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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CROWN PROFESSIONAL,

Plaintiff and Appellant,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant and Respondent.

G035883

(Super. Ct. No. 03CC07219)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.  
Michael Hayes, Judge. Affirmed.

Phillip K. Fife and Ryan M. Craig for Plaintiff and Appellant.

Crandall, Wade & Lowe, James L. Crandall and Edwin B. Brown for  
Defendant and Respondent.

A building owner, Crown Professional, LLC (Crown), appeals from a judgment entered in favor of its insurance company, State Farm Fire and Casualty Company (State Farm). In a bifurcated trial, the court determined Crown's claim for losses sustained to its building was barred by the statute of limitations. On appeal, Crown asserts the court misconstrued several provisions of the insurance policy. We disagree and affirm the judgment.

## I

Before trial, the parties stipulated the following facts were undisputed. Crown is a Texas limited liability corporation and it owns a professional building in Los Alamitos, California. Edward Howland is Crown's sole owner, the single shareholder, and the only member of Crown's board of directors.

In 1999, the building was managed by tenants, James Lia and Vonda Pelto, who periodically hired vendors when work needed to be done, or repairs were required, on the premises. They often used Ivan Caceres as a repairman.

In the beginning of June 1999, Howland underwent shoulder surgery in Texas. During his hospitalization, Caceres decided it would be helpful to scrape the "popcorn-type acoustic ceiling" from the Crown building's interior hallways. Unfortunately, he did not realize the ceiling material contained asbestos, and his clean-up contaminated the building's interior and parking lot. The tenants called the Air Quality Management District (AQMD), who promptly "shut the building down." The tenants immediately complained to Howland they could not conduct their businesses due to the closure.

Howland retained specialists to remove the asbestos, and the tenants were permitted to return within a few weeks. Over the next several months, Howland installed new lights and paid to have the ceiling replaced and repainted. Anticipating "trouble with the AQMD" about the incident, Howland hired an attorney, Diane Smith.

When the incident occurred (June 3), Lia telephoned State Farm agent Nancy Wiedman and reported the loss. State Farm opened a claim file and assigned it to Joan Crawford, who “took down the facts of the loss” from Lia. State Farm also opened a “third party claim and assigned it to Claim Representative Lyn Gilmore.”

A few days later (June 18, 1999), Howland told Gilmore he was seeking “loss of rents for the asbestos incident. State Farm therefore opened a first party claim file and assigned Claim Representative Jennifer Day to handle this first party claim.” Day contacted Howland on June 25, 1999, to ask questions about the claim. In addition, to providing information about the incident, Howland mentioned he had an attorney, Smith. Day and Smith spoke a few days later. Smith stated, “she was representing the insured for loss of income[,]” i.e., the first party insurance claim.

On June 30, 1999, State Farm sent Smith a “reservation of rights letter based on the pollution exclusion” provision contained in the insurance policy. Crown was informed there was a question as to whether State Farm would cover the “claim for loss of income.” One week later (on July 7), Day sent Smith a letter asking her to contact Gilmore for the purpose of arranging a recorded statement from Howland.

The following month (August 5, 1999), Day sent “Smith a ‘non-response and close letter’” stating, “[s]ince we have not heard from you, we assume you no longer wish to pursue the claim, and we are closing your file. However, if you wish to pursue this claim, please contact us.” Day concluded by providing a copy of the policy provision concerning legal actions. It provides: “Legal Action Against Us. No one may bring legal action against us under this insurance unless: [¶] a. there has been full compliance with all of the terms of this insurance; and [¶] b. the action is brought within two years after the date on which the accidental direct physical loss occurred. But if the law of the state in which this policy is issued allows more than two years to bring legal action against us, that longer period of time will apply.”

On August 13, Smith authorized State Farm to directly contact Howland for the recorded statement and she indicated Howland still intended to pursue Crown's first party claim. On September 2, Day and Smith spoke about the pollution exclusion provision contained in the policy and noted it would likely exclude coverage for the first party claim. Day advised Smith her client "would have to prove loss of income with documentation." Smith indicated she would talk to Howland because "he had all of the information."

