

Slip Copy, 2009 WL 2956923 (M.D.Fla.)
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United States District Court, M.D. Florida,
Tampa Division.
**PALMA VISTA CONDOMINIUM
ASSOCIATION OF HILLSBOROUGH COUNTY,
INC.**, Plaintiff,
v.
**NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY, INC.**, Defendant.
No. 8:09-CV-155-T-27EAJ.

June 11, 2009.

[Peter Michael Cardillo](#), Cardillo Law Firm, Tampa,
FL, for Plaintiff.

Jennifer Ann Latham, [Marc J. Gutterman](#), Conroy,
Simberg, Ganon, Krevans Abel, Lurvey, Hollywood,
FL, for Defendant.

ORDER

[JAMES D. WHITTEMORE](#), District Judge.

***1 BEFORE THE COURT** are Defendant's Motion to Dismiss Count 2 and Count 3 of Plaintiff's Complaint (Dkt.5) and Plaintiff's memorandum in opposition (Dkt.7). Upon consideration, Defendant's Motion to Dismiss is GRANTED IN PART, but only to the extent that Counts 2 and 3 are ABATED pending adjudication of Count 1.

Introduction

Palma Vista Condominium Association of Hillsborough County, Inc. ("Palma Vista") filed a complaint alleging Nationwide Mutual Fire Insurance Company, Inc. ("Nationwide") failed to pay in accordance with the terms of several property and casualty insurance policies. In addition to a claim for breach of contract, Palma Vista included causes of action for "Bad Faith" under [Florida Statutes § 624.155](#) and

"Unfair Claim Settlement Practices" under [Florida Statutes § 626.9541](#)(1)(i). Nationwide moved to dismiss the counts for bad faith and unfair claim settlement practices, because Palma Vista has not yet obtained an adjudication of coverage. Palma Vista does not dispute that these claims have not accrued but requests that they be abated, rather than dismissed.

Analysis

A complaint should be dismissed under Rule 12(b)(6) where it fails to "state a claim to relief that is plausible on its face." [Ashcroft v. Iqbal](#), ---U.S. ---, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). Under Florida law, claims for bad faith and unfair claim settlement practices do not accrue until there has been an underlying determination that the insurer breached an obligation to provide coverage. See [Blanchard v. State Farm Mut. Auto. Ins. Co.](#), 575 So.2d 1289, 1291 (Fla.1991); [Vanguard Fire & Cas. Co. v. Golmon](#), 955 So.2d 591, 594 (Fla. 1st DCA 2006) ("[T]he existence of liability and the extent of damages are elements of a statutory cause of action for bad faith that must be determined before a statutory cause of action for bad faith will lie."); [Hartford Ins. Co. v. Mainstream Constr. Group, Inc.](#), 864 So.2d 1270, 1272 (Fla. 5th DCA 2004). It follows that Palma Vistas' claims for bad faith and unfair claim settlement practices must be dismissed without prejudice or abated until there has been an adjudication of the breach of contract claim. See, e.g., [North Pointe Ins. Co. v. Tomas](#), 999 So.2d 728, 729 (Fla. 3d DCA 2008) (trial court departed from essential requirements of law by not dismissing or abating bad faith claim as premature).

Under similar circumstances, courts have found abatement the preferred remedy to dismissal. See, e.g., [Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co.](#), 527 F.Supp.2d 1355, 1367 (M.D.Fla.2007); [O'Rourke v. Provident Life & Accident Ins. Co.](#), 48 F.Supp.2d 1383, 1385 (S.D.Fla.1999). "Rooted in notions of judicial economy, the doctrine of abatement offers courts an opportunity to maintain a narrow focus on matters currently at issue, while preserving premature issues for future review if and when such issues ripen." [O'Rourke](#), 48 F.Supp.2d at 1385. Therefore, in the interest of judicial economy,

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the Court finds it appropriate to abate, rather than dismiss, Palma Vista's statutory bad faith and unfair claim settlement practices claims.

Conclusion

*2 Accordingly, it is **ORDERED** that Defendant's Motion to Dismiss (Dkt.5) is **GRANTED in part**. Counts 2 and 3 of Plaintiff s Complaint (Dkt.2) shall be **ABATED** pending adjudication of Count 1, during which time the Court will not permit any discovery, pleadings, motions, or other matters directed at Counts 2 and 3.

DONE AND ORDERED in chambers this *10th* day of June, 2009.

M.D.Fla.,2009.

Palma Vista Condominium Association of Hillsborough County, Inc. v. Nationwide Mut. Fire Ins. Co., Inc.

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