


Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, no objections were filed. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 23) as the findings of the Court. Defendants' motion for summary judgment (Docket No. 15) is **GRANTED**, and this case is **DISMISSED** with prejudice.

So **ORDERED** and **SIGNED** this 17th day of **February, 2025**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

RICHARD WALTERS

§

§

vs.

§

CIVIL CASE NO. 6:24-cv-53-JDK

§

STATE FARM LLOYDS

§

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Defendant’s Motion for Summary Judgment (ECF 15). The presiding judge referred the motion for proposed findings of fact and recommendations for disposition in accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72 (ECF 20). Having considered the briefing and evidence presented, including Defendant’s supplement and second supplement to the motion for summary judgment, it is recommended that Defendant’s motion for summary judgment be **GRANTED**.

BACKGROUND

Plaintiff Richard Walters initiated this lawsuit on January 8, 2024 in Shelby County, Texas, concerning a property insurance dispute. Plaintiff’s original petition states that Plaintiff is the owner of insurance policy 72B2J0209, issued by Defendant State Farm Lloyds, for property located in Joaquin, Texas. Plaintiff asserts that the property was damaged in a windstorm on or about April 12, 2022.¹ The damage included damage from a tree falling on the house. The petition alleges that Plaintiff’s public adjuster determined that the actual damage to the property totaled \$136,996.34, but Defendant only paid \$17,333.50.² Plaintiff asserts state law claims for breach of

¹ Notice of Removal, ECF 1-3, at *2 (Exhibit 3).

² *Id.* at *3.

contract, Texas Insurance Code violations, breach of the duty of good faith and fair dealing, violations of the Texas Deceptive Trade Practices Act, and common law fraud.

Defendant removed the case to federal court asserting diversity jurisdiction. Defendant filed a motion for summary judgment arguing that the lawsuit should be dismissed because Plaintiff no longer owns the property. The summary judgment evidence submitted with the motion primarily concerns the foreclosure on the home. Defendant's second supplement to the motion includes a declaration with attached documentation concerning the processing of Plaintiff's claim. The basic background facts asserted in the motion are generally in agreement with Plaintiff's petition. Defendant states that Plaintiff's home was damaged when a tree fell on the roof on or about April 12, 2022, and Defendant made payments of \$17,333.50 and \$1,227.50.³

Defendant's summary judgment evidence consists of: (A) Substitute Trustee's Notice dated June 5, 2024; (B) Substitute Trustee's Deed dated July 2, 2024; (C) Texas Home Equity Security Instrument; (D) Unsworn Declaration of Randy McLeroy; and (E) Unsworn Declaration of Paul Pulido. This evidence shows that the home at issue in this lawsuit was set for a foreclosure sale.⁴ The foreclosure sale took place on July 2, 2024 and the home was sold to the highest bidder, Plaintiff's lender, Farmer's State Bank, for \$19,710.01.⁵ Defendant submits that Plaintiff has not amended his pleadings to reflect the change in ownership and he has not designated any expert witnesses. Defendant further argues that the deed of trust in Exhibit C transfers any interest Plaintiff may have had in insurance proceeds and/or insurance claims to the lender following the foreclosure sale.

³ Motion for Summary Judgment, ECF 15, at *2. Plaintiff's petition, however, only recites the payment of \$17,333.50.

⁴ *Id.*, ECF 15-1 (Exhibit A – Substitute Trustee's Notice).

⁵ *Id.*, ECF 15-2 (Exhibit B – Substitute Trustee's Deed).

At the outset of his response, Plaintiff waives and agrees to the dismissal of his Texas DTPA and common law fraud claims. He continues to pursue his claims for breach of contract, violations of the Texas Insurance Code, and breach of the duty of good faith and fair dealing. Plaintiff did not submit any summary judgment evidence or object to any of Defendant's summary judgment evidence.⁶ Plaintiff does not dispute that he no longer owns the home or that he does not have any expert witnesses. He did not respond to the assertion that the deed of trust transfers any interest he may have had in insurance proceeds and/or insurance claims to the lender upon foreclosure. Plaintiff submits that he has alleged facts to support his claims and they should be decided by a jury.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when the pleadings and evidence show that “there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). The moving party has the burden of showing there is no genuine dispute as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548 (1986). A genuine dispute of material fact exists “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, 248, 106 S.Ct. 2505 (1986). A “material fact” is one that might affect the outcome of the suit under governing law. *Id.* Issues of material fact are “genuine” only if they require resolution by a trier of fact and if the evidence is such that a reasonable jury could return a verdict in favor of the non-moving party. *Id.* When ruling on a motion for summary judgment, the Court must make all inferences from the factual record in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The moving party

⁶ It is noted that Plaintiff attached exhibits to the response. However, the exhibits are printouts of cases, not summary judgment evidence.

may meet its burden by pointing to the absence of evidence supporting any claim. *Celotex Corp.*, 477 U.S. at 325.

If the movant meets its burden, the nonmovant must go beyond the pleadings and set forth specific facts in the record sufficient to support his claim. *Anderson*, 477 U.S. at 257. The nonmovant's burden may not be satisfied by argument, conclusory allegations, unsubstantiated assertions, metaphysical doubt as to the factors, or a mere scintilla of evidence. *Matsushita*, 475 U.S. at 585; *Wallace v. Tex. Tech. Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). The nonmovant must submit competent summary judgment evidence sufficient to defeat a properly supported motion for summary judgment. *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). "The nonmovant is also required to articulate the precise manner in which the submitted or identified evidence supports his or her claim." *Smith v. United States*, 392 F.3d 621, 625 (5th Cir. 2004).

