IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DARRELL F. SANDERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 02C-03-048-JRS
	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
	)	
	)	
Defendant.	)	

Date Submitted: September 2, 2003
Date Decided: September 8, 2003

Upon Consideration of Defendant State Farm's Motion for Summary Judgment.
GRANTED.

O R D E R

Defendant, State Farm Mutual Automobile Insurance Company ("State Farm") having moved for summary judgment, and the plaintiff, Darrell F. Sanders ("Sanders") having responded thereto, it appears to the Court that:

1) This case involves a declaratory judgment action in which Sanders seeks coverage under his State Farm policy for losses he incurred as a result of the alleged theft of his automobile on August 31, 2001. State Farm has raised various defenses to Sanders' claim for coverage, including late notice, fraud and lack of coverage.

With respect to this latter defense, the Court has already determined that the express terms of Sanders' policy with State Farm do not provide coverage for comprehensive (including theft), collision or other coverages sought by Sanders in this case. In response, Sanders has argued that subsequent to the issuance of the written policy, but prior to his loss, State Farm issued to him an oral binder of comprehensive and collision coverage in accordance with oral representations made to him by his State Farm insurance agent. And, although not pled in his complaint, Sanders seeks reformation of his State Farm policy to include the coverages allegedly offered to him by his State Farm agent.

2) State Farm contends that Sanders has not pled reformation and, consequently, he cannot recover on this theory. Moreover, Sanders cannot recover on the theory of an oral binder of coverage because the State Farm written policy specifically requires that any modification be set forth in writing. The factual record is complete and the matter is ripe for decision.

3) When considering a motion for summary judgment, the Court's function is to examine the record to determine whether genuine issues of fact exist.[1] If, after viewing the record in a light most favorable to the non-moving party, the Court finds that there are no genuine issues of material fact, and the party is entitled to judgment as a matter of law, summary judgment will be granted.[2] Summary judgment will not be granted, however, if the record indicates that a material fact is in dispute, or if judgment as a matter of law is not appropriate.[3]

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[1] *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973).

[2] *Id.*

[3] *Ebersole v. Lowengrub*, 180 A. 2d 467, 470 (Del. 1962).

4) The Court is satisfied that reformation is not appropriate in this instance. First, Sanders has not pled reformation and the time for amending pleadings as set forth in the Court's Trial Scheduling Order has long passed. Even if the Court was inclined to allow an amendment at this late date, it is clear that Sanders is not entitled to reformation as a matter of law. Reformation is available only to correct a written agreement which does not express the original intentions of the parties.[4] Before the Court will reform a contract, the plaintiff must demonstrate: (1) that the parties came to a prior complete mutual agreement which is not set forth in the written instrument; or (2) that there was a unilateral mistake by the parties seeking reformation and that the other party knew of the mistake but remained silent.[5] The record before the Court supports neither basis for relief.

5) Nor does the record support Sanders' claim for coverage under an oral binder. Sanders' policy with State Farm requires that any modification to the written policy be set forth in writing. This provision is clear and unambiguous. Accordingly, the Court will not entertain extrinsic evidence of a contrary agreement.[6]

6) The undisputed facts of record demonstrate that State Farm's policy did not provide collision, comprehensive or the other coverages sought by Sanders. Consequently, State Farm's motion for summary judgment must be, and hereby is, **GRANTED.**

IT IS SO ORDERED.

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[4] *Collins v. Burke*, 418 A.2d 999, 1002 (Del. 1980).

[5] *Cerberus Intern., Ltd. v. Apollo Mgt., L.P.*, 794 A.2d 1114, 1151-52 (Del. 2002).

[6] *Abbflakt, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA.*, 731 A.2d 811, 816 (Del. 1999)(holding that Delaware courts will not consider extrinsic evidence to determine the intent of the parties when the language of an insurance policy is clear and unambiguous); *Eagle Indus., Inc. v. DeVilbiss Healthcare, Inc.*, 702 A.2d 1228, 1232 (Del. 1997)(same).

Judge Joseph R. Slights, III

Original to Prothonotary

cc: Mr. Darrell Sanders
Donald M. Ransom, Esquire