

IN THE SUPREME COURT OF THE STATE OF DELAWARE

K. KAY SHEARIN,	§
	§
Plaintiff Below-	§ No. 472, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
ALLSTATE INSURANCE	§ in and for New Castle County
COMPANY,	§ C.A. No. 99C-12-233
	§
Defendant Below-	§
Appellee.	§

Submitted: February 7, 2003

Decided: March 31, 2003

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 31st day of March 2003, upon consideration of the Superior Court's decision following remand, the parties supplemental briefs on appeal, and the record below, it appears to the Court that:¹

(1) The plaintiff-appellant, K. Kay Shearin, filed this appeal from the August 27, 2001 order of the Superior Court granting summary judgment

¹ Following initial briefing by the parties, this matter was remanded to the Superior Court so that the reasoning underlying the Superior Court's decision could be supplied. *Shearin v. Allstate Insurance Co.*, Del. Supr., No. 472, 2001, Holland, J. (Oct. 21, 2002). After the Superior Court filed its November 13, 2002 memorandum opinion, the parties filed supplemental briefs.

in favor of the defendant-appellee, Allstate Insurance Company. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In December 1999, Shearin filed a complaint in the Superior Court alleging breach of contract on the part of Allstate, her automobile insurance carrier, and seeking rescission of her Allstate insurance policy and reimbursement of premiums or, in the alternative, payment for the loss of her Toyota Tercel. Following an arbitration hearing in August 2000, a scheduling order was issued. In May 2001, following discovery, Allstate filed its motion for summary judgment. The Superior Court granted Allstate's motion at a hearing on August 27, 2001.

(3) The record reflects that, beginning on January 12, 1995, Shearin's 1980 Toyota Tercel was covered by an insurance policy with Allstate. In early 1995, Shearin turned the car over to William Stokesbury of Bill's Muscle Car Parts & Restoration, Smyrna, Delaware, for repairs. Stokesbury, in turn, gave Shearin a loaner car, which she used until late 1997 or early 1998. A representative from Allstate confirmed that the insurance policy covered the loaner car.

(4) Sometime in late 1997, Shearin received notice that Stokesbury had given her Toyota Tercel to an individual named Chris Jones and that

Jones had junked it. Shearin subsequently arranged for a friend to purchase a 1997 Hyundai Accent for her use. At around the same time, Shearin verbally informed Allstate that Stokesbury had stolen the Toyota Tercel. Shearin requested Allstate to substitute the Hyundai Accent for the Toyota Tercel on the policy, but Allstate would not do so. At that point, Shearin had not filed a proper claim for the loss of the Toyota Tercel, nor did she own the Hyundai Accent. Shearin does not dispute that she did not file a police report regarding the allegedly stolen car, never provided Allstate with a written claim regarding the stolen car, and had no ownership interest in the Hyundai Accent. Shearin's insurance policy lapsed as of January 12, 1998 for non-payment of premiums.

(5) Part IV of Shearin's insurance policy with Allstate, under the section entitled "What You Must Do If There Is A Loss," contains the following language:

(1) As soon as possible (sic) any person making claim must give us written proof of loss, including (sic) all details reasonably required by us.

. . .

(3) Report all theft losses promptly to the police.

The policy further provides, in Part IV under the section entitled “Action Against Allstate,” that no one may sue Allstate “under this coverage unless there is full compliance with all the terms of this policy.”

(6) This Court reviews the Superior Court’s decision granting summary judgment *de novo*.² Summary judgment is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.³ In order to withstand a motion for summary judgment, the plaintiff is required to present some evidence, either direct or circumstantial, to support all of the elements of the claim.⁴ A motion for summary judgment is properly granted against a plaintiff who fails to make a showing sufficient to establish the existence of an element essential to the plaintiff’s case, and on which the plaintiff will bear the burden of proof at trial.⁵

(7) The Superior Court correctly granted summary judgment in favor of Allstate. There is no evidence that Shearin is entitled to any remedy resulting from an alleged breach of contract on the part of Allstate. Shearin

² *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002).

³ *Id.*

⁴ *Reybold Group, Inc. v. Chemprobe Technologies, Inc.*, 721 A.2d 1267, 1270 (Del. 1998).

⁵ *Id.* at 1271(citing *Celotex v. Catrett*, 477 U.S. 317, 322 (1986)).

is not entitled to a return of premiums paid between January 12, 1995 and January 12, 1998 because Allstate provided coverage on her Toyota Tercel and her loaner car during that period. Moreover, she is not entitled to payment for the loss of her Toyota Tercel because she did not make a proper claim for its loss in accordance with the terms of the policy. Shearin does not dispute that she did not comply with the terms of the policy, nor does she present any argument that would justify her lack of compliance. For all of these reasons, the Superior Court properly dismissed Shearin's claims against Allstate as a matter of law.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice