

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S281510

KATHERINE ROSENBERG-
WOHL,
Plaintiff and Appellant,

v.

STATE FARM FIRE AND
CASUALTY COMPANY,
Defendant and Respondent.

Court of Appeal of California
First District, Division Two
No. A163848

Superior Court of California
San Francisco County
No. CGC20587264
Hon. Anne-Christine Massullo

OPENING BRIEF ON THE MERITS

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Opening Brief on the Merits

BRIEFING ORDERED BY THIS COURT

“When a plaintiff files an action against the plaintiff’s insurer for injunctive relief under the Unfair Competition Law, which limitations period applies, the one-year limitations period authorized by [Insurance Code section 2071](#) or the four-year statute of limitations in [Business and Professions Code section 17208](#)?”

Order granting petition for review, filed 10/18/23.

NATURE OF THE ACTION/ RELIEF SOUGHT

This is single claim seeking public injunctive relief against State Farm for maintaining a claims adjudication process across its property lines of insurance in the State of California that is designed to lead to the summary denial of claims, in significant part by failing to investigate claims of loss and issuing a denial without sufficient specificity to put claimants on notice as to whether and how to provide information to State Farm that might make a difference.

JUDGMENT/FINALITY OF ORDER APPEALED FROM

Plaintiff filed this claim in Superior Court on October 18, 2020. [CT 13](#). Following Judge Anne-Christine Massullo’s order sustaining State Farm’s demurrer with leave to amend, Plaintiff filed the Second Amended Complaint May 21, 2021. [CT 182](#). The

trial court sustained State Farm’s demurrer to that complaint without leave to amend, issuing its order July 29, 2021, [CT 335](#), its judgment August 20, 2021, [CT 344](#), and serving its notice of entry of same August 24, 2021, [CT at 358](#).

Having abandoned her cause of action predicated upon false advertising at the hearing on State Farm’s demurrer to this Second Amended Complaint (July 26, 2021)¹ (the First Cause of Action, 44–50), Plaintiff appealed only the denial of her UCL claim (the Second Cause of Action, paras. 51–60, seeking exclusively public injunctive relief, paras. 61–64. *See* [CT 182](#).

The First Appellate District, Division Two, affirmed, certifying its decision for publication on July 11, 2023. The decision was written by Richman, J., to which Miller, J. concurred. Stewart, P.J. dissented on the grounds that Plaintiff’s UCL claim for injunctive relief was not an action “on” the insurance policy and so was not governed by the one-year limitations period specified in the policy and mandated by [Insurance Code section 2017](#).

On September 7, the California Attorney General weighed in. In seeking depublication of the appellate decision, the Attorney General argued:

“the Court of Appeal’s opinion deviates sharply from long-standing Supreme Court precedent holding that the UCL’s statute of limitations ‘admits of no exceptions.’ (Cortez v. Purolator Air Filtration Prods. (2000) 23 Cal.4th 163, 179.) The opinion runs counter to well-established law and threatens to create confusion by suggesting that courts can disregard the

¹ RT, 7/26/21 at 3:9-12 & 15:8-12.

letter of the Unfair Competition Law in any case where (as is common) a consumer has a contractual relationship with a defendant business.”

Petitioner petitioned this Supreme Court for review. On October 18, 2023, this Court, *en banc*, denied the Attorney General’s request for depublication but granted the Petition for Review:

“The issue to be briefed and argued is limited to the following: When a plaintiff files an action against the plaintiff’s insurer for injunctive relief under the Unfair Competition Law, which limitations period applies, the one-year limitations period authorized by [Insurance Code section 2071](#) or the four-year statute of limitations in [Business and Professions Code section 17208](#)?”

SUMMARY OF SIGNIFICANT FACTS

In the later part of 2018 or the early part of 2019, Plaintiff noticed that on two occasions an elderly neighbor stumbled and fell as she descend Plaintiff’s outside staircase. [CT 185](#). Upon investigating, Plaintiff learned that the pitch of the stairs had just changed and that to fix the stairs and return them to safety, the staircase needed to be replaced. Plaintiff authorized the work and contacted State Farm on or about April 23, 2019. [CT 185](#).

On August 9, 2019, Plaintiff submitted a claim to State Farm to be reimbursed for the money she had had to spend to repair her home’s stairway. [CT 185](#). On August 26, 2019 State Farm summarily denied Plaintiff’s claim. [CT 186](#).

The insurance policy requires claims on the policy to be brought within one year after the date of loss.

6. Suit Against Us. No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.

CT 92.

If the one year limitations period applies, it ran April 23, 2020, or early May 2020 (taking into account and tolling the days during claims submission), and Plaintiff's complaint was filed too late. Plaintiff would be barred from seeking money as damages for breach of the policy.

But Plaintiff is not arguing that State Farm breached its contractual promise to her. Rather, Plaintiff is arguing, on behalf of the public, that State Farm's claims adjudication process is unfair -- that State Farm actually has to investigate rather than guess about liability.

Plaintiff challenges State Farm for maintaining a claims adjudication process that is designed to lead to summary denial, in significant part by failing to investigate claims of loss and issuing denials without sufficient specificity as to put claimants on notice as to whether and how to provide information to State Farm that might make a difference, [CT 186–88](#); [CT 190–92](#). Plaintiff alleges that this claims adjudication process is one that is common not just to the homeowner's policy maintained by Plaintiff but across all of State Farm's property insurance lines in the State of California, [CT 193](#). Plaintiff asserts that State Farm's claims adjudication process violates California's unfair

competition statute, [CT 196–98](#), and seeks public injunctive relief, [CT 198–99](#), and that under that statute, i.e., [Bus. & Prof. Code, § 17208](#), she had four years to bring her claim and did so, such that the trial court’s dismissal of her claim and entry of judgment in favor of State Farm was error.

ARGUMENT:

AN INSURED’S CLAIM TO PROTECT THE PUBLIC FROM THE UNFAIR CONDUCT OF AN INSURER IS GOVERNED BY THE FOUR-YEAR STATUTE OF LIMITATIONS IN BPC § 17208.

There is no doubt that when an insured person wants to hold her insurer to the benefit of *her* bargain, the policy’s one-year period is relevant. State Farm itself links the one-year requirement to the promises made under the parties’ contract. Consistent with the one-year limitations period authorized by [Insurance Code section 2071](#), State Farm’s homeowners’ policy provides:

6. Suit Against Us. No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.

CT 92.

This one-year period is a considerable shortening of the usual four-year statute of limitations for actions in California based upon breach of written contracts, *see* [Code Civ. Proc., § 337](#). That is why appellate courts have limited the policy’s truncation from

four years to one year to the bilateral contractual context: “[A] contractually shortened limitations period has never been recognized outside the context of straightforward transactions in which the triggering event for either a breach of a contract or for the accrual of a right is immediate and obvious.” *Zamora v. Lehman* (2013) 214 Cal.App.4th 193, 208 (citation omitted).

Plaintiff agrees that an insured cannot plead around the one-year limitations provision by simply labeling her cause of action for breach of contract something that is unfair. Any claim seeking damages for failure to pay policy benefits falls under the one-year limitations period, however framed: a claim for benefits or damages is a claim “on the policy” that must be brought within the contractual limitations period. See, e.g., *Jang v. State Farm Fire & Cas. Co.* (2000) 80 Cal.App.4th 1291, 1301 (“regardless of whether the insured elects to file a complaint alleging solely tort claims . . . an action seeking damages recoverable under the policy for a risk insured under the policy is merely a ‘transparent attempt to recover *on the policy*’”) (italics in original); *Velasquez v. Truck Ins. Exch.* (1991) 1 Cal.App.4th 712, 722 (a “bad faith action based on denial of a claim in the underlying policy is an action on the policy”) (“[a]mong the damages sought by appellants are the policy benefits plus interest, revealing that their action, like the insured’s in *Abari*, is an “attempt to recover on the policy . . .”). See generally *Sullivan v. Allstate Ins. Co.* (C.D. Cal. 1997) 964 F.Supp. 1407, 1414–1415.

The reason is clear: demanding that State Farm pay policy benefits that were promised is an action seeking to hold State Farm to the bargain, a bargain State Farm must uphold even if its intent in not complying with its obligations was tortious: such

a tort is misconduct which “involve[] breach of a primary obligation to pay policy benefits.” *Prieto v. State Farm Fire & Cas. Co.* (1990) 225 Cal.App.3d 1188, 1195. Indeed, “a failure to pay benefits that are due under the policy” breaches “the very reason” for the policy itself. *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1280.

But where damages are *not* sought for breach of an insurer’s promise to its insured but rather the claim is one on behalf of the public to redress an unfair policy, this is not a claim based upon anything promised or agreed upon but a claim to benefit the public. The insurer’s policy promise to the insured is not at issue. *See, e.g., 20th Century Ins. Co. v. Superior Court, supra, 90 Cal.App.4th at pp. 1280–1281* (“While we are persuaded that bad faith claims that are *seeking damages recoverable under the policy*, such as those presented in *Jang, Velasquez, Prieto, Abari and Lawrence*, have the same limitations period applicable to claims for breach of contract, and constitute *insurance claims*, the rationale which justifies that conclusion has no application to [a] fraud claim [that] does not rest on 20th Century’s failure to perform under the policy, but rather on its alleged acts of deceit and deception that go well beyond simple nonperformance. That the purpose of such alleged fraudulent behavior may have been to evade performance under the policy does not alter the conclusion that an entirely separate act of misconduct has been alleged”).²

² “Similarly, the public’s interest in protecting vulnerable insureds mandates that insurance contract interpretation, like insurance contract remedies, not be limited by the usual contract rules: the rights and obligations of the insurer cannot be determined solely on the basis of rules pertaining to private contracts negotiated by individual parties of relatively equal

This is different from alleging a claim under the UCL where the basis of the claim is money owed under the policy and it is different from one alleging breach of the covenant of good faith and fair dealing: both are “tortiously” tinged ways to say the defendant has breached its contractual obligations. *See Conder v. Home Sav. of Am.* (C.D. Cal. 2010) 680 F.Supp.2d 1168, 1176 (“A breach of contract may form the basis for UCL claims ... if “it also constitutes conduct that is ‘unlawful, or unfair, or fraudulent’”). *Puentes v. Wells Fargo Home Mtg., Inc.* (2008) 160 Cal.App.4th 638, 645. *See generally Aryeh v. Canon Bus. Solutions, Inc.* (2013) 55 Cal.4th 1185, 1196.

Not here. Rosenberg-Wohl does not assert a UCL claim to mask a contract claim – she is explicitly arguing that the conduct she complains about is unfair *even though it is not required under her policy contract*. Put otherwise, it is unfair regardless of whether it leads to payment under the policy or no.

That is why Rosenberg-Wohl has sought only injunctive in this action; our legal system does not require people to perform contracts, contenting itself with damages, while injunctive relief is particularly well suited to preventing wrongdoing, here wrongdoing that affects society as a whole. *See, e.g., Broberg v. The Guardian Life Ins. Co. of Am.* (2009) 171 Cal.App.4th 912, 917, 920 (claim that insurance company’s practice regarding “the marketing, promotion and sale of the vanishing premium policy”

bargaining strength. Rather ... contractual provisions contained within, insurance policies must be construed in light of applicable public policy, promoting the protection of the insured and the public at large.” *20th Century Ins. Co. v. Superior Court, supra*, 90 Cal.App.4th at pp. 1266–1267 (internal citations omitted).

was unfair); *North Star Reinsurance Corp. v. Superior Court* (1992) 10 Cal.App.4th 1815, 1818 (unfair competition claim against insurer for “refusing the tender of the defense”). *See also Aryeh v. Canon Bus. Solutions, Inc., supra*, 55 Cal.4th at p. 1190 (complaint alleging unfair practice of charging for test copies seeking injunctive relief and class action).

The distinction is important enough that sometimes, even where a plaintiff *also* seeks damages, courts find that where the goal of the litigation is a change of policy benefiting the public more than the individual, they apply the longer statute of limitations. Compare, in this regard, *Keller v. Fed. Ins. Co.* (C.D. Cal. 2017, CV 16-3946-GW(PJWx)) 2017 WL 603181 with *Enger v. Allstate Ins. Co.* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 199888. In *Keller*, the insureds sought compensatory damages and the court found the UCL claim to be one based upon breach of contract, 2017 WL 603181 at 5–6 and 40–41, while in *Enger*, the insured challenged how the insurer calculated depreciation, something it had not promised to do in a particular way, and while the court recognized that the Plaintiff had also charged that Allstate had failed “to pay what is owed,” the goal of the lawsuit was changing an ongoing policy by someone with standing to seek an injunction to that effect, 2016 U.S. Dist. LEXIS 199888 at 2, 16–17.

The Second Amended Complaint stated a claim under the UCL that is governed by the four-year statute of limitations, and the trial court’s sustaining State Farm’s demurrer on the basis that the one-year contractual limitations period applies was error of law.

CONCLUSION

Accordingly, Appellant respectfully requests that this tribunal overturn the trial court's entry of judgment against Plaintiff, Appellant here.

Hershenson Rosenberg-Wohl
Respectfully submitted,

Dated: November 17, 2023

By: /s/ David Rosenberg-Wohl

David M. Rosenberg-Wohl
Attorney for Plaintiff and
Appellant,
Katherine Rosenberg-Wohl

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **2,278** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.520(c) or by Order of this Court.

Hershenson Rosenberg-
Wohl, A Professional
Corporation

Respectfully submitted,

Dated: November 17, 2023

By: /s/ David Rosenberg-Wohl

David M. Rosenberg-Wohl
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Hershenson Rosenberg-
Wohl, A Professional
Corporation

Respectfully submitted,

Dated: November 17, 2023

By: /s/ David Rosenberg-Wohl

David M. Rosenberg-Wohl
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Appellant, Katherine
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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S281510**
Lower Court Case Number: **A163848**

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11/17/2023

Date

/s/David Rosenberg-Wohl

Signature

Rosenberg-Wohl, David (132924)

Last Name, First Name (PNum)

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