

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PATRCIA HERNANDEZ,

Plaintiff,

v.

NATIONAL LLOYDS INSURANCE CO.,

Defendant.

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5:15-cv-1008-RP

ORDER

Before the Court is Defendant National Lloyd’s Insurance Company’s Motion for Summary Judgment, filed June 21, 2017. (Dkt. 6). For the reasons that follow, the Court finds that the motion should be granted.

BACKGROUND

Plaintiff Patricia Hernandez is an individual residing in Bexar County, Texas. Defendant National Lloyds Insurance Company is an insurance carrier licensed to conduct business in the State of Texas.

Plaintiff held a Standard Flood Insurance Policy (“SFIP”) issued by Defendant under the National Flood Insurance Program. *See* 42 U.S.C. §4011, *et seq.* On or around May 15, 2015, Plaintiff alleges that heavy rains caused temporary though severe flooding in the area of Plaintiff’s home, which resulted in considerable damage to her home. Plaintiff thereafter submitted a claim to Defendant, to which Defendant assigned an adjuster. Plaintiff claims that Defendant’s adjuster made a number of misrepresentations about her claim and policy, including that the policy did not cover her claim and that the neighboring homes had not experienced any flooding. Defendant thereafter denied Plaintiff’s claim on the basis that the damage to Plaintiff’s home was caused over a

long period of time rather than by the recent flooding as Plaintiff had claimed. Plaintiff asserts that the denial was wrongful and has prevented her from being able to repair her home.

Plaintiff alleges that Defendant acted culpably in many respects in handling her claim. In addition to making various misrepresentations, Plaintiff additionally faults Defendant for failing to conduct a reasonable investigation of her claim, failing to provide a timely acceptance or denial of her claim, and failing to pay the claim despite Defendant's liability being reasonably clear.¹

LEGAL STANDARD

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only "if the movant shows there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). "A fact issue is 'material' if its resolution could affect the outcome of the action." *Poole v. City of Shreveport*, 691 F.3d 624, 627 (5th Cir. 2012).

The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[T]he moving party may [also] meet its burden by simply pointing to an absence of evidence to support the nonmoving party's case." *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 544 (5th Cir. 2005). The burden then shifts to the nonmoving party to establish the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986); *Wise v. E.I. Dupont de Nemours & Co.*, 58 F.3d 193, 195 (5th Cir. 1995). After the non-movant has been given the opportunity to raise a genuine factual issue, if no reasonable juror could find for

¹ While Plaintiff exclusively raises claims under state law and the parties are non-diverse, the federal courts have exclusive jurisdiction over cases involving non-payment of benefits under policies issued pursuant to the National Flood Insurance Act. *See* 42 U.S.C. § 4072; *Jamal v. Travelers Lloyds of Tex. Ins. Co.*, 97 F. Supp. 2d 800 (S.D. Tex. 2000).

the non-movant, summary judgment will be granted. *Miss. River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000). The court will view the summary judgment evidence in the light most favorable to the non-movant. *Rosado v. Deters*, 5 F.3d 119, 123 (5th Cir. 1993).

DISCUSSION

As Defendant points out, state law tort causes of action concerning the handling of claims for benefits under a SFIP are preempted by federal law. *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 389–90 (5th Cir. 2005) (holding claims under Texas Insurance Code and Deceptive Trade Practices Act preempted). Each of Plaintiff's claims concerns Defendant's investigation, handling, and denial of her claim for benefits under her SFIP. The Court will therefore grant summary judgment to Defendant on grounds of preemption as to Plaintiff's claims arising under the Texas Insurance Code, the Texas Deceptive Trade Practices Act, and for breach of the duty of good faith and fair dealing. *See id.*

Remaining to be considered is Plaintiff's breach of contract claim for the non-payment of benefits under her insurance policy. Defendant contends that Plaintiff's claim fails because she did not file a properly documented and supported proof of loss, which is a strict prerequisite to the payment of benefits under a SFIP. The Court agrees. "SFIP policies require that insureds asserting a claim file a [proof of loss] within 60 days, subject to such extensions as FEMA may approve, listing 'the actual cash value . . . of each damaged item of insured property . . .[,] the amount of damage sustained' and 'the amount . . . claimed as due under the policy to cover the loss.'" *Id.* at 387 (quoting 44 C.F.R. §§ 61.13(a), (d), (e) (1993)). "Courts have enforced this requirement strictly." *Id.* "[A]n insured's failure to provide a complete, sworn proof of loss statement, as required by the flood insurance policy, relieves the federal insurer's obligation to pay what otherwise might be a valid claim." *Gonland v. Aetna*, 143 F.3d 951, 954 (5th Cir. 1998).

Defendant has produced the affidavit of Stella Craig, Defendant's Flood Manager, which attests that Plaintiff did not provide Defendant with a signed and sworn proof of loss statement within sixty days of the claimed loss. (Mot. Summ. J. Ex. F, Dkt. 6-6, at 1). Plaintiff's submission of this document was a requirement of her policy and a necessary condition precedent to her receipt of benefits. *See* 44 C.F.R. §§ 61.13(a); *id.* Pt. 61, App. A(1); *Gowland*, 143 F.3d at 954. Because Plaintiff has failed to respond to Defendant's motion for summary judgment, she has necessarily failed to create a fact dispute as to whether she properly submitted her proof of loss. The Court therefore considers Plaintiff's failure to file an adequate proof of loss to be undisputed, *see* Fed. R. Civ. P. 56(e)(2), and finds that Plaintiff was therefore ineligible to receive benefits under her SFIP. *See Gowland*, 143 F.3d at 954. Accordingly, she could have suffered no damages from Defendant's investigation and denial of her claim, and thus her breach of contract claim fails as a matter of law. *See id.*

CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby **GRANTED**. (Dkt. 6). **IT IS THEREFORE ORDERED** that Plaintiff Patricia Hernandez's claims against Defendant National Lloyd's Insurance Company are **DISMISSED WITH PREJUDICE**.

SIGNED on July 19, 2017.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE