



## II. LEGAL STANDARD

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).<sup>3</sup>

---

<sup>2</sup>(...continued)  
discovery and that Plaintiff, who is an attorney acting pro se, has not responded to Defendant's Interrogatories or Requests for Production of Documents. Defendant states that, with the discovery process at an end, Plaintiff has made no attempt to produce evidence that would support his allegations.

<sup>3</sup> Rule 56 further provides that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or  
(continued...)

### **III. DISCUSSION**

The Complaint alleges causes of action for: (1) breach of contract; (2) bad faith under 42 Pa. Cons. Stat. Ann. § 8371; and (3) a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. Ann. § 201-1 et seq. Defendant asserts that it is entitled to summary judgment because: (1) there was no contract of insurance between Plaintiff and Defendant; (2) Plaintiff has no standing to sue Defendant under Pennsylvania's bad faith statute; and (3) Plaintiff did not purchase goods or services from Defendant. The court will address each argument in turn.

Count I of the Complaint alleges breach of contract. Defendant asserts that it is entitled to summary judgment on this

---

<sup>3</sup>(...continued)

as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56 (e). "The non-moving party must raise 'more than a mere scintilla of evidence in its favor' in order to overcome a summary judgment motion and it cannot rely on unsupported assertions, conclusory allegations, or mere suspicions or beliefs in attempting to survive such a motion." Willmore v. American Atelier, Inc., 72 F. Supp. 2d 526, 527 (E.D. Pa. 1999) (citations omitted). As the Court stated in Celotex Corporation v. Catrett, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where no such showing is made, "[t]he moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323.

Count because there was no contract of insurance between Plaintiff and Defendant. (Def.'s Mem. of Law in Supp. of Mot. for Summ. J. at 4.) The Complaint does not assert that there was a contract between Plaintiff and Defendant, rather, it asserts that Plaintiff was the third party beneficiary of the contract between Defendant and Steven Travaglini, Defendant's insured. Plaintiff alleges that Defendant "breached its contractual obligations to pay benefits to Plaintiff as a third party beneficiary." (Compl. ¶ 13.)

Only a party to a contract can be liable for breach. See, e.g., Electron Energy Corp. v. Short, 597 A.2d 175, 177 (Pa. Super. Ct. 1991). Under Pennsylvania law, an injured party "has no right to directly sue the insurer of an alleged tortfeasor unless a provision of the policy or a statute creates such a right." Kollar v. Miller, 176 F.3d 175, 181 (3d Cir. 1999) (citations omitted); see also Strutz v. State Farm Mut. Ins. Co., 609 A.2d 569, 570 (Pa. Super. Ct. 1992) (rejecting argument that persons injured in car accident are third party beneficiaries of other driver's insurance policy). Plaintiff has not pointed to any contractual provision or statute that creates a right to sue Defendant or that supports his third party beneficiary theory of recovery.<sup>4</sup> Thus, the court will grant Defendant's motion for

---

<sup>4</sup> The record is devoid of any evidence that would establish the factual basis for Plaintiff's claim against Defendant. Plaintiff, who is an attorney, has provided no support for his allegation that a breach of contract occurred. The court also notes that the Complaint alleges that "Plaintiff

(continued...)

summary judgment as to Count I of the Complaint.

Count II of the Complaint asserts a claim for bad faith under 42 Pa. Cons. Stat. Ann. § 8371. Defendant asserts that it is entitled to summary judgment because Plaintiff has no standing to sue Defendant under Pennsylvania's bad faith statute.

Pennsylvania's bad faith statute provides as follows:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 Pa. Cons. Stat. Ann. § 8371. Under Pennsylvania law, it is "clear that the insurer's duty to act in good faith belongs to those persons who qualify as 'insureds' under the policy."

Seasor v. Liberty Mut. Ins. Co., 941 F. Supp. 488, 490 (E.D. Pa. 1996)(citing Dercoli v. Pennsylvania Nat'l Mut. Ins. Co., 554 A.2d 906 (1989)). Whether one is an insured with standing to sue an insurer for the bad faith denial of a claim depends upon the language of the policy in question. Id. at 491 (stating that "in order to bring an action for bad faith against an insurer, one must qualify as an 'insured' as that term is defined in the policy"). Plaintiff did not have an insurance policy with

---

<sup>4</sup>(...continued)

was required to institute successful litigation against Travaglini in order to obtain the benefits to which he was entitled from Nationwide," suggesting that Plaintiff has already been paid the benefits he claims Defendant withheld. (Compl. ¶ 9.)

Defendant, and he has brought forward no evidence to show that he qualifies as an "insured" under Travaglini's policy with Defendant. Thus, the court will grant Defendant's motion for summary judgment as to Count II of Plaintiff's Complaint.

Count III of Plaintiff's Complaint alleges a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Cons. Stat. Ann. § 201-1 et seq. Defendant asserts that it is entitled to summary judgment because Plaintiff did not purchase goods or services from Defendant.

Pennsylvania's UTPCPL expressly limits private actions to "any person who purchases or leases goods or services for personal, family, or household purposes." Id. § 201-9.2. The Third Circuit stated that the UTPCPL "contemplates as a protected class only those who purchase goods or services, not those who may receive a benefit from the purchase." Gemini Physical Therapy & Rehab. Inc. v. State Farm Mut. Auto. Ins. Co., 40 F.3d 63, 65 (3d Cir. 1994) (citations omitted). Plaintiff "did not purchase or lease anything, in the ordinary sense of those words." Gottlieb v. Tropicana Hotel and Casino, 109 F. Supp. 2d 324, 330 (E.D. Pa. 2000). Thus, Plaintiff has no support for his claim under the UTPCPL and the court will grant Defendant's motion for summary judgment on Count III of Plaintiff's Complaint.

#### **IV. CONCLUSION**

For the reasons set forth above, Defendants' motion for

summary judgment will be granted. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES F. DETWEILER	:	CIVIL ACTION
	:	
v.	:	
	:	
NATIONWIDE INSURANCE COMPANY	:	NO. 00-1776

ORDER

AND NOW, TO WIT, this            day of October, 2000, upon consideration of defendant Nationwide Insurance Company's unopposed motion for summary judgment, it is hereby ORDERED that said motion is GRANTED. Judgment is entered in favor of Nationwide Insurance Company and against plaintiff James F. Detwiler on all counts.

---

LOUIS C. BECHTLE, J.