

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 23-CP-4600392

Ina Shtukar,
Plaintiff,

vs.

Erie Insurance Exchange, aka Erie
Insurance Group, Erie Insurance
Company, and Erie Insurance.
Defendant.

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)
) **ORDER GRANTING**
) **DEFENDANTS MOTION**
) **TO DISMISS & DENYING**
) **PLAINTIFF'S MOTION FOR**
) **DEFAULT JUDGMENT**
)

THESE MOTION came for hearing before the Honorable Judge Daniel Hall at the July 31, 2024, session of the York County Court of Common Pleas for the Sixteenth Judicial Circuit. Elizabeth Martineau of Martineau King PLLC appeared on behalf of the Defendant in this matter, Plaintiff Ina Shtukar appeared representing herself *pro se*. Both parties wished to be heard on pending motions before the court, the Plaintiff on her Motion for Entry of Default and the Defendant on its Motion to Dismiss. Having heard from both parties, this Court now makes the following findings of fact:

1. On February 7, 2023, Plaintiff Ina Shtukar filed a summons and complaint in this matter in the York County Court of Common Pleas *pro se* (“the Filed Summons and Complaint”). The only listed defendant in the case caption on the Filed Summons and Complaint was “Erie Insurance Group,” an entity that does not exist.

2. The Filed Summons and Complaint alleged that Plaintiff purchased an auto policy of insurance on September 7, 2017 with Erie on September 7, 2017, at a

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time when she resided in North Carolina.

3. The Filed Summons and Complaint alleges that in July of 2020, Plaintiff signed a contract to purchase a house in Rock Hill, SC.

4. The Filed Summons and Complaint further alleges that Plaintiff contacted her Erie agent on or about August 2, 2020, and was told that she needed to procure a new auto policy since she was moving to South Carolina and Erie did not write policies in South Carolina. Plaintiff's Filed Summons and Complaint alleges that Plaintiff told her agent that she was going to procure an auto policy in SC with an effective date of September 6, 2020, which she did.

5. Plaintiff alleges that on September 30, 2020, she was contacted by her agent who wanted to see if she obtained insurance in South Carolina. The agent indicated in an email that "We still have active auto and renter's insurance policies for you. If you have gotten other coverage, if you can provide proof of when the SC policies started, we can backdate the cancellation of the NC ones."

6. Plaintiff's Filed Summons and Complaint alleges that Plaintiff immediately emailed the agent back with SC proof of insurance that indicated Plaintiff did obtain a policy of insurance with Travelers effective September 6, 2020.

7. Plaintiff's Filed Summons and Complaint alleges that the agent responded and indicated to Plaintiff that "[w]e will get your car removed from the North Carolina policy effective 9/6/2020. Since you and [Bunn] were sharing the auto policy, we are going to transfer the interest from you as the first named insured to Michael."

8. Plaintiff's Filed Summons and Complaint further states that "[t]his is how Plaintiff learned for the first time that Bunn was added to her auto policy even though Plaintiff expressly declined Becky's inquiry."

9. Plaintiff's Filed Summons and Complaint alleges claims and damages arising out of the agent and or Erie's acts and omissions stated above.

10. Plaintiff's Filed Summons and Complaint alleges causes of action against Erie for (1) Bad Faith; (2) Unfair and Deceptive Trade Practices; (3) Injunction; and (4) Punitive Damages.

11. Plaintiff never served the Summons or the Filed Summons and Complaint.

12. Instead, Plaintiff caused to be mailed to both the South Carolina Department of Insurance and Erie Insurance Exchange documents in the form of a summons and complaint, that were never filed with the clerk. These documents listed a case caption that was different from the Filed Summons and Complaint. Instead of listing "Erie Insurance Group," the documents sent to the South Carolina Department of Insurance and Erie Insurance Exchange identified the defendant in the case caption as "Erie Insurance Exchange." The documents Plaintiff caused to be mailed to the South Carolina Department of Insurance and Erie Insurance Exchange were different from the Filed Summons and Complaint.

13. Rule 3 of the South Carolina Rules of Civil Procedure, Commencement of Action, states:

A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the

statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

14. Plaintiff never offered an explanation to the Court that explained the discrepancies between her Filed Summons and Complaint and the different documents she sent to the S.C. Department of Insurance and Erie Insurance Exchange.

15. .On or about February 28, 2023, attorneys for Erie requested an extension of time to respond to Plaintiff's Filed Summons and Complaint, out to April 28, 2023. In that email exchange, the attorney for Defendant Erie Insurance Group specifically asked if Plaintiff could still consent to the 4/28/23 deadline to respond to the Field Complaint to which Plaintiff responded, "That will be fine – I consent to 4/28."

16. On April 28, 2023, the attorney for Defendant Erie Insurance Group timely filed a motion to dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted.

17. On May 31, 2023, Plaintiff filed a motion for entry of default based in part on her grant of an extension to April 28. 2023, stating that she could not grant such an extension.

18. Both motions first came to be heard before this court on November 14, 2023. This court continued the hearing on these motions in order to give the Plaintiff time to amend her original complaint and for the parties to explore a possible settlement.

19. On January 5, 2024, Plaintiff filed with the clerk an amended summons and complaint (“Amended Summons and Complaint”) naming Ere Insurance Exchange as a defendant for the first time. The Amended Complaint alleges causes of action for bad faith, unfair and deceptive trade practices, conversion, wrongful appropriation of identity, for an injunction and for punitive damages.

20. Per the Plaintiff’s own Filed Summons and Complaint and Amended Complaint, she knew or should have known about the existence of each and every of the above mentioned claims on September 30, 2020.

21. The statute of limitations period for bad faith claims is three years (S.C. Code Ann. §15-3-530(8) and begins running from the date Plaintiff reasonably ought to have discover the claim (*Martin v. Companion Healthcare Corp.*, 593 S.E.2d 624. 627 (S.C. Ct. App. 2004).

22. The statute of limitations period for unfair and deceptive trade practices is three years (S.C. Code Ann. §39-5-150) and begins running from the date the unlawful conduct is discovered.

23. The statute of limitations period for conversion is three years (S.C. Code Ann. §§ 15-3-530(4) and 15-3-530(5)) and begins running from when the injured party knew or by the exercise of reasonable diligence should have known that it has a cause of action.

24. The statute of limitations period for misappropriation of identity is three years (S.C. Code Ann. § 1-52(5)) and begins running from the date the misappropriation was discovered or in the exercise of reasonable diligence should

have been discovered by the Plaintiff.

25. That the statute of limitations for all of Plaintiff's claims in this action began running on September 30, 2020, based solely on the language in Plaintiff's Filed Summons and Complaint and Amended Complaint.

26. That the statute of limitations for all of Plaintiff's claims ran on September 30, 2023.

27. Pursuant to Rule 3, of the South Carolina Rules of Civil Procedure, Plaintiff failed to commence her action as required by this rule; she failed to serve the summons and complaint upon the defendant within the applicable statute of limitations.

28. Default judgment cannot be granted on a claim that was never properly served or commenced under Rule 3(a), and this court finds no basis for changing the law to allow this to occur.

29. Defendant's motion to dismiss is proper and should be allowed.

NOW, THEREFOR IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants motion to dismiss is granted;
2. Plaintiff's motion for entry of default is denied; and
3. This matter is dismissed with prejudice.

SO ORDERED. This the _____ day of August, 2024.

Honorable Judge Daniel Hall



York Common Pleas

Case Caption: Ina Shtukar VS Erie Insurance Group

Case Number: 2023CP4600392

Type: Order/Other

So Ordered

s/Daniel D. Hall 2753