

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----- x	:	
MICHAEL CAMILLO,	:	No. 3:18CV610 (JAM)
	:	
Plaintiff	:	
	:	
v.	:	
	:	
MERRIMACK MUTUAL FIRE	:	
INSURANCE CO.,	:	
	:	New Haven, Connecticut
Defendant	:	April 10, 2019
	:	
----- x		

EXCERPT OF MOTION HEARING: RULING

B E F O R E:

THE HONORABLE JEFFREY ALKER MEYER, U.S.D.J.

A P P E A R A N C E S:

FOR THE PLAINTIFF:

BILLER SACHS RAI0 & ZITO
2750 Whitney Ave.
Hamden, Connecticut 06518
BY: MICHAEL J. LeMOULT, ESQ.

FOR THE DEFENDANT:

BLACKBURN & O'HARA, LLC
2 Concorde Way
Unit 3-C
Windsor Locks, Connecticut 06096
BY: TAMARA DeBERRY, ESQ.

Diana Huntington, RDR, CRR
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

(Excerpt as follows:)

THE COURT: I appreciate the arguments from all counsel. I'm actually going to rule now at this time on the parties' cross-motions. I'm going to give an oral ruling so that you have guidance at this time. If you'd like to get a copy of the ruling from the court reporter, you're free to request a copy from the court reporter in this case. So it's going to take me a couple minutes to issue my ruling in light of all that I've considered and even the content of today's oral argument.

This case, of course, is about an insurance dispute that stems from water damage to a property in Newington, Connecticut. On November 11th of 2016, the plaintiff, Mr. Camillo, made a claim to the defendant insurance company Merrimack for water damage to the property apparently from a toilet pipe. The company promptly investigated and denied the claim. Plaintiff in turn has filed this lawsuit that alleges three counts or three claims: (1) a breach of contract for breach of the insurance policy contract; (2) for bad faith denial of the claim; and (3) a statutory claim for violation of the Connecticut Unfair Trade Practices Act and the corresponding cognate provisions of Connecticut Unfair

1 Insurance Practices Act.

2 The insurance policy, as everybody knows in this
3 case, is an all-risk policy. It's subject to the
4 following leakage-and-seepage exclusion: "[W]e do not
5 insure loss ... caused by ... constant or repeated seepage
6 or leakage of water or steam over a period of weeks,
7 months or years from within a plumbing, heating,
8 air-conditioning or automatic fire protective sprinkler
9 system or from within a household appliance." The parties
10 I think do agree that this exclusion only applies for
11 seepage or leakage that occurs for a period of at least 14
12 days.

13 Now, the parties have filed, of course,
14 cross-motions for summary judgment. And I'm not going to
15 recite the full governing standard, I think it's familiar
16 to everybody under Rule 56. I have to determine whether
17 there's a genuine issue of fact and I have to view the
18 facts in the light most favorable to the non-moving party
19 as to each of the motions, and I've tried to do that.

20 I'll take up plaintiff's motion first for
21 summary judgment on the contract claim. He argues that
22 there's no genuine issue of fact that the water damage was
23 discovered less than 14 days after it occurred or after
24 the water damage or the leakage/seepage occurred.
25 Plaintiff, of course, points to his own statements and

1 other witness statements about visits to the property in
2 late October and early November of 2016, all of which did
3 occur fewer than 14 days before November 11, 2016, when
4 the damage was purportedly first discovered and certainly
5 that's the date when the claim was made, for sure.
6 Defendant, on the other hand, points to plaintiff's own
7 statement as recorded by Mr. Shlegel near the time of the
8 claim to Mr. Shlegel that it had been about three weeks
9 since plaintiff had previously been to the property. And
10 also defendant relies on an expert report concluding that
11 mold evidence suggested the presence of water damage for
12 at least three weeks.

13 I think I understand Mr. LeMoult's arguments
14 about why there's questions about the credibility of
15 plaintiff's -- or rather, about defendant's responding
16 evidence in this respect. But I have to say I think
17 there's a genuine issue of fact on that in terms of
18 whether there was any seepage or leakage that lasted more
19 than 14 days. And so I'm going to, for that reason, deny
20 plaintiff's motion for summary judgment insofar as it's
21 seeking in its entirety judgment in its favor on the claim
22 of Count One for the entirety of damages there because I
23 do think that there's a genuine issue of fact for the jury
24 to decide if there was water seepage/leakage for more than
25 14 days in light of the evidence that points in both

1 directions, in my view.

2 Now, plaintiff, as we clarified here, is also
3 seeking kind of a second type of summary judgment on
4 purely the issue of whether he's entitled at the least to
5 damages that occurred over just the first 13 days of
6 seepage/leakage. Rule 56(a) of the Federal Rules does
7 allow a party to move for summary judgment that can
8 identify each claim or defense and also on a part of each
9 claim or defense on which summary judgment is sought. So
10 I think that plaintiff's request here is a permissible one
11 in terms of asking the Court to decide this particular
12 issue partially as to the 13 days or less. Plaintiff, of
13 course, relies on and we've talked about the *Hicks* case,
14 *Hicks v. Amer. Integrity Ins. Co. of Florida*,
15 241 So.3d 935, a Florida Court of Appeals decision from
16 2018, and the older case from the Tenth Circuit, *Wheeler*
17 *v. Allstate Ins. Co.*, 687 F.App'x 757 (10th Cir. 2017), if
18 I've got that right. Now, in *Hicks*, the Florida Appellate
19 Court there concluded -- and I'm quoting -- that "we hold
20 that an insurance policy excluding losses caused by
21 constant or repeated leakage or seepage over a period of
22 fourteen days or more does not unambiguously exclude
23 losses caused by leakage or seepage over a period of
24 thirteen days or less." And I think because the
25 defendants have not pointed, in my view, to contrary law

1 in their papers, I'm going to grant summary judgment, a
2 limited summary judgment for plaintiff on that issue, that
3 plaintiff is entitled at the least to coverage for any
4 damages that plaintiff can prove was incurred over just
5 the first 13 days of seepage/leakage. I'm not assessing
6 what that amount is. I know there's an expert here that
7 said what they believe it is. But I heard Mr. LeMoult say
8 he's not seeking summary judgment on what that
9 quantification would be. And I wouldn't otherwise do
10 that, because I think it is a question of fact exactly
11 what it is that occurred during the first 13 days. Just
12 as a pure legal matter, I am going to grant plaintiff's
13 motion for summary judgment in reliance principally on the
14 reasoning of the Florida court in *Hicks* of the entitlement
15 to damages for that limited period of time.

16 So that's plaintiff's motion for summary
17 judgment.

18 Defendant moves for summary judgment on the bad
19 faith and CUTPA/CUIPA claims. I understand the arguments
20 of both sides on this in terms of defendant's good faith
21 arguments here about how it promptly investigated the
22 claim, hired an expert, gave a prompt disposition of it.
23 I understand defendant's argument with respect to
24 plaintiff's broader allegations about additional bad faith
25 conduct that occurred, but I'm going to focus right now

1 essentially on plaintiff's claim just as to the
2 defendant's investigation with respect to the timing issue
3 in light of the discrepancy of facts that are pointed to
4 and highlighted by Mr. LeMoult today with respect to the
5 plaintiff's interrogatory response in terms of what it is
6 he told the investigator at the time about when the water
7 had been found, the water damage had been found. I'm not
8 crediting plaintiff's version there, but plaintiff's
9 version is he told him quite clearly that it was fewer
10 than 14 days before that occurred. And I understand
11 defendant's contrary version is he told him it was three
12 weeks before it occurred. But I do conclude, just on that
13 narrow basis there, that there's at least a fact issue --
14 I'm not resolving it, certainly -- a fact issue, though,
15 about whether Merrimack acted in bad faith and also
16 whether it would be in violation of CUTPA/CUIPA. I really
17 understood Ms. DeBerry to say if a jury were to credit
18 those facts as plaintiff has now said and alleged in the
19 interrogatory responses that there would be a fact issue.
20 So I don't think that that's disputed there. It's really
21 up to the jury to decide there.

22 So in short, I'm denying in part and granting in
23 part plaintiff's motion for summary judgment. I deny it
24 to the extent that plaintiff seeks judgment in his favor
25 on Count One in its entirety, but I do grant it to the

1 extent that plaintiff seeks judgment to the extent that
2 he's able to prove at trial the extent of water damage
3 that occurred over solely the first 13 days. And I will
4 otherwise deny defendant's motion for summary judgment as
5 to Counts Two and Three again on the narrow issue of a
6 fact dispute existing about whether there was a bad faith
7 investigation of the basis for the denial of the claim.
8 Again, I'm not making any finding about that or saying the
9 evidence points in one direction or another. I'm just
10 saying there's enough there for a jury to take a look at
11 rather than for me to try to resolve the credibility as a
12 matter of law.

13 So that's the Court's ruling. I really
14 appreciate the parties' presentation on the issue.

15 I think what I'd like to do is, have you been to
16 a see -- I would ordinarily set a trial date, but I like
17 to give the parties an opportunity to confer amongst
18 themselves possibly also if there might be a settlement.
19 Have you been to Judge Spector yet?

20 MR. LeMOULT: We have not, Your Honor.

21 THE COURT: Have either of you worked with Judge
22 Spector before?

23 MR. LeMOULT: Yes, Your Honor.

24 MS. DeBERRY: Spoke to him.

25 THE COURT: You've spoken to him, okay.

1 So I think it would be helpful for you to try to
2 meet with Judge Spector if you'd like, unless you have
3 another preferred way to see if there's a resolution
4 possible. You've now had the guidance that I've given you
5 in terms of what's occurred. I know you need to go back
6 to your clients and talk to them about that, but what I
7 think I'm going to do is make a referral to Judge Spector
8 at this time so you can kind of get on his list.
9 Ordinarily, you'd go in and meet with him with a client
10 representative to talk about whether there's a settlement
11 that's possible. If it's not possible, of course we'll
12 set the matter down for a speedy trial on the issues here.
13 It seems like the parties certainly have a lot to dispute
14 for jury purposes.

15 And I also give the option to all parties, if
16 they'd like to, Judge Spector at times does handle trials
17 himself. So if parties wish to proceed to a jury trial,
18 it would be a full jury trial, if the parties wish, or
19 bench trial, but if they would wish for convenience of
20 scheduling, his trial schedule is a bit less busy than
21 mine. But if you decided that you would like the case
22 referred to him for trial apart from any settlement,
23 you're welcome to let me know about that and I would
24 intend to grant that request provided it's a mutual one of
25 all sides. I'd just get you to think about that, it might

1 be one of the things to talk to your clients about as well
2 in terms of how you wish to proceed in the case.

3 Anything else to take up?

4 MR. LeMOULT: No, Your Honor.

5 MS. DeBERRY: No, Your Honor.

6 THE COURT: We really appreciate you coming in.

7 Stand in recess.

8 (Proceedings adjourned at 12:00 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

RE: CAMILLO v. MERRIMACK MUTUAL FIRE INSURANCE CO.
No. 3:18CV610(JAM)

I, Diana Huntington, RDR, CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages 1 through 10 are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

_____/s/_____

DIANA HUNTINGTON, RDR, CRR
Official Court Reporter
United States District Court
141 Church Street, Room 147
New Haven, Connecticut 06510
(860) 463-3180