On September 30, 1999, Day sent Smith a "closing letter" and again cited Crown's failure to provide the required and requested documentation. The letter also quoted the full text of the State Farm policy's provision concerning the two-year statute of limitations for legal actions. A few days later (October 4), Smith advised Day, "This is in response to your letter of September 30, 1999. I have discussed your request for a recorded statement with . . . Howland, and have forwarded your letters to him. It is my understanding that he intends to defer pursuing a claim, since no suit has been filed as of this date. [¶] Please communicate directly with him regarding obtaining a recorded statement, if you still require one." Howland does not recall ever seeing Smith's letter.

Over three years later, on May 12, 2003, State Farm received a proof of loss letter (dated April 24 & executed April 30) from Howland. It begins with Howland's explanation of how the asbestos was released and his assertion the incident was an accident. He next discussed the third party claims filed by tenants, noting, "The majority of the tenant [third party] claims were ultimately resolved [by State Farm]. . . . Most were settled with no pay out of any damages, and the last die-hard claimant's claim was settled early last year." Howland said he recently received notice of a new claim made by a tenant seeking to justify breach of his lease agreement.

Howland then went on to state the remainder of his letter was "to function as a sworn 'Statement of Loss' in support of a claim by the insured for first party loss." He documented \$252,458 of losses relating to the costs of the asbestos disposal, repairs,

and loss of rental income when the building was temporarily closed. He added, “My lawyers advise that if this claim cannot be resolved amicably before the fourth anniversary of the commencement of the unauthorized scraping . . . the insured must file suit for damages to avoid having the claim become barred by the four-year statute of limitations for breach of a written contract.”

State Farm Claim Team leader Dean Wiese assigned the claim to Claim Representative Arnie Trias. Crown and Howland were now represented by attorney Phillip Fife. Trias reviewed the letter, and on June 5, 2003, he informed Fife the two-year statute of limitations had run on the claim. On June 16, 2003, State Farm issued a denial letter, citing the two-year limitations period.

Howland filed a lawsuit on May 28, 2003. After several demurrers, resulting in a third amended complaint, the parties agreed to a bench trial. It was agreed the court would first decide the statute of limitations defense raised by State Farm.

The court considered the facts and trial exhibits the parties stipulated were necessary to decide the issue. It concluded the action was time barred, stating, “the defer letter of . . . October 4 and the State Farm letter of September 30 were contemporaneous acts, and that by the letter of October 4, [Crown] was deferring [its] claim. That [it] was in essence . . . saying ‘I am not pursuing my claim now at this time. I may do it in the future, but I’m not going to proceed any further.’”

The court reasoned the doctrine of equitable tolling did not give Crown “an open-ended extension [of the two-year statute of limitations] until such time as [it received] a formal denial of coverage letter . . .” It explained, “[Crown] cannot take that much control of the case and say ‘now I’m not going to do anything further on the case, I’m going to defer it until the future,’ get notified he has two years to do something, and then not act within those two years. So [Crown] took control of the case away. [¶] State Farm simply notified [it] of the statute, [and] that they were closing [Crown’s] file. And I’m making a finding that it was clear to [Crown and Howland] that at this time at least

there will be no further investigation and that they were done with their investigation because of the deferral letter.” Judgment was entered in favor of State Farm.

## II

Citing *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674 (*Prudential-LMI*), Crown asserts the applicable statute of limitations is always tolled from the time the insured gives notice of the claim to the insurance company until “the time the insurer formally denies the claim in writing.” (*Id.* at p. 678.) It asserts State Farm’s closing letters (dated August 5 & September 30) cannot be construed as formal denials. Absent an unequivocal written denial, Crown asserts its claim was equitably tolled for a period of four years. We disagree.

We begin with addressing the applicable statute of limitations. “The ordinary statute of limitations for breach of a written contract is four years from the date of the breach. ([Code Civ. Proc.], § 337.) When the contract is a policy of insurance . . . and the insured has a property damage claim, there is a *contractual* limitation period imposed by the terms of the policy. In the case of fire policies, the limitation period is one-year, as dictated by Insurance Code[] section 2071 (setting out the terms that must be included in the standard form fire policy). Such a shortened limitation period has long been recognized as valid in California. [Citation.]” (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1085, fn. omitted (*Doheny*).

