NOT DESIGNATED FOR PUBLICATION

JANE M. LEWIS	*	**NO. 2012-CA-1508**
VERSUS	*	
		COURT OF APPEAL
PRESTIGE TITLE INCORPORATED, SOUTHERN MORTGAGE FINANCIAL GROUP, L.L.C. D/B/A FIDELITY LENDING (SOUTHERN), FIRST NATIONAL SECURITY CORPORATION N/K/A LITTON LOAN SERVICING, L.P.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-11065, DIVISION "N-8"
Honorable Ethel Simms Julien, Judge
* * * * * *
Judge Madeleine M. Landrieu
* * * * * *

(Court composed of Judge Terri F. Love, Judge Roland L. Belsome, Judge Madeleine M. Landrieu)

Patrick D. Breeden
P. Michael Breeden
BREEDEN LAW FIRM, LLC
830 Union Street
Suite 300
New Orleans, LA 70112

COUNSEL FOR PLAINTIFF/APPELLANT

Paul A. Eckert
BASTIAN & ASSOCIATES
909 Poydras Street
Suite 3000
New Orleans, LA 70112

COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED
JUNE 5, 2013

The plaintiff, Jane M. Lewis, appeals the district court's granting of summary judgment in favor of defendants, Audubon Insurance Company and Illinois National Insurance Company [collectively referred to as "Audubon"]. For the reasons that follow, we affirm the judgment.

FACTS AND PROCEEDINGS BELOW

Ms. Lewis initially sued Prestige Title Incorporated ["Prestige"], Southern Mortgage Financial Group, L.L.C. d/b/a Fidelity Lending ["Southern"], and First national Security Corporation n/k/a Litton Loan Servicing, L.L.C. ["Litton"] alleging that she suffered damages on account of an error made by one or more of the defendants in the refinancing of her home, located at 1514 Frenchman Street. The $74,700.00 loan used for the refinancing closed on May 5, 2000. At that time, the mortgage on the plaintiff's nearby rental property (1508-1510 Frenchmen Street) was mistakenly paid off instead of the first mortgage on her home. According to Ms. Lewis's allegations, Prestige closed the loan intended to refinance the mortgage on her home; Southern was one of the lenders; and Litton

serviced the mortgage on her rental property. She alleged that Prestige and/or Southern negligently requested payoff information from Litton rather than from CITI Financial, which serviced the mortgage on her rental property, and then negligently paid off the wrong loan. Ms. Lewis further alleged that the defendants' attempt to cure the error by means of an Act of Correction erroneously placed another mortgage on her rental property, resulting in each property having two mortgages. Thereafter, the holder of the new (refinanced) loan on Ms. Lewis's home instituted foreclosure proceedings via executory process. Ms. Lewis alleged that as a result of the defendants' negligence, she incurred financial loss, adverse credit, mental anguish, pain and suffering, and legal fees.

In a Third Supplemental and Amending Petition, Ms. Lewis added Audubon as a defendant, alleging that Audubon was the insurer of Southern and was therefore liable *in solido* with Southern for its alleged negligence.

On March 14, 2012, Audubon filed a motion for summary judgment asserting that the policy it issued to Southern did not provide coverage for the acts alleged by Ms. Lewis. The matter was heard on May 4, 2012. By written judgment rendered July 23, 2012, the trial court granted Audubon's motion and certified the judgment as final for purposes of immediate appeal pursuant to La. C.C.P. art. 1915 (B). This appeal followed.

STANDARD OF REVIEW

We review the district court's decision granting summary judgment *de novo*, using the same standard applied by the trial court in deciding the motion for

summary judgment. *Independent Fire Ins. Co. v. Sunbeam Corp*., 99- 2181, 99-2257, p. 7 (La. 2/29/00), 755 So.2d 226, 230. Under this standard, summary judgment shall be granted 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 material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B); *Lingoni v. Hibernia Nat. Bank*, 2009–737, p. 4 (La. App. 4 Cir. 3/3/10), 33 So.3d 372, 375.

DISCUSSION

In support of its motion for summary judgment, Audubon submitted the affidavit of Dale Mascarenas, a casualty claims specialist for Chartis Claims, Inc., of which Audubon is a member company. Mr. Mascarenas averred that his diligent search of Audubon's records did not uncover any business liability policy issued by Audubon to Southern for the relevant time period. He further averred that Audubon had issued three identical commercial liability policies to Southern: Policy number CDO 704834, in effect from 9/22/1999 to 9/22/2000, Policy number CDO 753595, in effect from 9/22/ 2000 to 9/22/2001, and policy number CDO 753699, in effect form 9/22/2001 to 9/22/2002. Mr. Mascarenas averred that none of these commercial liability policies provided coverage for "acts of negligence associated with the enterprise operated by [the] insured." A copy of each policy was submitted in support of the summary judgment. Each policy provides that the insurer will pay "those sums the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage'…only

if [such] is caused by an 'occurrence' that takes place in the covered territory…" "Occurrence" is defined in the policies as "an accident, including continuous or repeated exposure to the same general harmful conditions."

In opposition to Audubon's motion for summary judgment, Ms. Lewis attached to her memorandum the following documents: (1) an authorization form permitting Brian Pellissier, an officer of Southern, to obtain certain documents pertaining to the policies in question; and (2) an application for insurance signed by Mr. Pellissier from Zurich America Insurance Company that refers to Audubon as the prior carrier. Without citing any authority, the plaintiff argues on appeal, as she did in the trial court, that the policies in question fail to define "accident," which term is broad enough to encompass the alleged negligence of Audubon in paying off the wrong mortgage.

The interpretation of an insurance policy generally involves a legal question which can be resolved properly in the framework of a motion for summary judgment. *Bonin v. Westport Ins. Corp.,* 2005–0886, p. 4 (La. 5/17/06), 930 So.2d 906, 910. In the present case, the affidavit of Mr. Mascarenas and attached insurance policies sufficiently demonstrate the plaintiff's lack of proof for her assertion that Audubon provided coverage for the allegedly negligent actions of Southern. Pursuant to La. C.C.P. art. 966 (C) (2), if (as in this case) the movant will not bear the burden of proof at trial, the movant's burden on the motion is "to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim.… Thereafter, if the adverse party

fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact."

Neither of the documents attached to the plaintiff's opposition memorandum refutes the assertions of Mr. Mascarenas in his affidavit. As this court has held, "[o]nce the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of material factual dispute mandates the granting of the motion." *Am. Auto Brokers, Inc. v. Canal Indem. Co.,* 2011-0599, p. 2 (La. App. 4 Cir. 11/2/11), 80 So.3d 14, 16.

Moreover, Mr. Lewis has not cited any language in the insurance policy that provides coverage for his claims, nor has he cited any law or jurisprudence to show that the acts complained of constitute an "occurrence" under the policy. The policy is not a business liability or an errors and omissions policy, which ordinarily would provide coverage for mistakes made by the insured in the conducting of its business; it is a commercial general liability policy. The policy covers "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage'…." "Bodily injury" is defined in the policy as "bodily injury, sickness or disease sustained by a person, including death…." Property damage is defined as "physical injury to tangible property, including all resulting loss of use of that property" or "loss of use of tangible property that is not physically injured." Significantly, the policy excludes coverage for "personal injury," which is defined as "injury, other than 'bodily injury', arising out of" certain offenses, including malicious prosecution and wrongful eviction. On its

face, the policy does not provide coverage for the injuries alleged by Mr. Lewis in his lawsuit. As Ms. Lewis failed to submit any evidence to refute the plain meaning of the policy language and/or affidavit of Mr. Mascarenas, the trial court correctly found that Audubon had established the absence of a genuine issue of material fact and its entitlement to judgment as a matter of law. Therefore, the motion for summary judgment was properly granted.

CONCLUSION

Accordingly, for the reasons stated, we affirm the judgment of the district court.

AFFIRMED