

2014 WL 10988334

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United States District Court, C.D. California.

William CRAWFORD

v.

CONTINENTAL CASUALTY INSURANCE CO., et al.

Case No. SACV 14-00968-CJC(JCGx)

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Signed 07/24/2014

Attorneys and Law Firms

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[Laurie S. Julien](#), [Steven M. Crane](#), Berkes Crane Robinson and Seal LLP, Los Angeles, CA, for Defendant.

PROCEEDINGS: (IN CHAMBERS) DENYING DEFENDANT'S MOTION TO DISMISS THE THIRD CAUSE OF ACTION [filed 6/30/14]

HONORABLE [CORMAC J. CARNEY](#), UNITED STATES DISTRICT JUDGE

*1 Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. See [Fed.R.Civ.P. 78](#); Local Rule 7-15. Accordingly, the hearing set for July 28, 2014 at 1:30 p.m. is hereby vacated and off calendar.

Introduction/Background

Plaintiff William Crawford is the holder of a long-term care insurance policy (the "Policy") purchased from Defendant Continental Casualty Company in 1996. (Dkt. No. 5, Exh. 1 ["Compl."] ¶¶ 9, 25.) In May 2012, Mr. Crawford suffered a [hip injury](#) that required him to tender a claim to Continental under the Policy. (*Id.* ¶ 32-35.) Continental denied the claim at least in part, an action which Mr. Crawford alleges was in breach of the Policy and taken in bad faith. (*Id.* ¶¶ 64-75.) Additionally, Mr. Crawford, who is over 65 years old, also alleges that Continental's actions constituted financial elder abuse prohibited under [California Welfare & Institutions Code](#)

[section 15610.30](#). (*Id.* ¶¶ 76-84.) On June 23, 2014, Continental removed this action, originally filed in Orange County Superior Court, to this Court on the basis of diversity jurisdiction, (Dkt. No. 1), and now moves to dismiss Mr. Crawford's cause of action for financial elder abuse for failure to state a claim, (Dkt. No. 7 ["Mot. Dismiss"]). For the reasons stated herein, Continental's motion is **DENIED**.

Analysis

A motion to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#) tests the legal sufficiency of the claims asserted in the complaint. The issue on a motion to dismiss for failure to state a claim is not whether the claimant will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims asserted. [Gilligan v. Jamco Dev. Corp.](#), 108 F.3d 246, 249 (9th Cir.1997). When evaluating a [Rule 12\(b\)\(6\)](#) motion, the district court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party. [Moyo v. Gomez](#), 32 F.3d 1382, 1384 (9th Cir.1994). [Rule 12\(b\)\(6\)](#) is read in conjunction with [Rule 8\(a\)](#), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. [Fed.R.Civ.P. 8\(a\)\(2\)](#). Dismissal of a complaint for failure to state a claim is not proper where a plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 570 (2007). Although the district court should grant the plaintiff leave to amend if the complaint can possibly be cured by additional factual allegations, [Doe v. United States](#), 58 F.3d 494, 497 (9th Cir.1995), the district court need not grant leave to amend if amendment of the complaint would be futile. See [Kendall v. Visa U.S.A., Inc.](#), 518 F.3d 1042, 1051-52 (9th Cir.2008) (finding that amendment would be futile where plaintiff was granted leave to amend once and the amended complaint contained the same defects as the prior complaint).

The core of Continental's motion to dismiss the cause of action for financial elder abuse is that the "financial elder abuse statute simply does not apply to standard breach of contract claims." (Mot. Dismiss at 2.) More specifically, Continental argues that the basis of Mr. Crawford's Complaint is that Continental allegedly breached its insurance contract with him by declining to pay certain policy benefits. However, such a cause of action for breach

of contract does not create a cause of action for financial elder abuse. (Mot. Dismiss at 8.)

*2 The Elder Abuse Act was enacted by the California Legislature to address the harm of “California seniors losing millions of dollars by purchasing unnecessary financial products.” See *Rosove v. Cont’l Cas. Co.*, 2014 WL 2766161 at *4 (C.D. Cal. June 2, 2014) (citations omitted). In relevant part, the statute provides: “(a) ‘Financial abuse’ of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.” Cal. Welf. & Inst.Code § 15610.30. Real and personal property are defined elsewhere in California law, with real property being “coextensive with lands, tenements, and hereditaments” and personal property “includ[ing] money, goods, chattels, things in action, and evidences of debt.” Cal. Civ.Code § 14.

In recent years, several lower federal courts have addressed the question presented here—whether the breach of a long-term care policy of the type at issue here, and whose payment of benefits is contingent upon the occurrence of some triggering event, can constitute financial elder abuse. In *O’Brien v. Continental Casualty Company*, which Continental cites in approval, the court held that “[n]either the language of § 15610.30 nor its accompanying legislative history indicate that a basic denial of insurance coverage was ever contemplated as a form of ‘financial elder abuse.’” 2013 WL 4396761 at *5 (N.D.Cal. Aug. 13, 2013). The court in *O’Brien* was persuaded by the argument that the denial of benefits, which was a policy-driven decision by the insurer, could not create an impropriety of the type intended to be encompassed by the Elder Abuse Act, and therefore dismissed the plaintiff’s claim with prejudice.

Both before and since *O’Brien*, however, other federal courts have found just the opposite—that especially when coupled with a claim for bad faith breach, the denial of policy coverage benefits to an elderly individual can violate the Elder Abuse Act. See *Rosove*, 2014 WL

2766161 at *4; *Johnston v. Allstate Ins. Co.*, 2013 WL 2285361 (S.D.Cal. May 23, 2013); *Keshish v. Allstate Ins. Co.*, 12-cv-03818-MMM-JCx, Dkt. No. 16 (C.D.Cal. July 23, 2012). As *Rosove* explains, these holdings are based on the fact that the text of the statute is “broad in scope,” and that while the statute may originally have been enacted to combat “classic” financial fraud against elders, its language nonetheless “sweeps far beyond ‘unnecessary financial products’ and at least potentially reaches the denial of benefits” claimed by plaintiffs like Mr. Crawford. See *Rosove*, 2014 WL 2766161 at *5 (internal citation omitted).

The Court is persuaded by the reasoning in the latter set of cases. The statutory language of the Elder Abuse Act is indeed broad in scope. See Cal. Welf. & Inst.Code § 15610.30. Moreover, as did the plaintiffs in the cited cases, Mr. Crawford has not pleaded a claim only for breach of his insurance contract, but has further alleged that such breach was in bad faith. That allegation, if proven, could show that Mr. Crawford had an entitlement to policy benefits which Continental unlawfully withheld—or in the language of the statute, improperly “retained.”¹ While his claim for financial elder abuse is at present contingent upon his claim for bad faith, the pleaded facts, taken in light of the breadth of the statutory language, could support a claim under the Elder Abuse Act. See *Johnston*, 2013 WL 2285361 at *4 (“If the trier of fact finds that [Defendant] acted in bad faith and that Plaintiff was entitled to the money, her rights to the money vested by operation of the terms of her insurance policy. Thus, if Plaintiff was legally entitled to the insurance money at that time, such money was ‘personal property’ within the meaning of the elder abuse claim, and [Defendant]’s retention of this personal property was a potential violation of California’s financial elder abuse statute.”).

Conclusion

*3 For the reasons stated above, Continental’s motion to dismiss Mr. Crawford’s claim for financial elder abuse is **DENIED**.

All Citations

Not Reported in Fed. Supp., 2014 WL 10988334

Footnotes

- 1 Because Mr. Crawford's Complaint clearly alleges that he was improperly, and in bad faith, denied benefits due after August 22, 2013, (see Compl. ¶ 55), the Court disagrees with Continental's contention that the Complaint fails to meet the pleading standard of [Rule 8](#). Contrary to Continental's implication otherwise, the statute is not limited to just the wrongful "taking" of property, but also includes the wrongful retention of such property. [Cal. Welf. & Inst.Code § 15610.30](#). Similarly, the Court disagrees that the Complaint does not allege any "wrongful use" by Continental. The Complaint clearly states Mr. Crawford's age, as does the attached insurance policy. (See Compl. Exh. A ["Policy"] at 65.) Continental was therefore on notice that Mr. Crawford was elderly, and further either " 'knew or should have known' denial of coverage was 'likely to be harmful to the elder or dependent adult.' " See [Rosove, 2014 WL 2766161 at *3](#). The Complaint sufficiently alleges wrongful use. *Id.*

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