“The purpose behind the shortened limitations period required by [Insurance Code] section 2071 is to relieve insurance companies of the burden imposed by defending old, stale claims. [Citation.] It was designed ‘to obtain the advantage of an early trial of the matters in dispute and to make more certain and convenient the production of evidence on which the rights of the parties depended . . . . [Citation.]’ [Citations.]” (*Aliberti v. Allstate Ins. Co.* (1999) 74 Cal.App.4th 138, 145 (*Aliberti*).

“When, as in this case, the policy insures against other perils as well as fire loss, the terms of the policy may vary as long as the coverage provided is equivalent or more favorable to the insured. [Citations.] Thus, the inclusion in the [State Farm] policy [in this case] of a *two*-year limitation period did not violate Insurance Code[] section 2071, as it was more favorable to the insured.” (*Doheny, supra*, 132 Cal.App.4th at p. 1085, fn. 9.)

“Under Insurance Code[] section 2071, the limitation period commences to run from the inception of the loss. That term has been construed to mean ‘that point in time when appreciable damage occurs and is or should be known to the insured, such that a reasonable insured would be aware that his notification duty [i.e., the duty to notify the insurer of a covered loss] under the policy has been triggered.’ [Citation.]” (*Doheny, supra*, 132 Cal.App.4th at p. 1086, italics omitted.)

Applied to this case, damage occurred and was known to Crown in May 1999. The two-year statute of limitations would run until May 2001, unless as Crown asserts, the doctrine of equitable tolling saves the day. However, we conclude the doctrine was not triggered, and we begin our discussion with a look at the purpose and rationale supporting application of equitable tolling.

The two-year contractual limitations period “may be tolled during the period that the claim is being considered by the insurer. Put another way, the limitations period will be tolled ‘from the time the insured files a timely notice, pursuant to policy notice provisions, to the time the insurer formally denies the claim in writing.’ [Citation.] This rule is justified on the ground that it would be ‘unconscionable’ to permit the limitations period to run while the insured is [pursuing] its rights in the claim process, as required by the policy. [Citations.]” (*Doheny, supra*, 132 Cal.App.4th at pp. 1087-1088, italics & fn. omitted.)

The policy considerations supporting the doctrine were addressed by the California Supreme Court in *Prudential-LMI, supra*, 51 Cal.3d at pages 691-693. At the

time, there were two divergent views on interpretation of limitation clauses. The court sided with state courts that “ha[d] devised rules to equitably toll the limitation period. . . .” (*Id.* at p. 688.) It determined adoption of the doctrine was “consistent with the trend in other states toward equitable tolling of the one-year suit provision in the limited circumstances in which the insurer (or other party against whom the claim has been made) has received timely notice of the loss and thus is able to investigate the claim without suffering prejudice.” (*Id.* at p. 691.) “[T]he period during which an insured’s right to bring suit is . . . for the benefit of the company so that it can pursue its statutory and contractual rights. Accordingly, it ought not be charged against the insured’s time to bring suit.’ [Citation.]” (*Id.* at p. 688.)

The court recognized, “[T]he purpose of a shortened limitation period was to obtain the advantage of an early trial of the matters in dispute and to make more certain and convenient the production of evidence on which the rights of the parties depended, and not to achieve a technical forfeiture of the insured’s rights by enforcing the limitation provision when the insured has given timely notice of a claim to his insurer. [Citation.] We do not believe that an equitable tolling of the one-year limitation period [would] frustrate the purpose of [Insurance Code] section 2071, or work a hardship on the insurer, whose investigation [would] necessarily have preceded the denial of coverage.” (*Prudential-LMI, supra*, 51 Cal.3d at p. 691.)

