

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

EARLDINE ROUNTREE,)
AREATHA JONES,)
And MICHELLE JONES,)

 Plaintiffs,)

v.)

PEAK PROPERTY AND)
CASUALTY INSURANCE)
CORPORATION)

 Defendant.)

C.A. No: N11C-11-216 CLS

Date Submitted: June 6, 2012
Date Decided: July 18, 2012

On Defendant's Motion for Summary Judgment.
GRANTED.

ORDER

Francis J. Jones, Jr., Esq., Morris James LLP, 803 North Broom Street, P.O. Box 2328, Wilmington, Delaware 19806. Attorney for Plaintiffs.

William J. Cattie, III, Esq., Rawle & Henderson LLP, 300 Delaware Avenue, Suite 1015, P.O. Box 588, Wilmington, Delaware 19899. Attorney for Defendant.

J. Scott

Introduction

Before the Court is Defendant's, Peak Property and Casualty Insurance Company ("Defendant"), Motion for Summary Judgment pursuant to Superior Court Civil Rule 56. There is no statutory provision under 18 *Del. C.* § 3905 that requires Defendant to send a separate notice of cancellation after payment is not received and accordingly, Defendant complied with the requirements set forth in the statute. Thus, Defendant's Motion for Summary Judgment is **GRANTED**.

Facts

Plaintiff, Earldine Roundtree ("Plaintiff Roundtree") obtained an automobile insurance policy with Defendant on April 18, 2011, which provided, *inter alia*, personal injury protection ("PIP") benefits. An Installment Notice/Nonpayment Cancellation Notice was mailed to Plaintiff Roundtree on June 3, 2011, with a payment due date of June 17, 2011. The cancellation notice portion of the correspondence indicated that if payment was not received by the scheduled due date, the policy would be cancelled for nonpayment of premium on July 19, 2011. A payment was not received by the due date or any time thereafter and the policy was subsequently cancelled on July 19, 2011.

On July 24, 2011, Plaintiffs Areatha Jones and Michelle Jones suffered injuries while driving an automobile owned by Plaintiff Roundtree and were when they were struck by another vehicle while stopped at a red light. Plaintiffs Areatha

and Michelle demanded payment of PIP benefits from Defendant for injuries sustained, which were denied on the ground that the policy was cancelled at the time of the collision.

Parties' Contentions

Defendant asserts that it complied with all of the requirements enumerated in 18 *Del. C.* § 3905 to effect a proper cancellation of the insurance policy when it provided Plaintiff Roundtree with more than thirty days notice of cancellation of policy and the reason therefore. Plaintiffs contend that regardless of the fact that Plaintiff Roundtree did not pay her premium, Defendant did not effectively cancel Plaintiff's policy because it failed to comply with the requirements of 18 *Del. C.* § 3905. Specifically, Plaintiffs argue that a separate notice of cancellation should have been mailed to Plaintiff Roundtree after the payment became overdue indicating that the payment had not been received and that the policy would be cancelled as of a certain date.

Standard of Review

The Court may grant summary judgment 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 summary judgment as a matter of law.”¹ The moving party

¹ Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

bears the initial burden of showing that no material issues of fact are present.² Once such a showing is made, the burden shifts to the non-moving party to demonstrate that there are material issues of fact in dispute.³ In considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party.⁴ “Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.”⁵

Discussion

Defendant Property Complied with the Cancellation Requirements Set Forth in 18 Del. C. § 3905.

Pursuant to 18 *Del. C.* § 3905, when cancelling a policy due to nonpayment of premiums, an insurance company must provide written notice of such cancellation, including the reason therefore, ten days prior to the effective date of cancellation.⁶ In other words, the statute simply requires at least ten-days notice prior to the effective date of cancellation and that the reason for the cancellation be provided. “The decision to omit a provision [in a statute] is deemed purposeful.”⁷ Further, when a statute employs unambiguous language, the Delaware courts must

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Burkhart*, 602 A.2d at 59.

⁵ *Phillip-Postle v. BJ Prods., Inc.*, 2006 WL 1720073, at *1 (Del. Super. Apr. 26, 2006).

⁶ 18 *Del. C.* § 3905.

⁷ *State Farm Mut. Auto. Ins. Co. v. Mundorf*, 659 A.2d 215, 220 (Del. Super. 1995) (citing *Humm v. Aetna Cas. And Sur. Co.*, 656 A.2d 712, 715 (Del. Supr. 1995)).

apply the plain meaning of the rule and give the words of the statute their ordinary meaning.⁸ Specifically, “the courts may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature.”⁹

The unambiguous language of 18 *Del. C.* § 3905 provides that a notice of cancellation be mailed or delivered ten days prior to the effective date of the cancellation of an insurance policy due to nonpayment of premiums.¹⁰ Additionally, the reason for the cancellation must be stated.¹¹ There is no requirement that a separate nonpayment cancellation notice to be mailed after the payment due date informing the insured that the policy will be cancelled. The omission of an express provision in the statute that notice be mailed separately from the monthly bill indicates that it was not the legislative intent to require the separate mailings.

Defendant complied with the statutory requirements of 18 *Del. C.* § 3905. First, instead of providing only ten-days notice as required by the statute, Defendant actually provided more than thirty-days notice. Secondly, Defendant stated that the reason for the cancellation was for nonpayment of the premium amount due. There are no genuine issues of fact in dispute as to: (1) whether the June 3, 2011 notice was mailed or delivered to Plaintiff Roundtree at least ten days

⁸ *Id.*

⁹ *Id.* (citations omitted).

¹⁰ 18 *Del. C.* § 3905.

¹¹ *Id.*

prior to the cancellation effective date; or (2) whether the reason for cancellation was provided. Accordingly, as there are no genuine issues of material fact in dispute and Defendant cancelled the insurance policy in compliance with statutory regulations, summary judgment is **GRANTED**.

Conclusion

Based on the foregoing, Defendant's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.