United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 24-40748

KEITH FREDERICH,

Plaintiff—Appellant,

versus

TRISURA SPECIALTY INSURANCE COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:24-CV-39

Before DENNIS, GRAVES, and DUNCAN, *Circuit Judges*.

PER CURIAM:[*]

Keith Frederich sued his insurer, Trisura Specialty Insurance Company ("Trisura"), for allegedly violating the Texas Insurance Code. He appeals the grant of summary judgment in favor of Trisura. We AFFIRM.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I

In September 2021, Frederich filed a claim with Trisura for wind and hail damage to his property. Over the next month, Trisura investigated the claim and concluded that Frederich's policy covered only some of his losses. Dissatisfied, Frederich invoked the policy's appraisal provision. In December 2022, the appraisal panel valued Fredrich's covered losses at $27,670.04. Later that month, Trisura paid the appraisal award, minus the policy's deductible and the amount of a prior payment.

Frederich then sued Trisura in Texas state court. His original petition alleged violations of Chapter 541 of the Texas Insurance Code (the Unfair Settlement Practices Act) and Chapter 542 of the Texas Insurance Code (the Texas Prompt Payment of Claims Act), as well as breach of the common-law duty of good faith and fair dealing. Trisura removed the case to federal court. Soon after, Trisura paid Frederich $2,996.27 for accrued interest on his claim, mooting his prompt-payment claim under Chapter 542. Frederich then amended his complaint, asserting only the bad-faith tort claims under Chapter 541.

Trisura moved for summary judgment, arguing that its payment of the appraisal award plus interest foreclosed Frederich's claims. Frederich countered that the plain language of Chapter 541 allows an insured to recover tort damages that are cumulative to, and distinct from, any breach-of-contract damages. Agreeing with Trisura, the district court granted summary judgment on all claims "[b]ecause Frederich received all benefits to which he was entitled through the appraisal process and ha[d] failed to establish an independent injury[.]"

Frederich appeals.

II

We review summary judgment *de novo*, applying the same standard as the district court. *See Nickell v. Beau View of Biloxi, L.L.C.*, 636 F.3d 752, 754 (5th Cir. 2011). Summary judgment is appropriate when "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). "[I]n this diversity-jurisdiction case, Texas law applies to . . . question[s] of substantive law." *Antero Res., Corp. v. C&R Downhole Drilling Inc.*, 85 F.4th 741, 746 (5th Cir. 2023).

III

On appeal, Frederich contends Chapter 541 allows an insured to recover tort damages that "are independent and distinct from" contractual damages for breach of contract. So, although Trisura's appraisal payment eliminated his breach-of-contract damages, Frederich claims he can recover additional damages for Trisura's "independent" tort of improperly withholding his claim payment. Trisura counters that its payment of the "appraisal award plus statutory interest forecloses" all of Frederich's claims under Chapter 541.

We agree with Trisura. Frederich's argument fails under our decision in *Mirelez v. State Farm Lloyds*, 127 F.4th 949 (5th Cir. 2025). Like Frederich, Mirelez asserted he could recover tort damages "even when an appraisal award, any applicable interest, and any payments due under the insurance policy were paid out[.]" *Id.* at 951. And there, like here, the district court granted summary judgment because Mirelez had received his policy benefits and because his tort claims were not an independent injury under *Ortiz v. State Farm Lloyds*, 589 S.W.3d 127 (Tex. 2019). *See id.* at 950. On appeal, Mirelez argued he need not prove an independent injury to recover tort

damages under Chapter 541, citing *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479 (Tex. 2018). *Ibid.*

Affirming the district court, we explicitly rejected that reading of *Ortiz* and *Menchaca*. *Id.* at 953. As we explained, *Ortiz* held "quite explicitly, that if the only 'actual damages' that a plaintiff seeks are policy benefits that have already been paid pursuant to an appraisal provision in that policy, an insured cannot recover for bad faith either under Chapter 541 of the Texas Insurance Code or in common law tort." *Id.* at 951 (quoting *Ortiz*, 589 S.W.3d at 135). Turning to *Menchaca*, we noted that an insured could "recover policy benefits as actual damages in tort" only when the insured had not already recovered those benefits. *Id.* at 952. Taken together, we concluded that "because Mirelez seeks no actual damages other than the policy benefits paid in accordance with the policy's appraisal provision, he may not maintain a bad faith claim under either the common law or chapter 541." *Id.* at 953 (citation modified) (quoting *Ortiz*, 589 S.W.3d at 135).

Since then, we have repeatedly applied *Mirelez* to reject bad-faith claims like Frederich's brought under Chapter 541. *See, e.g.*, *Wilhite v. Ark Royal Ins.*, No. 24-20401, 2025 WL 2588992, at *5 (5th Cir. Sep. 8, 2025) ("An insured cannot maintain tort claims against his insurer if he has received his full appraisal award absent evidence of an independent injury."); *Senechal v. Allstate Vehicle & Prop. Ins.*, 127 F.4th 976, 979 (5th Cir. 2025) (affirming summary judgment on bad-faith claims because the insured had not shown "that he suffered an independent injury"); *Navarra v. State Farm Lloyds*, No. 23-20582, 2024 WL 3174505, at *3 (5th Cir. June 25, 2024) (same).

Mirelez also controls here. *See United States v. Wilkerson*, 124 F.4th 361, 367 (5th Cir. 2024) ("[W]e are bound by a previous panel's decision absent an intervening change in the law, such as by a statutory amendment,

or the Supreme Court, or our *en banc* court." (internal quotation omitted)). While conceding *Mirelez* is on point, Friedrich argues *Mirelez* does not govern because that panel did not address his "statutory construction" argument. "But the rule of orderliness applies even when a party raises 'new arguments that were not presented to a prior panel.'" *Id.* at 368 (quoting *Mendez v. Poitevent*, 823 F.3d 326, 335 (5th Cir. 2016)); *see also United States v. Berry*, 951 F.3d 632, 636 (5th Cir. 2020) ("Under our rule of orderliness, though, an earlier panel decision binds even if that panel's opinion does not explicitly address arguments presented to the later panel.").

In any event, we considered and rejected Frederich's statutory-construction argument in *Wilhite*. *See* 2025 WL 2588992, at *4–5 (holding "*Mirelez* forecloses [the insured's] appeal" because "even if the plaintiff in *Mirelez* had raised the same statutory-construction argument," the panel would have rejected it as foreclosed by the Texas Supreme Court's interpretation of Chapter 541 in *Ortiz*).

In sum, *Mirelez* forecloses Frederich's appeal. Absent an independent injury, an insured cannot bring tort claims against an insurer under Chapter 541 after receiving an appraisal award and applicable statutory interest.

IV

The district court's judgment is AFFIRMED.