The Supreme Court delineated five “policy considerations” which supported adoption of the doctrine of equitable tolling. “First, it allows the claims process to function effectively, instead of requiring the insured to file suit *before* the claim has been investigated and determined by the insurer. Next, it protects the reasonable expectations of the insured by requiring the insurer to investigate the claim without later invoking a technical rule that often results in an unfair forfeiture of policy benefits. . . . Third, a doctrine of equitable tolling will further our policy of encouraging settlement between insurers and insureds, and will discourage unnecessary bad faith suits

that are often the only recourse for indemnity if the insurer denies coverage after the limitation period has expired. [Citations.] [¶] [Fourth,] [e]quitable tolling is also consistent with the policies underlying the claim and limitation periods—e.g., the insurer is entitled to receive prompt notice of a claim and the insured is penalized for waiting too long after discovery to make a claim. For example, if an insured waits 11 months after discovering the loss to make his claim, he will have only 1 month to file his action after the claim is denied before it is time-barred under [Insurance Code] section 2071. [Citation.]” (*Prudential-LMI, supra*, 51 Cal.3d at pp. 691-692.)

Finally, the court determined literal application of the one-year suit provision could create the anomalous situation where an insured’s lawsuit “would have been untimely before the insurer denied coverage.” (*Prudential-LMI, supra*, 51 Cal.3d at pp. 692-693.) The insured cannot be “penalized for the time” consumed by the insurance company “while it pursues its contractual and statutory rights to have a proof of loss, call the insured in for examination, and consider what amount to pay . . . .” (*Id.* at p. 693.)

Crown devotes the majority of its briefing to convince us the trial court improperly decided State Farm’s letters (dated August 5 & September 30) qualified as formal denials, halting the equitable tolling period and triggering the two-year statute of limitations. It is well established, “The tolling period ends . . . upon the insurer’s *unconditional denial* of the insured’s claim *in writing*.” (*Doheny, supra*, 132 Cal.App.4th at p. 1088.) And, as Crown points out, there is much authority discussing what qualifies as an “unconditional denial.”<sup>1</sup>

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<sup>1</sup> For example, the insurer need not actually use the words deny or denial. (*Migliore v. Mid-Century Ins. Co.* (2002) 97 Cal.App.4th 592, 605.) Oral denial of the claim may not suffice. (*Alberti, supra*, 74 Cal.App.4th at pp. 147-148, fn. 12.) Requests for reconsideration will not extend the period of equitable tolling. (*Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135, 142.) Insurers must “provide to the claimant a statement listing all basis for such rejection or denial and the factual and legal basis for each reason given for such rejection . . . .” (See Cal. Code Regs., tit. 10, § 2695.7, subd. (b)(1).)

Based on our review of the letters, we conclude they would not satisfy the requirements of an unconditional denial to halt equitable tolling. Crown was informed its first party claim file was *closed* due to inactivity, not that the claim was *denied* due to application of a statute or a specific policy exclusion provision. In fact, State Farm indicated the file closure was due to the “assumption” Crown “no longer wish[ed] to pursue the claim,” i.e., State Farm saw no need to investigate a claim that had been withdrawn. State Farm concedes on appeal the letters do not qualify as formal coverage denial letters.

The trial court determined, and we agree, the doctrine of equitable tolling could not be applied in this case because of Crown’s course of conduct following receipt of the file closure letters. As stated above, tolling is triggered only as long as a claim is being investigated. A formal denial letter is not the only way to halt equitable tolling. “The burden is on the insured to initiate and support a claim.” (*1231 Euclid Homeowners Assn. v. State Farm Fire & Casualty Co.* (2006) 135 Cal.App.4th 1008, 1018 (*1231 Euclid*)).

For example, “[T]he voluntary withdrawal of a damage claim by an insured arguably has the same legal consequences as the failure to file any claim at all or after filing a claim, the failure or refusal to prove to the insurer the information necessary to adjust the claim. [Citation.]” (*1231 Euclid, supra*, 135 Cal.App.4th at p. 1018.) In such cases, the insurer is excused from having any obligation to conduct further investigation, it cannot be faulted for closing its file, and there is no basis to apply the doctrine of equitable tolling.

