

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

CHLEASE BROWN, : CIVIL ACTION
 :
 Plaintiff, : NO. 99-6596
 :
 v. :
 :
 LIBERTY MUTUAL INSURANCE :
 GROUP, et. al, :
 :
 Defendant. :

M E M O R A N D U M

BUCKWALTER, J.

January 30, 2001

Plaintiff Chlease Brown ("Plaintiff" or "Brown") filed this action pursuant to 42 Pa. C.S.A. § 8371 and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. § 201-1 et seq. alleging that her insurance company, Liberty Mutual Insurance Group ("Defendant" or "Liberty Mutual"), breached its contract duties, acted in bad faith and engaged in unfair trade practices, deceit and intentional infliction of emotional distress when handling her claim for theft of her vehicle.

Presently before this Court is Defendant's Motion for Summary Judgment as to all of these claims. This Court finds that Plaintiff failed to provide sufficient evidence¹ to support

1. The Third Circuit established "clear and convincing evidence" as the appropriate standard for evaluating a claim of bad faith. See Polselli v. Nationwide Mut. Fire Ins. Co., 23 F.3d 747, 750 (3rd Cir. 1994).

these allegations. This Court grants summary judgment on all five counts.

I. BACKGROUND

Plaintiff filed a claim with her car insurance company, Liberty Mutual, following the theft of her car on November 26, 1997. Plaintiff alleged that she had parked the car for the evening on the street between two other vehicles. The following morning, the car was gone. The police recovered the car within a week and found it significantly damaged. As the car had been leased, Plaintiff sought compensation for the value of incidentals that had been in the car as well as the cost of a rental car for the week before she obtained a replacement car.

In processing her claim, Defendant conducted a routine examination of the car and discovered that the ignition had not been disturbed and the steering wheel column was still locked. As an uncompromised ignition and a locked steering wheel are "red flags" that trigger further investigation into theft claims as a precaution against fraud, Defendant referred Plaintiff's claim to a Special Investigation Unit ("SIU") for a more thorough analysis.

The SIU investigator claimed he conducted a thorough investigation of Plaintiff's case including a taped interview with Plaintiff, a visit to the site of the car's disappearance, an interview with the neighborhood watch captain for Plaintiff's

block and efforts to interview other neighbors. Additionally, he viewed the car and spoke with the company that leased her the vehicle. At that point, the investigator stated in his report, he had been prepared to pay Plaintiff's claim if she had no credit problems. Although Plaintiff recalled being late on her car payments only once, her credit history suggested that she had been substantially late on various other payments in the past. This information prompted the investigator to continue his investigation, and he hired an expert to conduct a key path analysis. This test confirmed that the ignition had not been compromised and the investigator proceeded by examining Plaintiff under oath in June. In early October, after learning that a series of car thefts had occurred by using a tow truck or flatbed, a method which would not compromise the ignition, Defendant sent Plaintiff a check for the amount of her claim.

Plaintiff, on the advice of her attorney, did not deposit the check citing her objection to Defendant's release form. Despite her decision not to submit the release, Defendant mailed Plaintiff a check for the amount of her claim. As Plaintiff did not deposit the check, Defendant sent her a letter authorizing the deposit without compromising her bad faith claim.

II. Legal Standard

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue

as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id.

If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See United States v. Diebold, 369 U.S. 654, 655 (1962). The nonmoving party, however, cannot "rely merely upon bare assertions, conclusory allegations or suspicions" to support its claim. Fireman's Ins. Co. v. DeFresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in support of the non-moving party's position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant. Liberty Lobby, 477 U.S. at 252. Therefore, it is plain that "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). In such a situation, "[t]he moving party is 'entitled to a judgment as a matter of law' because the non-moving 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 (quoting Fed. R. Civ. P. 56(c)).

III. Discussion

A. Count I-Breach of Contract

Plaintiff alleges in her complaint that Defendant breached her insurance contract both by requiring her to sign a release before sending her payment and by delaying its decision to pay her. As to the first argument, Plaintiff's allegation should be considered moot. Although Defendant mailed Plaintiff a standard release prior to making a payment, Defendant subsequently paid Plaintiff's claim without requiring submission of the release. Moreover, Defendant sent Plaintiff a letter acknowledging her bad faith suit and assuring her that depositing the check would not compromise this claim. As Plaintiff fails to identify any clause in her insurance policy that the request for release violates and as Defendant ultimately made payment without

requiring a release, there is no evidence that Defendant breached Plaintiff's contract and summary judgment is appropriate.

As to the length of time between Plaintiff's claim and her receipt of payment, Plaintiff fails to identify a contractual provision that Defendant breached in continuing its investigation for this period of time. Moreover, as discussed infra, Defendant did not cause an intentional delay in the investigation of her claim. Therefore, Defendant did not behave in bad faith or breach any duty to reasonably and fairly evaluate Plaintiff's insurance claim. For these reasons, the breach of contract claim does not survive the motion for summary judgment.

B. Count II-Bad Faith

Plaintiff alleges that Defendant engaged in bad faith because it did not fairly or objectively evaluate her insurance claim. More specifically, Plaintiff argues that Defendant required Plaintiff to sign a general release before paying her claim, failed to keep Plaintiff adequately apprized of coverage and unreasonably withheld her payment for a prolonged period of time. The first argument is addressed under the breach of contract claim supra and the second two are discussed here.

To make out a claim of bad faith under 42 Pa. C.S.A. § 8371, Plaintiff must provide clear and convincing evidence that

1) Defendant lacked reasonable basis for denying benefits under the policy and 2) Defendant recklessly disregarded its lack

of reasonable basis. See Polselli v. Nationwide Mut. Fire Ins. Co., 23 F.3d 747, 750 (3rd Cir. 1994). Moreover, mere negligence or poor judgment is not bad faith. *Id.* at 751.

Plaintiff fails to provide sufficient evidence that Defendant lacked reasonable basis for delaying payment of Plaintiff's claim in order to pursue its investigation. The appearance of the type of "red flag" present here made it appropriate for Defendant to evaluate the authenticity of the claim more carefully. Plaintiff counters by stating that her situation involved only one red flag whereas the cases cited by Defendant in which delay of payment was permissible contained multiple flags. While this distinction is accurate, the number of flags does not necessarily render Defendant's decision to investigate her claim any less reasonable. The initial "red flag" in Plaintiff's case, an uncompromised ignition, is significant and related enough to the theft as to reasonably require further investigation.

As to the duration of the investigation, Plaintiff fails to provide clear and convincing evidence that Defendant knowingly disregarded information that would have ended the investigation more promptly. By contrast, in February less than three months after recovery of the car, the investigator evaluating Plaintiff's claim indicated in his internal report that he found Plaintiff credible and was prepared to pay her

claim. However, he wanted to confirm her good credit history. Upon learning of her past late payments, he believed it appropriate to investigate this additional red flag.² This information, in combination with the fact that Plaintiff had exceeded the number of miles permitted under her lease, and the perceived difficulty of removing her car from a narrow street without using the ignition, constitutes sufficient grounds for continuing the investigation. For these reasons, the Court finds Defendant's behavior reasonable under the circumstances.

As to the argument that Defendant took too long to evaluate Plaintiff's claim, the Court recognizes that eleven months is a protracted period of time for payment of a small claim. However, the length of the investigation fell within parameters that have been deemed acceptable by this circuit. See Quaciari v. Allstate Insurance Company, 998 F.Supp. 578, 579-80 (E.D.Pa.), aff'd without opinion, 172 F.3d 860 (3rd Cir. 1998)(finding that a period of approximately thirteen months between the initiation of a claim and its payment did not constitute bad faith absent aggravating factors); see also Williams, 83 F.Supp.2d at 572. (holding that although swifter resolution may have been possible, the insurer did not act in bad

2. Plaintiff testified at her deposition that she recalled only one late lease payment and some possible credit card debt. The SIU investigator allegedly learned from her credit report that she was late multiple times in making various payments. This Court believes that in light of the circumstances of this theft even one confirmed incident of delinquent payment was sufficient to justify proceeding with a more thorough investigation.

faith where it took fifteen months to resolve an insurance claim). Hence, as no aggravating factors were presented, Defendant's behavior does not constitute bad faith.

As to the argument that Defendant failed to keep Plaintiff apprized of the investigation, it should be dismissed as it does not constitute a ground for bad faith under this statute. Moreover, even if this claim did fall within the protection of the statute, Plaintiff fails to provide adequate evidence of this allegation. Defendant, by contrast, offers testimony that the investigator met with Plaintiff at the end of December, sent her letters approximately once a month from February to April to inform her that the investigation was ongoing and requested to take her statement under oath in June. Although these contacts were not necessarily as informative as Plaintiff might have wanted, they did occur and are sufficient to eliminate Plaintiff's claim of bad faith on this ground.

C. Counts III & IV-Unfair Trade Practices and Deceit

Plaintiff asserts a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. § 201-1 et seq. alleging unfair and deceptive business practices. In order to establish a claim under this act, Plaintiff must demonstrate that Defendant made a false representation that has actually deceived or has had a tendency to deceive Plaintiff and that this representation may have affected Plaintiff's decision to purchase

the insurance policy. See DiLucido v. Terminix International Inc., 676 A.2d 1237, 1240-41 (Pa. Super. 1996). Plaintiff does not offer any evidence that Defendant misled Plaintiff in the crafting of her insurance policy or during the handling of her claim. For this reason, Plaintiff fails to survive a motion for summary judgment as to this claim.

D. Count V--Intentional Infliction of Emotional Distress

Plaintiff alleges that the delay in receiving her insurance payments and the process involved in the continued investigation of her theft claim constituted intentional infliction of emotional distress. However, Plaintiff fails to provide sufficient evidence of this claim to survive a motion for summary judgment. A claim for intentional infliction of emotional distress is reserved for cases of outrageous or extreme behavior. See Papieves v. Lawrence, 437 Pa. 373 (1970)(finding outrageous conduct in the mishandling of a corpse). While it may be undesirable and anxiety causing for an insurance investigation to last almost a year, this experience is not the kind where courts have found outrageous behavior. See id. For this reason, Plaintiff's claim for intentional infliction of emotional distress does not survive the motion for summary judgment.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is granted as to all five counts (1) breach of

contract; (2) bad faith; (3) unfair trade practices and consumer protection law; (4) deceit; and (5) intentional infliction of emotional distress.

An appropriate order follows.

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GROUP, et. al,	:	
	:	
Defendant.	:	

O R D E R

AND NOW, this 30th day of January, 2001, upon consideration of Defendant's Motion for Summary Judgment (Docket No. 13), Plaintiff's response thereto (Docket No. 14) and Defendant's Reply Memorandum (Docket No. 15), it is hereby **ORDERED** that Defendant's Motion is **GRANTED** in its entirety.

Judgment is entered on behalf of defendant and against plaintiff.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.