

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER)

Civil Action No. 2016-CP-43-00414

Charlie L. Jones,)

Plaintiff,)

v.)

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS TAPCO
UNDERWRITERS, INC. AND
CRAWFORD & COMPANY**

Certain Interested Underwriters at Lloyd's,)

London Subscribing to Policy Number)

TMASHO144229; Tapco Underwriters,)

Inc.; Creech, Roddey & Watson; and)

Crawford & Company,)

Defendants.)

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SC Court of Appeals

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OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a Motion for Summary Judgment, pursuant to Rule 56(c), SCRCP, filed by Defendants Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number TMASHO144229 ("Underwriters"), Tapco Underwriters, Inc. ("Tapco"), and Crawford & Company ("Crawford") (collectively, "Defendants"). Defendants requested that this Court grant them summary judgment as to all causes of action set forth in Plaintiff's Complaint on the grounds that there exists no genuine issue of material fact and Defendants are entitled to judgment as a matter of law. This Court held a hearing on the Defendants' motion on June 5, 2017. Plaintiff appeared *pro se*, John R. Moorman, Esquire of Bryan Law Firm appeared on behalf of Defendant Creech, Roddey & Watson¹ and Kirby D. Shealy III, Esquire of Adams and Reese LLP appeared on behalf of Defendants.

UNDISPUTED FACTS

The following facts are not in dispute. At all times relevant to this action, Plaintiff resided at 901 Manning Street, Sumter, South Carolina (the "Property"). On July 7, 2015, Plaintiff

¹ Defendant Creech, Roddey & Watson filed its own motion for summary judgment, which has been granted by way of separate order.

obtained a policy of homeowners' insurance, Policy Number TMASHO144229 (the "Policy"), through an insurance agency, Defendant Creech, Roddey & Watson ("Creech") for the Property. The Policy was issued by Underwriters through its American underwriting agent, Tapco.

On October 12, 2015, Plaintiff filed a claim against the Policy with Creech, claiming that the Property sustained water damage during a storm on October 5, 2015 (the "Claim"). Crawford adjusted the Claim on Underwriters' behalf and Underwriters bears the risk associated with the Policy. The claim was denied.

Plaintiff's Complaint alleges causes of action for breach of contract and bad faith refusal to pay a first-party insurance claim. The Court finds that Defendants Tapco and Crawford are entitled to judgment as a matter of law as to both causes of action for the reasons that follow.²

DISCUSSION

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). 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 any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere

² The Court has taken the Motion under advisement as to Defendant Underwriters and will dispose of its request for summary judgment by separate order.

allegations or denials contained in the pleadings.” *Singleton*, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, “[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 198, 659 S.E.2d at 203. “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). “Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Id.*

To prove a claim for breach of contract, a plaintiff must show evidence in support of the following elements: (1) the existence of a contract; (2) defendant's breach; and (3) damages to plaintiff caused by such breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 686 S.E.2d 200 (Ct. App. 2009). Additionally, to prove a claim of bad faith refusal to pay first-party insurance benefits, a plaintiff must adduce evidence of the following elements: (1) existence of mutually binding contract of insurance between plaintiff and defendant; (2) refusal by insurer to pay benefits due under contract; (3) insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on contract; and (4) damage to insured. *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996). The duty of good faith and fair dealing does not extend to one who is not a party to the insurance contract. *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618 586 S.E.2d 586, 588 (2003).

Tapco is a managing general insurance agency. Tapco was the policy servicer for the Policy. It simply issued the Policy on Underwriters' behalf. There is no contract between Tapco and Plaintiff and Plaintiff did not contract with or engage Tapco personally to perform the risk assessment of the Property for coverage evaluation purposes.

Crawford is an adjusting firm. At Tapco's request, Crawford was directed to the subject property to conduct a loss assessment and inspection in order to evaluate the Claim. There is no written contract between Crawford and Plaintiff and Plaintiff did not contract with or engage Crawford to perform the loss assessment on the Property.

None of Tapco's or Crawford's actions give rise to a contractual relationship with Plaintiff. Because both of Plaintiff's causes of action against Crawford and Tapco are predicated upon the existence of a contract as between Plaintiff and these defendants, and because no such contract exists, Defendants Crawford and Tapco are entitled to judgment as a matter of law.

It is therefore ORDERED that Defendants Crawford and Tapco are hereby DISMISSED WITH PREJUDICE from the above-captioned lawsuit.

IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Presiding Judge

June _____, 2017
Sumter, South Carolina



Sumter Common Pleas

Case Caption: Charlie L Jones VS Lloyds Of London , defendant, et al
Case Number: 2016CP4300414
Type: Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144