

BAD FAITH BLOG

# Pennsylvania Bad Faith Claim Subsumed Within Breach of Contract Claim

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**Summary:** Dismissal of the mortgagor's claim for breach of the implied covenant of good faith and fair dealing was affirmed on appeal. Under Pennsylvania law, there is no cognizable claim for breach of the implied covenant of good faith and fair dealing separate from a breach of contract claim.

## *Davis v. Wells Fargo*

On January 5, 2008, Wells Fargo, claiming to be the assignee of a mortgage on Davis's home, locked Davis out of the property. It then obtained a default judgment of foreclosure. Davis's active duty military status delayed the foreclosure sale. While he was away, Wells Fargo obtained "force-placed" insurance on the property, i.e., insurance placed by a mortgagee rather than the property owner, with one of Assurant's companies (which particular company was in dispute).

In October 2011, Wells Fargo discovered a leak in the roof and made a claim with Assurant. Assurant paid Wells Fargo \$317 in settlement of the claim, but neither Wells Fargo nor Assurant made any repairs to the property. The leak continued to damage the property. A year later, Davis received notice from the city stating the property had been designated unsafe due to a partially collapsed wall caused by the leak. Davis filed a claim with Assurant which denied the claim since it had already settled with Wells Fargo for the roof leak.

On October 28, 2012, Davis first filed suit against Wells Fargo in federal court asserting counts for trespass and violation of the Servicemembers Civil Relief Act ("SCRA"). The district court dismissed the SCRA claim and declined to assert jurisdiction over the trespass claim. Davis failed to timely refile the claim in state court.

Two years later, he filed suit again against Wells Fargo and Assurant. The federal district court granted both defendants' motions to dismiss. As to Assurant, the district court ruled it did not have subject matter jurisdiction since Davis named the incorrect Assurant company as the defendant.

On appeal, the Third Circuit first affirmed the dismissal in favor of Wells Fargo on the grounds of issue preclusion and the statute of limitations. The court then addressed the dismissal of Davis's breach of contract, negligence, fraud, and bad faith claims against Assurant. The court held the dismissal of Davis's complaint on the basis that the district court lacked subject matter jurisdiction because Davis sued the incorrect Assurant company was improper. The court found this dismissal was in error and reversed. The Court of Appeals then addressed the substance of Assurant's motion to dismiss.

The court dismissed the negligence and fraud claims against Assurant which were barred by the statute of limitations. Then the court found that dismissal of Davis's breach of contract claim against Assurant was not proper. The court found that because the "Assurant" name was on the denial letter (and in bold font at the top), there was a "reasonable expectation" discovery would uncover proof that a contract existed between Davis and Assurant.

The court then found that although Davis's breach of contract claim could survive, his separate count for bad faith could not. "Under Pennsylvania law, a claim for breach of the implied covenant of good faith and fair dealing is subsumed in a breach of contract claim." In other words, Davis could not maintain a bad faith claim separate from his breach of contract claim. The covenant does nothing more than imply certain obligations into the contract itself. The court dismissed the bad faith claim allowing Davis's arguments concerning bad faith to be addressed in connection with his surviving breach of contract claim.

By Katrina Smeltzer

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