Summary judgment is inappropriate if the evidence before the court, viewed as a whole, could lead to different factual findings and conclusions. *Honore v. Douglas*, 833 F.2d 565 (5th Cir. 1987). The district court must look to the full record, including the pleadings, affidavits, and depositions. *Williams v. Adams*, 836 F.2d 958, 961 (5th Cir. 1988). Under this standard, fact questions are considered with deference to the nonmovant. *Reid v. State Farm Mutl. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986). The evidence of the nonmovant is to be believed and all inferences are to be drawn in his favor. *Anderson*, 477 U.S. at 255, 106 S.Ct. at 2513. The Court resolves factual controversies for purposes of summary judgment in favor of the nonmoving party, but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. *Little*, 37 F.3d at 1075. The Court does not, however, in the absence of any

proof, assume that the nonmoving party could or would prove the necessary facts. *Wallace*, 80 F.3d at 1048 (citing *Little*, 37 F.3d at 1075).

An issue is genuine if the evidence supporting its resolution in favor of the party opposing summary judgment, together with any inference in such party's favor that the evidence allows, would be sufficient to support a verdict in favor of the party. *St. Amant v. Benoit*, 806 F.2d 1294, 1297 (5th Cir. 1987). A material fact is one that might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248.

APPLICABLE LAW

Texas substantive law applies to this diversity action. *See Holt v. State Farm Fire & Cas. Co.*, 627 F.3d 188, 191 (5th Cir. 2010). Insurance contracts are interpreted by the same rules of construction that are applicable to other contracts. *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994). Under Texas law, a plaintiff asserting the breach of an insurance contract must prove: “(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach.” *Certain Underwriters at Lloyd’s of London v. Lowen Valley View, L.L.C.*, 892 F.3d 167, 170 (5th Cir. 2018) (quoting *Smith Int’l, Inc. v. Egle Grp., LLC*, 490 F.3d 380, 387 (5th Cir. 2007)) (internal quotation marks omitted). The burden lies with the insured to prove that a loss is covered under the terms of the policy at issue. *Fiess v. State Farm Lloyds*, 392 F.3d 802, 807 (5th Cir. 2004).

ANALYSIS

There is no dispute that ownership of the insured property transferred to the lender following a foreclosure sale. Pursuant to the express terms of the security instrument executed by Plaintiff on July 12, 2011, upon foreclosure, Plaintiff, as Borrower, “assigns to Lender (a) Borrower’s rights

to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property."⁷ In his response, Plaintiff argues that he has an "insurable interest" in the property. None of the cases cited by Plaintiff concern insurance proceeds following a foreclosure sale and assignment of any interest in insurance proceeds pursuant to a deed of trust. Plaintiff's response wholly fails to address the assignment of his rights to the lender upon foreclosure pursuant to the terms of the security instrument.

The assignment of Plaintiff's rights under all insurance policies covering the property divests him of any interest in the insurance proceeds. *See, e.g., Peacock Hospitality, Inc. v. Patel*, 2015 WL 4478037, at *2 (Tex.App.—San Ant. July 22, 2015); *Graham v. Ditech Financial, LLC*, 2021 WL 1251876, at *4 (Tex.App.—Tyler March 31, 2021) (construing the same deed of trust language to require an assignment of rights to any insurance proceeds to the lender in conjunction with a foreclosure sale). As a result, he does not maintain a breach of contract claim against the insurance company. *Peacock Hospitality, Inc.*, 2015 WL 4478037, at *2. Plaintiff has not shown that he retained any contractual rights to insurance proceeds following the assignment that would support his breach of contract claim. As articulated above, Plaintiff's response to the motion for summary judgment must go beyond the pleadings and set forth specific facts in the record sufficient to support his claim. *Anderson*, 477 U.S. at 257. He cannot merely rely on argument, conclusory allegations, or unsubstantiated assertions, but must come forward with competent summary judgment evidence to defeat summary judgment. *Matsushita*, 475 U.S. at 585; *Ragas*,

⁷ Supplement to Defendant's Motion for Summary Judgment, ECF 16-1 (Exhibit C), at *5.

136 F.3d at 458. Plaintiff has not identified a genuine issue of material fact precluding summary judgment.

In addition, Plaintiff has not shown that there is a genuine issue of material fact precluding summary judgment on his remaining extra-contractual claims. These claims derive from Plaintiff's breach of contract claim asserting that Defendant did not comply with the terms of the policy. As stated, Defendant is entitled to summary judgment on Plaintiff's breach of contract claim. "An insured cannot recover any damages based on an insurer's statutory violation if the insured had no right to receive benefits under the policy and sustained no injury independent of a right to benefits." *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 499 (Tex. 2018). Plaintiff's response to the motion for summary judgment does not identify any injury independent of his alleged right to benefits. Plaintiff states that he "has presented solid evidence to support each and all"⁸ of the elements of these extra-contractual claims, yet he did not submit any summary judgment evidence. Plaintiff's conclusory arguments do not preclude summary judgment.

RECOMMENDATION

It is hereby **RECOMMENDED** that Defendant's Motion for Summary Judgment (ECF 15) be **GRANTED** and that the complaint dismissed with prejudice.

Within fourteen days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b). Written objections shall not exceed eight pages. Local Rule CV-72(c).

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after service shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations

⁸ Plaintiff's Response to Defendant's Motion for Summary Judgment, ECF 18, at *11.

and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Assn.*, 79 F.3d 1415, 1430 (5th Cir.1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 28th day of January, 2025.



K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE