evaluate the case,' " the insurer had "neither interviewed [the plaintiff's] treating physicians, nor conducted its own medical examination or review." (*Ibid.*) Because the complaint alleged "an inadequate investigation and dilatory claim handling procedures," the *Maslo* court held "the genuine dispute rule provide[d] no basis for sustaining the demurrer." (*Id.* at p. 637.)

We agree with the trial court that *Maslo* is inapposite to this case. The critical holding in *Maslo* is that an insurer cannot assert a genuine dispute existed over a claim's value if the insurer has entirely failed to conduct the sort of investigation necessary reasonably to determine the value of a claim. (See *Maslo, supra,* 227 Cal.App.4th at p. 637 ["there can be no genuine dispute in the absence of a thorough and fair investigation"]; see also *Wilson, supra,* 42 Cal.4th at p. 723 [a "genuine dispute exists only where the insurer's position is maintained in good faith and on reasonable grounds"].) Even when viewed in the light most favorable to Plaintiff, the complaint's allegations do not demonstrate that Star failed to conduct such an investigation.

In contrast to *Maslo*, the complaint admits that Star acknowledged Plaintiff's claim on January 29, 2008, shortly after receiving it on January 8, 2008. In November 2009, Plaintiff

presented his medical records and a demand for settlement, and, in January 2010, Star "acknowledged receipt of the demand[ ]." Although Star allegedly failed to examine Plaintiff's vehicle, the complaint admits that, in January 2010, Plaintiff's attorney provided Star photographs of the damage and repair estimates for the vehicle. In April 2010, Star conducted a defense medical examination, and, in May 2010, Plaintiff provided additional information regarding his injuries in response to Star's discovery requests. Two days later, Star deposed Plaintiff regarding the accident and the extent of his injuries. In December 2010, Star made a settlement offer in the amount of $25,000. And, in July 2012, Plaintiff made a policy limit demand of $1,000,000. Star rejected the demand, and advised Plaintiff that it disputed the rear-end collision had caused his claimed injuries. Unlike in *Maslo*, these allegations admit that Star took meaningful steps to investigate and evaluate Plaintiff's claim, and that it disclosed its reasons for withholding payment when it completed the investigation. (Cf. *Maslo, supra,* 227 Cal.App.4th at p. 637 ["the [complaint] alleged that the insurer failed to investigate appellant's claim, failed to respond in good faith to appellant's settlement demand, failed to make its own settlement offer, refused to accept appellant's offer to mediate, and provided no explanation for withholding payment"].)

The vast disparity between Plaintiff's policy limit demand of $1,000,000 and the arbitrator's award of $70,000 also substantively distinguishes this case from *Maslo*. (Cf. *Maslo, supra,* 227 Cal.App.4th at p. 636 [plaintiff awarded $164,000 on his $250,000 claim].) In *Rappaport-Scott*, a different panel of this court addressed similar facts and concluded that such a disparity irrefutably established the existence of a genuine dispute. There,

the plaintiff brought a bad faith action against his insurer after an arbitrator determined he was entitled to only $63,000 on his $346,732.34 underinsured motorist claim. (*Rappaport-Scott, supra,* 146 Cal.App.4th at p. 834.) In affirming the trial court's judgment of dismissal, this court held "the vast difference between the $346,732.34 in losses claimed by Rappapor-Scott and the $63,000 in actual losses as determined by the arbitrator demonstrates, *as a matter of law*, that a genuine dispute existed as to the amount payable on the claim." (*Id.* at p. 839.) Given the even greater difference here, we likewise conclude the disparity between Plaintiff's $1,000,000 demand and the arbitrator's $70,000 award demonstrates, as a matter of law, that a genuine dispute existed about the amount payable on Plaintiff's uninsured motorist claim. The trial court properly sustained Star's demurrer.

## DISPOSITION

The judgment is affirmed. Star Insurance Company is entitled to its costs.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.