

EXHIBIT 14

I. BACKGROUND¹

On the evening of April 4, 2004, a fire broke out in Plaintiff Ferron Thompson's residence. Pl's. First Amended Compl. for Damages ¶ 7 (hereinafter Pl's. Amended Compl.). At the time of the fire, Plaintiff had a homeowner's policy, in full force and effect, with Defendant. Id. ¶ 8. On or about June 15, 2004, Plaintiff submitted a Sworn Proof of Loss for the damages to his residence and personal property resulting from the fire. Id. ¶ 11. David Riley (Riley), a claims representative, handled and investigated Plaintiff's fire loss. Pl's. Resp. to Def's. Statement of Undisputed Mtl. Facts ¶ 44 (hereinafter Pl's. Response to Undisputed Facts). The investigation included the hiring of Jim Swain (Swain), a cause and origin expert; forensic analysis by David Akin (Akin); and interviews of several witnesses, including Plaintiff. Id. ¶¶ 14-22, 34-40. As a result of his investigation, Swain concluded that the fire was incendiary. Riley Dep. at 30. Thereafter, Defendant decided to deny Plaintiff's fire loss claim. Id. at 35. On October 19, 2004, Defendant sent a letter to Plaintiff advising him that Defendant elected to void Plaintiff's insurance policy. Pl's. Amended Compl. ¶ 12.

Plaintiff commenced the present lawsuit on April 1, 2005 in the Circuit Court of Shelby County, Tennessee. Defendants subsequently removed the case to this Court. On February 21, 2007, Plaintiff filed a motion to amend his complaint in order to add TCPA and common law fraud claims (D.E. # 39). Defendant filed its Motion for Partial Summary Judgment on Plaintiff's Claim for Statutory Bad Faith Penalty (D.E. # 52) on March 2, 2007. On March 30, 2007, Defendant filed its provisional Supplemental Motion for Partial Summary Judgment on Plaintiff's Claim for Punitive Damages, Common Law Fraud, and Violation of the Tennessee

¹For the purposes of these motions, the Court accepts these facts as true.

Consumer Protection Act Asserted in the Plaintiff's Proposed First Amended Complaint (D.E. # 67). When Defendant filed its provisional Supplemental Motion, the Court had not yet ruled on Plaintiff's Motion to Amend (D.E. # 69). After the Magistrate Judge's initial denial of Plaintiff's Motion to Amend, the Court granted Plaintiff's motion (D.E. # 85). Plaintiff filed his Amended Complaint on June 25, 2007 (D.E. # 88).

II. LEGAL STANDARD

Summary judgment is proper "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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). Although hearsay evidence may not be considered on a motion for summary judgment, Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp., 176 F.3d 921, 927 (6th Cir. 1999), evidentiary materials presented to avoid summary judgment otherwise need not be in a form that would be admissible at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Thaddeus-X v. Blatter, 175 F.3d 378, 400 (6th Cir. 1999). The evidence and justifiable inferences based on facts must be viewed in a light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Wade v. Knoxville Utilities Bd., 259 F.3d 452, 460 (6th Cir. 2001).

Summary judgment is proper "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, 477 U.S. at 322. The moving party can prove the absence of a genuine issue of material fact by showing that there is a lack of evidence to support the nonmoving party's case. Id. at 325. This may be accomplished by submitting affirmative

evidence negating an essential element of the nonmoving party's claim, or by attacking the nonmoving party's evidence to show why it does not support a judgment for the nonmoving party. 10a Charles A. Wright et al., Federal Practice and Procedure § 2727 (2d ed. 1998).

Once a properly supported motion for summary judgment has been made, the "adverse party may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A genuine issue for trial exists if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). To avoid summary judgment, the nonmoving party "must 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).

III. ANALYSIS

A. STATUTORY BAD FAITH PENALTY

Plaintiff conceded to Defendant's arguments regarding his claim for statutory bad faith. Pl's. Resp. To Def. State Farm's Mot. for Part. Summ. J. For Statutory Bad Faith Penalty at 1. As a result, it is unnecessary for this Court to analyze the parties' claims and arguments regarding the above claim.

Therefore, the Court **GRANTS** Defendant's Motion for Partial Summary Judgment as to Plaintiff's claims for relief under the bad faith penalty.

B. COMMON LAW FRAUD

Plaintiff contends that Defendant's concealment of exonerating material evidence from Defendant's cause and origin expert, Swain, and Plaintiff constitute common law fraud. Pl's Resp. to Def's Mot. for Part. Summ. J. on the Issues of Fraud and Violation of TCPA at 1-2 (hereinafter Pl's Response on Fraud & TCPA); Pl's Amended Compl. ¶ 16. Specifically, Plaintiff contends that Defendant never disclosed certain witness statements that allegedly contradict Swain's conclusion as to the cause and origin of the fire. *Id.* at 2. In contrast, Defendant asserts that Plaintiff has failed to allege any conduct on the part of Defendant that would satisfy the elements of common law fraud. Supplemental Motion for Partial Summary Judgment on Plaintiff's Claim for Punitive Damages, Common Law Fraud, and Violation of the Tennessee Consumer Protection Act Asserted in the Plaintiff's Proposed First Amended Complaint at 3 (hereinafter Def's Supp. Mot. for Part. Summ. J.).

