INSURANCE

INSURED, EXERCISING REASONABLE DILIGENCE SHOULD HAVE DISCOVERED THE MISREPRESENTATIONS AND THE INADEQUATE COVERAGE PROVIDED BY POLICY

Adaptive Modifications, LLC v. Atl. Cas. Ins. Co., ___F. Supp. 3d___ (E.D. Tex. 2019).
https://casetext.com/case/adaptive-modifications-llc-v-atl-cas-ins-co

FACTS: Plaintiff Adaptive Motors, LLC, owned by James Boren, was a business that converted living spaces into accessible homes for the disabled and elderly. Boren asked Defendant Dan Mitchell, an insurance agent for Defendant Trimark Insurance Group ("Trimark"), to procure a commercial general liability policy for Boren's business that covered various handyman work, including installing faucets. Mitchell applied to Defendant Delta General Agency Corporation, North Texas Branch ("Delta"), to underwrite the policy, which was then issued to Boren with Defendant Atlantic Casualty Insurance Company ("Atlantic") acting as the managing general agent. Mitchell told Boren that the policy would cover the requested work. However, the policy allegedly only covered carpentry work. After becoming insured, Boren was contracted to install a faucet in a customer's home, which later leaked. The customers filed the underlying suit in this case against Boren for property damage. Boren contacted Atlantic to defend and indemnify Boren in the suit, pursuant to the insurance policy. Atlantic denied Boren's claim.

Boren filed suit against Defendants, alleging violations of Chapter 541 of the Texas Insurance Code, §17.46(b) of the DTPA, breach of contract, and negligence by failing to procure the appropriate insurance coverage. Defendants removed the case to federal court. Boren filed a motion to remand.

HOLDING: Motion dismissed.

REASONING: Atlantic argued that the case should not be remanded because Boren improperly joined the Texas Defendants to defeat diversity jurisdiction. To establish improper joinder, the removing party has the burden to demonstrate either: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. Defendants argued that Boren could not establish a cause of action because his suit was barred by the Texas's two-year statutes of limitations.

Under Texas law, an insurance agent has no duty to explain policy terms and the insured is bound by its terms.

Boren argued that he could establish a cause of action because, under the discovery rule, Boren's claims accrued when Atlantic denied coverage to Boren. The court rejected Boren's argument, holding that the discovery rule did not apply. The court noted that under Texas law, an insurance agent has no duty to explain policy terms and the insured is bound by its terms. The court found that Boren should have learned of Mitchell's alleged misrepresentations and the lack of coverage provided by the policy upon Boren's initial review of the policy through the exercise of reasonable diligence. Because Boren failed to exercise reasonable diligence, the discovery rule was inapplicable to this case.