United States Court of Appeals for the Fifth Circuit

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Fifth Circuit
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Thomas B. Plunkett, III
Clerk

No. 25-11291

DWIGHT GANN, *as Trustee of* BR REAL ESTATE HOLDINGS TRUST and SAGE MANAGEMENT L.L.C.,

Plaintiff—Appellant,

versus

DEPOSITORS INSURANCE COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CV-2168

Before SMITH, HAYNES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:[*]

Plaintiffs Dwight Gann, as Trustee of BR Real Estate Holdings Trust, and Sage Management L.L.C. appeal the summary judgment in favor of Depositors Insurance Company on claims arising from an insurance dispute between the parties. The district court also denied Plaintiffs' motion to alter or amend the judgment. We AFFIRM.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I. Background

Plaintiffs contracted with Depositors to insure a commercial property in Irving, Texas (the "Property"). The Property contains one building, but the roof is divided into three sections. Relevant here are two insurance policies that Depositors issued to Plaintiffs: the 2018 Policy[1] and the 2022 Policy.[2] Both policies required Plaintiffs to "[g]ive [Depositors] prompt notice of the loss or damage."

Gann reported a claim to Depositors on September 7, 2022, after discovering interior water damage at the Property. The claim was given a date of loss of August 9, 2022, and was initially made under the 2022 Policy.

Just over a week after Gann reported the claim, Depositors had the Property inspected. Based on the inspector's report, Depositors concluded that part of Plaintiffs' roof had experienced hail-related damage. Depositors promptly issued payment for repairs. But in the following months, the parties disputed the proper loss valuation. Depositors later revised its estimate and issued a supplemental payment in August 2023.

Meanwhile, Plaintiffs had engaged a consultant, Gary Treider, to evaluate the Property for hail damage that had occurred near the time the claim was initially filed. However, Depositors was not provided with the report until October 2023, a year after Treider's initial inspection and over a year after Gann had reported the claim. Treider's report called for the replacement of all three roof sections based on a *June 5, 2018* date of loss. That "was the first time [a] June 2018 loss date was claimed." Depositors

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[1] "Policy Number ACP CPPD 3027560444," which covered the period from January 29, 2018 to January 29, 2019.

[2] "Policy Number ACP CPPD 3067560444," which covered the period from January 29, 2022 to January 29, 2023.

later issued a supplemental claim decision that no additional payment was owed—based on a June 2018 date of loss—because "the date of loss reported by [Treider] . . . occurred outside of the effective policy period (January 29, 2022 to January 29, 2023) associated with the reported date of loss for [Plaintiffs'] claim, August 9, 2022." The letter also noted that "[r]ecent hailstorms, including those occurring on March 16, 2023 and/or April 21, 2023, as well as[] historical hailstorms," had resulted in "widespread" damage to the roof, and that "[i]t cannot be ruled out that historical hailstone impacts" had resulted in a certain "reported leak." Plaintiffs' counsel sent a demand letter to Depositors and another engineer inspected the Property, but Depositors sent Plaintiffs' counsel a new coverage letter advising that it stood by its earlier coverage decision.

In June 2024, Plaintiffs filed suit in Texas state court, alleging breach of the insurance contract, violations of Texas Insurance Code Chapters 541 and 542, and breach of the duty of good faith and fair dealing. Depositors removed the case to federal court and moved for summary judgment. Although the claim was made under the 2022 Policy and Plaintiffs' damage occurred in 2018, "even assuming that Plaintiffs made a claim under the 2018 Policy," the district court concluded that "the years-long delay in notice was not prompt as a matter of law and prejudiced" Depositors. For that reason and others, the district court granted the motion and dismissed all of Plaintiffs' claims. Plaintiffs then filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The district court denied the motion, explaining that Plaintiffs only "rehash[] arguments and evidence" that it had "already weighed, considered, and addressed, or that could have been offered or raised before the entry of judgment." Plaintiffs appealed.

II. Jurisdiction & Standard of Review

This case was removed under 28 U.S.C. § 1441, as the district court had jurisdiction under 28 U.S.C. § 1332. We have jurisdiction to consider this appeal under 28 U.S.C. § 1291.

We review a summary judgment de novo. *Guillory v. Domtar Indus. Inc.*, 95 F.3d 1320, 1326 (5th Cir. 1996). "Summary judgment is proper if the movant shows that there is no genuine dispute of material fact and that the movant is entitled to judgment as a matter of law." *Discover Prop. & Cas. Ins. Co. v. Blue Bell Creameries USA, Inc.*, 73 F.4th 322, 327 (5th Cir. 2023) (citation omitted); FED. R. CIV. P. 56(a). We review the denial of a Rule 59(e) motion for abuse of discretion. *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990). A Rule 59(e) motion "must clearly establish either manifest error of law or fact or must present newly discovered evidence and cannot raise issues that could and should have been made before the judgment issued." *Homoki v. Conversion Servs., Inc.*, 717 F.3d 388, 404 (5th Cir. 2013) (citation omitted).

III. Discussion

Plaintiffs contend that the district court erred when granting Depositors' motion for summary judgment and denying Plaintiffs' Rule 59(e) motion. We find no basis for reversal.

A. Summary Judgment Motion

As for the motion for summary judgment, Plaintiffs argue that the district court erred when dismissing both their contractual and extra-contractual claims. We cannot agree.

We first focus on Plaintiffs' breach of contract claim. The district court granted summary judgment on this claim because, even assuming Plaintiffs' claim was made a year later (thus five years later) under the 2018

Policy, Plaintiffs failed to provide prompt notice under the 2018 Policy and that delay prejudiced Depositors.[3] The 2018 Policy requires that Plaintiffs provide Depositors with "prompt notice of the loss or damage" to the Property. Under Texas law, compliance with a notice provision is a "condition precedent, the breach of which voids policy coverage." *Blanton v. Vesta Lloyds Ins. Co.*, 185 S.W.3d 607, 611 (Tex. App.—Dallas 2006, no pet.).

Plaintiffs' delay in providing notice was unreasonable. Plaintiffs did not make their insurance claim until September 7, 2022, over four years after the June 2018 storm, and they did not provide the 2018 date of loss until October 11, 2023, over five years after the June 2018 storm. *See Ridglea Est. Condo. Ass'n v. Lexington Ins. Co.*, 415 F.3d 474, 479 (5th Cir. 2005) (explaining that "no rational finder of fact could conclude that [the plaintiff's] notice, which came six years after the alleged date of the hail damage, was given within a reasonable time"); *Alaniz v. Sirius Int'l Ins. Corp.*, 626 F. App'x 73, 77 n.2 (5th Cir. 2015) (per curiam) (collecting cases where briefer delays were held to be unreasonable). In response to Depositors' motion for summary judgment, Plaintiffs merely contended that this delay was reasonable because Gann promptly filed the insurance claim after noticing interior water damage at the Property. But, as the district court noted, Plaintiffs offered no excuse as to why the damage to the roof was not previously discoverable for such a long period of time. *See Nat'l Union Fire Ins. Co. v. Bourn*, 441 S.W.2d 592, 595 (Tex. Civ. App.— Fort Worth 1969,

[3] We note that the district court also dismissed the breach of contract claim on the grounds that Plaintiffs never alleged a breach of the 2018 Policy and that no claim was made under the 2018 Policy. That is likely true but even if it was ultimately requested under the 2018 Policy, as we discuss, the Plaintiffs fail.

writ ref'd, n.r.e.) ("[A]n inexcused delay or delay because of a flimsy excuse entitles the insurance company to judgment as a matter of law . . . .").

Additionally, Depositors has shown prejudice. Specifically, it established that Plaintiffs' delay in providing notice impaired its ability "to promptly investigate the circumstances of the accident while the matter is fresh." *See Stonewall Ins. Co. v. Mod. Expl., Inc.*, 757 S.W.2d 432, 435 (Tex. App.—Dallas 1988, no writ). Because Plaintiffs' delay was unreasonable and prejudiced Depositors, the district court did not err in granting summary judgment on Plaintiffs' breach of contract claim.

The district court also properly granted summary judgment on Plaintiffs' extra-contractual claims. Plaintiffs' claims under Chapter 541 of the Texas Insurance Code and for breach of the duty of good faith and fair dealing fail because Plaintiffs presented no evidence that they suffered an injury independent of their insurance claim. *See Senechal v. Allstate Vehicle & Prop. Ins. Co.*, 127 F.4th 976, 979 (5th Cir. 2025) (affirming dismissal of a plaintiff's bad faith claims because he "presented no evidence that he suffered an independent injury"). Likewise, Plaintiffs' claim under Chapter 542 of the Texas Insurance Code fails because they did not establish that Depositors were liable for a claim under the 2018 Policy. *See Weiser-Brown Operating Co. v. St. Paul Surplus Lines Ins. Co.*, 801 F.3d 512, 518 (5th Cir. 2015) (explaining that, to succeed under Chapter 542, an insured must establish that the insurer is liable for a claim under the insurance policy).

B. Rule 59(e) Motion

Following the district court's entry of final judgment, Plaintiffs moved under Rule 59(e) to alter or amend the judgment. As the district court noted, Plaintiffs offered various arguments previously made, or that could have been made, in response to Depositors' motion for summary judgment. We have explained that Rule 59(e) motion is not a proper vehicle to rehash old

arguments or raise new ones that could have been presented before the entry of judgment. *See, e.g.*, *Templet v. HydroChem Inc.*, 367 F.3d 473, 478–79 (5th Cir. 2004); *Marseilles Homeowners Condo. Ass'n Inc. v. Fid. Nat. Ins. Co.*, 542 F.3d 1053, 1058 (5th Cir. 2008) (per curiam). Accordingly, the district court did not abuse its discretion in denying Plaintiffs' Rule 59(e) motion.

IV. Conclusion

For the foregoing reasons, we AFFIRM.