Under Fed. R. Civ. P. 9 and Tenn. R. Civ. P 9.02, a plaintiff must allege the elements of fraud with particularity. In order to maintain a cause of action for common law fraud, a plaintiff must establish that the defendant intentionally misrepresented a material fact or produced a false impression in order to mislead the plaintiff or to obtain an undue advantage over him or her. Brown v. Birman Managed Care, Inc., 42 S.W.3d 62, 66 (Tenn. 2001). In addition, the defendant must have made the misrepresentation with fraudulent intent and the plaintiff must have reasonably relied upon defendant's misrepresentation to his detriment. *Id.* at 66-67.

In this case, Plaintiff's Amended Complaint fails to allege any facts that demonstrate any intentional misrepresentation made by Defendant with fraudulent intent or that Plaintiff detrimentally relied on any alleged misrepresentation. In his Amended Complaint, Plaintiff attempts to support his allegations of fraud by contending that "State Farm's claim representative

failed to provide State Farm's cause and origin expert [Swain] with specific witness statements . . . that directly refute the theory of State Farm's cause and origin expert." PI's. Amended Compl. ¶ 17. Plaintiff does not present any evidence that Defendant's alleged failure to provide these statements was motivated by fraudulent intent or that Plaintiff relied to his detriment. In fact, Plaintiff eventually obtained these witness statements from Rudy Doyle, Fire Investigator for the Shelby County Fire Department. PI's. Response on Fraud & TCPA at 4. There is also evidence that Swain interviewed one of the witnesses, Edward Pendleton, a volunteer firefighter. Mot. for Partial Summ. J. on PI's. Claim for Statutory Bad Faith Penalty, Expert Report of Jim Swain, Ex. F, at 13-15. In addition, Plaintiff argues that Defendant's inability to fully explain the cause and origins of the fire also demonstrate fraud. Id. ¶ 18. A dispute about the basis for a claim denial does not in itself demonstrate fraud. Even assuming that Defendant carried out an imperfect investigation or drew an incorrect conclusion regarding the cause and origin of the fire, this alone does not demonstrate fraudulent intent. Thus, Plaintiff has failed to demonstrate an action for common law fraud against Defendant.

Therefore, the Court GRANTS Defendant's Motion for Partial Summary Judgment as to Plaintiff's claims for common law fraud.

C. TENNESSEE CONSUMER PROTECTION ACT

Plaintiff also alleges Defendant's alleged conduct constitute a violation of the TCPA. PI's. Amended Compl. ¶ 16. The purpose of the TCPA is "[t]o protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts and practices in the conduct of any trade or commerce" Tenn. Code. Ann. § 47-18-102 (2007); see also Stooksbury v. Am. Nat'l Property & Casualty Co., 126 S.W.2d 505, 520 (Tenn. 2004). In order

to state a claim under the TCPA, Plaintiff must demonstrate: “(1) that the defendant engaged in an unfair or deceptive act or practice declared unlawful by the TCPA; and (2) that the defendant’s conduct caused an ‘ascertainable loss of money or property’” Williamson v. Aetna Life Ins. Co., 2005 WL 3087861 at *5 (W.D. Tenn. Nov. 17, 2005) (citations omitted). Furthermore, “[t]he defendant’s conduct need not be willful or even knowing” Id. In this case, Plaintiff has not presented any material evidence that Defendant engaged in deceptive or unfair acts. The parties do not dispute that Defendant investigated Plaintiff’s insurance claim, hired an experienced origin and cause expert, and sent debris samples to an experienced forensic scientist. Pl.’s. Response to Undisputed Facts ¶¶ 13-22. The mere fact that the parties dispute the origin and cause of the fire is not enough to support an action under the TCPA.

Therefore, the Court GRANTS Defendant’s Motion for Partial Summary Judgment as to Plaintiff’s claims under the TCPA.²

D. PUNITIVE DAMAGES

Since the Court granted partial summary judgment to Defendants as to Plaintiff’s claims for relief under the bad faith penalty, the TCPA, and common law fraud, the Court need not address the punitive damages issue as to those claims. In addition, Tennessee does not recognize a common law tort of bad faith. See, e.g., Persian Galleries, Inc. v. Transcontinental Ins. Co., 38 F.3d 253, 258-59 (6 th Cir. 1994); Rice v. Van Wagoner Cos., Inc., 738 F. Supp. 252, 253 (M.D.

²Since the Court has addressed Plaintiff’s TCPA claims on substantive grounds, it need not address the statute of limitations issue raised in Plaintiff’s Motion to Strike Defendant State Farm’s Affirmative Defense of Violation of the Statute of Limitations (D.E. # 107) and Response of Defendant State Farm Fire & Casualty Company to Plaintiff’s Motion to Strike Affirmative Defense of Violation of the Statute of Limitations (D.E. # 110).

Tenn 1990); Chandler v. Prudential Ins. Co., 715 S.W.2d 615, 621 (Tenn. Ct. App. 1983).

Accordingly, punitive damages are unavailable on this basis as well.

Therefore, the Court **GRANTS** Defendant's Motion for Partial Summary Judgment as to Plaintiff's claims for punitive damages as to the above claims.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion for Partial Summary Judgment.

IT IS SO ORDERED this 17th day of September, 2007.

s/Bernice Bouie Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT COURT JUDGE