

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 20, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

GEORGE ANDREW MORGAN,

Plaintiff - Appellant,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

Defendant - Appellee.

No. 19-6058
(D.C. No. 5:17-CV-00622-D)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HOLMES**, **McHUGH**, and **CARSON**, Circuit Judges.

George Andrew Morgan appeals from the district court's grant of summary judgment to State Farm Mutual Automobile Insurance Company on his state law claims for breach of contract and breach of the duty of good faith and fair dealing. The district court found that an Oklahoma statute of limitations barred each claim. We abated this appeal and certified questions regarding the accrual of Morgan's

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

causes of action to the Supreme Court of Oklahoma. Based on its answers to our certified questions, we now affirm the district court's grant of summary judgment to State Farm on Morgan's contract claim and reverse the district court's grant of summary judgment to State Farm on Morgan's good-faith-and-fair-dealing claim.

I. Background

This case stems from injuries Morgan inflicted on Jesse Atkins while driving drunk. Morgan hit Atkins with his truck at more than 40 miles per hour, leaving Atkins severely injured. Atkins's resulting medical bills exceeded \$2 million.

State Farm provided liability insurance to Morgan at the time of the accident under a policy with a \$100,000 limit. State Farm negotiated and executed a settlement with Atkins in April 2010 whereby State Farm paid its policy limit of \$100,000 to Atkins, and Atkins released his claims against Morgan.

In the same timeframe, Atkins pursued a workers' compensation claim because he had been traveling for work when Morgan hit him. The workers' compensation court issued a preliminary order for compensation and Atkins's workers' compensation insurer began making payments to Atkins.

The workers' compensation insurer's subrogee, New York Marine and General Insurance Company (NYM), then sued Morgan in Oklahoma state court in June 2011 for reimbursement of the amounts paid to Atkins. It served this suit on Morgan in January 2012. Morgan retained personal counsel to represent him in the action, but State Farm also provided counsel to Morgan and mounted a vigorous defense. Morgan and State Farm claimed that by releasing Morgan, Atkins severed any

reimbursement claim NYM might have against Morgan due to NYM's status as Atkins's subrogee. The trial court denied State Farm's motion for summary judgment on this basis on November 22, 2013. Then on February 27, 2014, a jury returned a verdict in favor of NYM, finding that State Farm knew about NYM's potential claim but failed to apprise NYM of its pending settlement with Atkins. The Oklahoma Court of Civil Appeals affirmed on June 10, 2016, and the Supreme Court of Oklahoma denied certiorari and issued a mandate on March 23, 2017.

Morgan then brought this suit against State Farm on May 23, 2017. He alleges State Farm's failure to secure NYM's release as part of its settlement with Atkins amounted to breach of contract and breach of the implied duty to deal fairly and in good faith. The district court found that Morgan's claims accrued in 2010 when State Farm negotiated the original settlement with Atkins and therefore concluded that the applicable two- and five-year statutes of limitations barred Morgan's suit.¹

The record in this appeal does not contain evidence supporting a finding that Morgan suffered an injury resulting from State Farm's actions before NYM secured a judgment against him in April 2014. And at the time Morgan filed this appeal, Oklahoma precedent did not clarify whether an injury caused by entry of a judgment that remains

¹ While the district court concluded that the causes of action accrued in 2010, it also applied the discovery rule and equitable tolling to toll the limitations period until January 2012, when Morgan discovered that State Farm had not settled with the workers' compensation insurer because NYM served its suit on him. Because Morgan did not file this suit until May 2017, the court concluded the limitations periods barred the suit notwithstanding its application of tolling.

subject to appeal is sufficiently certain to support accrual of a cause of action for breach of the duty implied in an insurance contract to deal fairly and in good faith. Oklahoma precedent likewise did not clarify whether the injury rule that applies to tort claims—namely, that a plaintiff suffer an injury that is certain and not speculative before a cause of action accrues—also applies to breach-of-contract claims. We therefore certified the following questions to the Supreme Court of Oklahoma:

(1) Where a plaintiff is injured by entry of an adverse judgment that remains unstayed, is the injury sufficiently certain to support accrual of a tort cause of action based on that injury under Okla. Stat. tit. 12, § 95 before all appeals of the adverse judgment are exhausted?

(2) Does an action for breach of an insurance contract accrue at the moment of breach where a plaintiff is not injured by the breach until a later date?

The Supreme Court of Oklahoma “answer[ed] the first question with a ‘no’” and “answer[ed] the second question with a ‘yes.’” *Morgan v. State Farm Mut. Auto. Ins.*, 488 P.3d 743, 745 (Okla. 2021).

II. Discussion

A. The District Court’s Summary Judgment Ruling

We review the district court’s summary judgment decision de novo, viewing the factual record and making reasonable inferences from it in the light most favorable to the nonmoving party. *Bird v. W. Valley City*, 832 F.3d 1188, 1199 (10th Cir. 2016). Summary judgment is appropriate “if the movant shows that there

is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

The parties agree that Okla. Stat. tit. 12, § 95 supplies the applicable limitations period for each of Morgan’s causes of action and that Oklahoma law governs their accrual and any tolling of the statute of limitations. *See, e.g., Burnham v. Humphrey Hosp. Reit Tr., Inc.*, 403 F.3d 709, 712 (10th Cir. 2005) (“A federal court sitting in diversity applies state law for statute of limitations purposes . . . [and] state law determines when an action is commenced for statute of limitations purposes.”).

1. Breach of the Duty of Good Faith and Fair Dealing

In answering the certified questions, the Supreme Court of Oklahoma clarified that a tort claim for breach of the duty of good faith and fair dealing does not accrue until the plaintiff suffers an injury that is “certain and not merely speculative.” *Morgan*, 488 P.3d at 748. Where, as here, “the injury alleged in a tort cause of action is an adverse judgment, the claim accrues when the appeal is finally determined in the underlying case.” *Id.* The Supreme Court of Oklahoma finally determined Morgan’s appeal of the adverse judgement on March 23, 2017. He filed this suit two months later. The district court therefore erred in concluding that the applicable two-year statute of limitations barred Morgan’s good-faith-and-fair-dealing claim.

2. Breach of Contract

The Supreme Court of Oklahoma also clarified that “[a]n action for breach of contract accrues when the contract is breached, not when damages result.” *Id.* at 750. “The discovery rule does not apply to an action for breach of contract under

Oklahoma law. The claim accrues when the contract is breached, regardless of whether the plaintiff knows, or in the exercise of reasonable diligence, should have known of the breach.” *Id.* at 753. But “[i]f a defendant fraudulently conceals material facts and thereby prevents a plaintiff from discovering his wrong or the fact that a cause of action has accrued against him, the limitations period is tolled.” *Id.*

Morgan based his breach-of-contract claim on State Farm’s failure to secure a release of NYM when it settled with Atkins in 2010. He did not argue State Farm fraudulently concealed its alleged breach. We therefore affirm the district court’s conclusion that the applicable five-year statute of limitations bars his breach-of-contract claim.

B. The District Court’s Stay of Discovery

State Farm sought, and the district court granted, a discovery stay pending the court’s resolution of State Farm’s summary judgment motion. The district court then allowed Morgan to depose one State Farm employee after he filed a Rule 56(d) motion seeking to take four depositions to rebut summary judgment. Morgan argues the district court erred by ruling on State Farm’s summary judgment motion before he took all requested depositions.

“A district court’s discovery rulings are reviewed for an abuse of discretion.” *Diaz v. Paul J. Kennedy L. Firm*, 289 F.3d 671, 674 (10th Cir. 2002). Morgan does not identify any evidence he hoped to discover via the outstanding depositions that would change the statute of limitations analysis. We therefore conclude the district

court did not abuse its discretion by staying discovery pending its ruling on the statute of limitations issues.

III. Conclusion

We lift our abatement, affirm the district court's grant of summary judgment to State Farm on Morgan's breach-of-contract claim, reverse the district court's grant of summary judgment to State Farm on Morgan's tort claim for breach of the duty of good faith and fair dealing, and remand this case to the district court for further proceedings.

Entered for the Court

Joel M. Carson III
Circuit Judge