318

IN THE COURT OF COMMON PLEAS, WYANDOT COUNTY, OHIO
CIVIL DIVISION

JERALD BOSH, ET. AL., — Case No. 18-CV-0055

Plaintiffs,

vs.

AUTO OWNERS INS. CO., ET. AL., — JUDGMENT ENTRY

Defendants.

: :

This day the Court comes on to consider the Motion for Summary Judgment filed by the Defendant, Auto Owners (Mutual) Insurance Company ("Auto-Owners"), on April 22, 2019, by and through its Attorney, Brian T. Winchester and Jesse M. Schmidt. Non-oral hearing was held on May 29, 2019. The day prior to hearing, Auto-Owners filed its Notice of Supplemental Authority in support of its Motion for Summary Judgment and Plaintiffs, Jerald Bosh and Jennie Bosh, filed their Memorandum Contra by and through their Attorneys, J. C. Ratliff, Jeff Ratliff, Rocky Ratliff and Edwin Bibler. Due to some irregularities in the service of Plaintiffs' response, Defendant sought and received permission to file a reply. The reply was filed June 28, 2019.

At the heart of Defendant's Motion is the assertion that Plaintiffs misrepresented values for their home and personal property when making their claim that was presented to Defendant, their insurer, after Plaintiffs suffered a fire at their home.

Plaintiffs argue that the valuations given were due to mistake and an inadvertent omission. Again the Plaintiffs urge this Court to determine that Plaintiffs' bankruptcy attorney and their insurance agent led them astray. Plaintiffs do not tie these alleged statements to their attorney and/or insurance agent to any concept of mistake or inadvertent omission.

Further Plaintiffs must bear responsibility for that which they signed. The bankruptcy petition advises if "two married people are filing together both are equally responsible for supplying correct information." Plaintiffs gave a current value of their home as $32,060.00 on January 28, 2016 in their bankruptcy petition despite having had the property appraised for $65,000.00 approximately two years earlier. Furthermore all the improvements they argued that justified an increase in the home's value were already included in the appraisal they were given. There is no good reason not to have used the appraised value of the property rather than a guess. The figure put down was deliberate and the Bankruptcy Court relied on it.

As to the personal property, Plaintiffs argue they should at least receive the sum $4,089.71 they listed in their bankruptcy for their loss of it. On page 11 of their Bankruptcy Petition, Plaintiffs stated they had $1,300.00 in household goods and furnishings, electronics worth $200.00, $100.00 in books, CDs and DVDs, a shotgun worth $250.00 and $250.00 in clothing totaling $2,100.00 not $4,089.71. But a perusal of Defendant's Deposition Exhibit D, which is Plaintiffs' list of their personal property inventory submitted for insurance purposes, reveals a 21 page document that

contains numerous items, some having significant values. While Plaintiffs told the Bankruptcy Court, for instance, that they had $100.00 in books, CDs and DVDs, Plaintiffs told their insurer approximately a year and a half later, that the movies and DVDs had a value of $1,716.00. While the Bankruptcy Petition listed under electronics, a television, DVD player and stereo for a total worth of $200.00, the inventory contains at least 6 televisions, a play station, Dell computer, First Alert system and camera, a Samsung tablet, HP lap top computer and an Epson printer among other such electronic items.

In comparing the contents of Plaintiff's Bankruptcy filings with the contents of the Proof of Loss inventory one thing becomes very apparent. While Plaintiffs argue that their attorney told them to put down what they might get for their personal property, if they had to sell it, nowhere do Plaintiffs claim that this attorney told them to minimize or reduce the amount of personal property they owned. Scrutiny of the aforecited document demonstrate that is exactly what was done. Plaintiffs greatly minimized what they owned if the Proof of Loss inventory is correct. For example Plaintiff in their Bankruptcy Petition as previously stated claimed a value of $200.00 for all their electronics. (Deposition, Exhibit F, Bankruptcy Petition, p. 11) However in the their proof of loss inventory, Plaintiffs claim numerous items that fall under the electronics heading and Plaintiffs want thousands of dollars to replace these items. These two statements cannot be reconciled. Plaintiffs represented to the Bankruptcy Court that they had few items of personal property but one and a half

years later had a household bursting with goods. Plaintiffs also failed to explain why, when an appraisal of their home resulted in a $65,000.00 valuation, they would sell it for $30,060.00 at the time of their bankruptcy.

Likewise Plaintiffs failed to explain how they arrived at the value for their home. In her Deposition Jennie admitted she did not know whether her house was worth the $145,000.00 but Plaintiffs used that figure anyway despite having a fairly current appraised value at hand. Ironically Plaintiff Jennie Bosh when testifying about the $30,060.00 value placed by Plaintiffs on this property for bankruptcy purposes, stated that its fair market value was probably a little less than what was used. (Jennie's Deposition p. 41, line 13-16.)

Sifting through all of the facts demonstrates that Plaintiffs made a conscious effort to appear impoverished for their bankruptcy proceeding and quite the opposite when seeking insurance proceeds. Plaintiffs unsupported claims that their attorney and insurance agent led them to do this, does not relieve them of their duty to be truthful. It was Plaintiffs who represented that the documents contained accurate information and Plaintiffs who recognized in their Sworn Statement of Proof of Loss, that their representations made were material representations. (Deposition Defendant's Exhibit C)

Defendant urges this Court to apply the doctrine of judicial estoppel to the undisputed and proven facts of this case.

"In order to apply the doctrine of judicial estoppel, the proponent must show that his opponent

(1) took a contrary position;
(2) under oath in a prior proceeding; and
(3) the prior position was accepted by the Court."

Jackson v. Rohrbaugh, 2015 - Ohio - 2112, ¶ 19, 20, citing Greer-Burger v. Temesi, 116 Ohio St 3d 324 at ¶25.

Plaintiffs in the handling of their loss for purposes of their insurance claim took a contrary position to that used in their bankruptcy proceeding. They reported vastly different values for the same property, as well as, different amounts of property that they owned in each proceeding. The representations were under oath and the Bankruptcy Court accepted Plaintiffs' representations and granted them a discharge.

The doctrine of judicial estoppel applies to this case based on the facts presented. Further the Plaintiffs did misrepresent values contained in their Proof of Loss Sworn statement thereby voiding the policy of insurance obtained from the Defendant.

Civil Rule 56 (C) requires this Court to find, after construing the evidence most strongly in the favor of Plaintiffs, that no genuine issue of material fact remains and reasonable minds could not find for Plaintiffs. Accordingly, Defendant, Auto-Owners Insurance Company, is entitled to a judgment in its favor. This Court HEREBY GRANTS to Defendant summary judgment on all of its claims and HEREBY assesses costs to Plaintiffs. The Court further understands, pursuant to

Defendant's representation on Page 10 of its Motion for Summary Judgment, that it will not be seeking any further monetary judgment against Plaintiffs for the thousands of dollars it has already paid to them under its policy of insurance issued to Plaintiffs.

The case is HEREBY DISMISSED.

IT IS SO ORDERED.

THIS JUDGMENT ENTRY HEREBY CONSTITUTES A FINAL APPEALABLE ORDER.

7/17/19

Kathleen A. Aubry, Judge

CERTIFICATION

The undersigned does hereby certify that a file-stamped copy of the foregoing was sent to the parties and/or counsel of record by regular U. S. Mail this 17th day of July, 2019.

Melissa D. Bridgeman

~~Clerk~~/Deputy Clerk