The effect of a voluntary withdrawal was discussed in *1231 Euclid, supra*, 135 Cal.App.4th at page 1019. There, a Homeowner’s Association (HOA) of a

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Moreover, the insurer must provide written notification the denied claim can be “reviewed by the California Department of Insurance[.]” (Cal. Code Regs., tit. 10, § 2695.7, subd. (b)(3).)

condominium unit made a claim to its insurer, State Farm, following the 1994 Northridge earthquake. (*Id.* at p. 1010.) “After a preliminary inspection by representatives of *both* State Farm and HOA, it was determined that the damage sustained was largely cosmetic and totaled an amount that was well below the deductible under the State Farm policy. Thereafter, HOA withdrew its claim and State Farm closed its file.” (*Id.* at p. 1011.) Eight years later it sued State Farm, claiming the insurer “failed to ‘adequately investigate’ HOA’s claim of damage” and breached the insurance contract. (*Id.* at p. 1019.)

The court reasoned State Farm’s obligation to provide coverage was conditioned on HOA providing “prompt notice of the claimed loss, including a description of the lost or damaged property. In addition, the insured was required to provide a timely submission of a sworn statement of loss.” (*1231 Euclid, supra*, 135 Cal.App.4th at p. 1018.) It determined, “While the submission of a proper and timely notice and proof of loss may be subject to a ‘substantial compliance’ standard [citation] and even a predicate requirement of insurer prejudice [citation], the total failure to comply with the notice and proof of loss conditions will excuse insurer liability due to the failure of a condition precedent. [Citations.] A fortiori, where an insured submits no claim at all or, in this case, voluntarily withdraws the claim less than 45 days after first giving notice of the claim to the insurer, the insurer cannot be faulted for closing its file. The burden is on the insured to initiate and support a claim.” (*Ibid.*)

The court added, “This record clearly demonstrates that State Farm had every justification to conclude that HOA had *independently* determined that whatever damage its building may have sustained, it did not exceed the policy deductible.” (*1231 Euclid, supra*, 135 Cal.App.4th at p. 1019.) Moreover, it was undisputed HOA voluntarily withdrew its claim. “That act, which is clearly demonstrated by the record excused State Farm from any obligation to conduct further investigation of possible damage to the HOA property. These circumstances demonstrate that a claim was

submitted and effectively resolved, to the apparent satisfaction of the parties and in accordance with the relevant terms (i.e., the deductible provisions) of State Farm’s policy.” (*Id.* at p. 1019.) Consequently, the court agreed with the trial court’s determination there was no evidence State Farm breached the insurance contract and affirmed the summary judgment entered in the insurer’s favor. (*Id.* at p. 1011.)

Like the insured in *1231 Euclid*, Crown’s policy contained several conditions to coverage: Specifically, Crown “must see that the following are done in the event of loss to covered property: [¶] [A]. notify the police if a law may have been broken; [¶] [B]. give us prompt notice of the loss, include a description of the lost or damaged property in the notice; [¶] [C]. as soon as possible, give us a description of how, when[,] and where the loss occurred; [¶] . . . [¶] [H]. send us a signed, sworn statement of loss containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms; [and] [I]. cooperate with us in the investigation or settlement of the claim . . . .”

Crown provided prompt notice of the loss, but failed to support the claim with the required signed/recorded statement of loss. Although documentation on lost income may not have been available, Crown knew the full extent of property damage, the asbestos clean-up bills, and costs associated with AQMD incurred a few months after the incident. This portion of the claim, exceeding \$200,000, certainly could have been documented, submitted and pursued. After notifying State Farm of its intention to defer the claim, “since no suit has been filed,” it was not reasonable for Crown to assume State Farm reopened the closed claim file and continued its investigation. As aptly surmised by the trial court, State Farm closed the file and then “it was clear to [Crown] . . . that there [would] be no further investigation and that [State Farm was] done with their investigation because of the deferral letter.” To hold the limitation provision can be tolled by simply filing a claim, even if the insured knows the claim is not being

investigated, would frustrate the provision's primary purpose of preventing the revival of stale claims.

III

The judgment is affirmed. Respondent shall recover its costs on appeal.

O'LEARY, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.