

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL

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| Lauren King, |) | C/A: | 0:11-cv-123-JFA |
| |) | | |
| |) | | |
| Plaintiff, |) | ORDER | |
| |) | | |
| vs. |) | | |
| |) | | |
| Esurance Insurance Company, |) | | |
| |) | | |
| Defendant. |) | | |
| |) | | |

This case is before the court on the defendant’s motion for summary judgment pursuant to Fed. R. Civ. P. 56. (ECF No. 30). The plaintiff has not filed a response, but after reviewing the defendant’s motion and supporting memorandum, the court grants the motion for summary judgment.

The plaintiff purchased an automobile insurance policy that became effective on February 2, 2010 from the defendant, Esurance Insurance Company (“Esurance”). She and a passenger claim her vehicle caught fire while she was driving on March 27, 2010. The fire department was called and extinguished the fire but only after the vehicle was totally destroyed.

The plaintiff called Esurance the same night to report the incident. The claim was assigned to a claims investigator, and a cause and origin investigation into the cause of the fire was initiated on April 29, 2010. A certified fire investigator inspected the vehicle and determined that it burned from the interior fire wall to the trunk, the origin was in the interior seats and floor boards, all of the car doors were open during the fire, and the engine was not

the source of the fire. Additionally, several lab tests showed that evaporated gasoline was present in the car. The fire investigator concluded that the fire was not accidental. Esurance then issued a conditional denial on the plaintiff's insurance claim.

On December 9, 2010, the plaintiff filed suit against the defendant in the South Carolina Court of Common Pleas for York County alleging breach of contract, breach of contract with fraudulent intent, bad faith refusal to pay first party insurance benefits, libel, slander, and intentional infliction of emotional distress. The defendant removed the case to this court on January 14, 2011 and subsequently filed a motion to dismiss (ECF No. 19), which the court denied. The defendant then filed this motion on June 16, 2011.

Summary judgment should be granted “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact.” Fed. R. Civ. P. 56(c)(2). “The party seeking summary judgment carries the burden of showing that there is no genuine issue as to any material fact in the case.” Pulliam Inv. Co. v. Cameo Props., 810 F.2d 1282, 1286 (4th Cir. 1987). “When determining whether the movant has met its burden, the court must assess the documentary materials submitted by the parties in the light most favorable to the nonmoving party.” Id.

“[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986). A party “may not rely merely on allegations or denials in [his] own pleading; rather, [his] response must—by affidavits or as otherwise provided in this rule—set out specific facts showing a genuine issue for trial.” Fed. R. Civ. P. 56(e)(2).

The defendant has provided evidence and expert testimony that the fire was not accidental and did not occur in the manner the plaintiff claims. Without the existence of an accidental fire, the breach of contract claim and all of the plaintiff's other claims fail. The plaintiff has not named any expert witnesses to challenge the defendant's expert's findings, and the deadline to do so has passed. The plaintiff has failed to respond to this motion altogether and is relying exclusively on her complaint. Even when viewing the evidence in the light most favorable to the plaintiff, the court finds that she has failed to show that there is any genuine issue of material fact for trial.

Therefore, the court grants the defendant's motion for summary judgment as to all five causes of action.

IT IS SO ORDERED.



July 20, 2011
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge