

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 South Carolina Farm Bureau Ins. Co.,)
)
 Plaintiff,)
)
 vs.)
)
 Marion L. Driggers, Shiralee Driggers,)
 Tammy D. Floyd, Arthur McKenzie, a/k/a)
 Arther McKenzie, The Travelers Home) and
 Marine Insurance Company,)
 The United States of America acting by) and
 through its agency, The Internal)
 Revenue Service and The South Carolina) Tax
 Commission)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2014-CP-44-00132

ORDER GRANTING DEFENDANT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY’S MOTION FOR SUMMARY JUDGMENT AS TO THE CAUSE OF ACTION FOR EQUITABLE INDEMNITY OF PLAINTIFF



This matter came before the Court on Defendant The Travelers Home and Marine Insurance Company’s (“Travelers”) Motion for Summary Judgment as to Plaintiff’s claim for equitable indemnity. For the reasons set forth below, Travelers’s motion is **GRANTED**.

FACTUAL BACKGROUND

This declaratory judgment action arises out of two insurance policies issued by two different insurers to different insureds on the same house located in Williamsburg County:

- (1) Policy number 984761288 633 1 –Travelers issued this homeowner’s policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 Bypass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010.
- (2) Policy number FI 0401219 – Plaintiff South Carolina Farm Bureau Insurance Company (“Farm Bureau”) issued this dwelling fire policy on the same property to Defendant Marion L. Driggers for the period from May 24, 2009 to May 24, 2010.

On or about April 25, 1997, Defendant Tammy Floyd and Lisa Gamble entered into a

Contract for Sale and Purchase of the property. On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to Defendant McKenzie.

On or about November 26, 2009, the insured home was damaged by fire, and Defendant McKenzie made a claim under his Travelers policy. The adjustment of Defendant McKenzie's losses was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. Travelers settled Defendant McKenzie's claims for \$232,073.45, of which the sum of \$116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of \$115,140.40. Travelers moved to deposit that amount with the Court pursuant to its interpleader cross-claims. This Court granted that motion under a separate order.

In its Amended Complaint, the only truly direct cause of action against Travelers is for equitable indemnity. On April 11, 2019, Travelers moved for summary judgment on this claim.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "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 moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The purpose of summary judgment is to expedite disposition of cases not requiring the services of the factfinder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 705 (1976).

DISCUSSION

Under South Carolina law, "[i]ndemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*,

307 S.C. 128, 414 S.E.2d 118 (1992). “A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party.” *Id.*

Farm Bureau’s own Complaint establishes that there was no contractual right of indemnification between Travelers and Farm Bureau or the Driggers. Specifically, paragraph 11 of the Complaint states, “Defendant McKenzie did insure the property, insuring his ownership interest in the dwelling along with its contents. However, he did so **without noting the interest of Defendants Driggers** per the [contract of sale]. At the time of the said fire loss, the subject property was insured by Defendant McKenzie via a policy with Defendant Travelers.”

In the absence of a contractual right of indemnification, courts have required a “special relationship” between the parties. *See Fountain v. Fred’s Inc.*, 429 S.C. 533, 839 S.E.2d 475 (Ct. App. 2020) (“there must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing.”). In South Carolina, a special relationship has been found to exist for the purposes of equitable indemnification between a contractor and subcontractor, a purchaser of a defective vehicle and a seller, a landlord and a general contractor who damaged a tenant's property, a home seller and an exterminator who were both sued by a home buyer for falsely representing that the purchased home was free of termites and moisture, and two former property owners who were both sued by a subsequent property owner for damage to the property. *See Town of Winnsboro v. Weideman-Singleton, Inc.*, 303 S.C. 52, 57, 398 S.E.2d 500, 503 (Ct. App. 1990); *Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 301 S.E.2d 552 (1983); *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445 S.E.2d 446 (1994); *Griffin v. Van Norman*, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971); *McCoy v. Greenwave Enterprises, Inc.*, 408 S.C. 355, 357, 759 S.E.2d 136, 137 (2014).

In this case, Farm Bureau has failed to show any special relationship with Travelers. Farm

Bureau's Complaint alleges in paragraph fifteen (15) that its own insured, Marion Driggers, did not make any claim under the Farm Bureau policy, nor notify Farm Bureau of the fire, until almost three years from the date of the fire loss. Farm Bureau's basis for the equitable indemnification cause of action against Travelers is set forth in Paragraphs 31 and 32 of the Complaint. Farm Bureau alleges that the "Driggers made a timely claim with Travelers under McKenzie's policy and intended to look to Travelers to pay benefits due for the fire loss in this matter, but Travelers denied his claim. Further, Travelers located Driggers and inquired as to his interest in the property. At that time, it either learned or should have learned of Farm Bureau's coverage and it either failed to notify Farm Bureau of this loss or of its involvement in this loss or it negligently failed to inquire of Driggers as to other insurance coverage which it should have done and had a duty to do in good faith compliance with its professional obligations, and to determine all issues as to coverage so that it could properly evaluate the claims and interests." Thus, Farm Bureau's equitable indemnification claim rests on Travelers's (1) failure to pay Driggers's claim to the Travelers funds, (2) failure to discover the existence of the Farm Bureau policy insuring the property, and (3) failure to notify Farm Bureau of the fire when Farm Bureau's own insured had not notified Farm Bureau or filed a claim.

Farm Bureau has presented no evidence in the form of deposition testimony, affidavit, or otherwise, to establish that Defendant Marion Driggers did in fact make a claim under the Travelers policy, or that Travelers knew of Driggers' alleged interest in the real property (as he is not the owner of record), or that Travelers knew that Driggers had insured the property under a Farm Bureau policy.¹ However, even assuming that each of these allegations is true, none establishes a basis for a claim of equitable indemnification. As Farm Bureau's own Memorandum Opposing Or Responding To Motions By Travelers and Marion L. Driggers (filed July 6, 2020) notes, an insurance policy is a

¹ Counsel for Farm Bureau argues that discovery is ongoing. The court is unpersuaded. This case has been pending since 2014. Plaintiff has had more than ample opportunity to conduct any discovery it deemed necessary.

personal contract between the insurance company and the insured. The insurance carrier's obligations are to the insured and do not pass with the property, unless assigned with the consent of the insurer, or unless "by extraordinary or special and express stipulation of the parties it is made to run with the subject matter." *Crook v. Hartford Ins. Co.*, 175 S.C. 42, 178 S.E. 254 (1935).

Travelers had no obligation to anyone except its own insured, Arthur McKenzie. Any duty McKenzie had to protect Floyd's or the Driggers' interests pursuant to the contract of sale did not implicate Travelers, which was not a party to the contract of sale. Moreover, there is no authority for the proposition that an insurance company has an obligation to investigate the existence of any other policies covering the insured property, or to notify another insurer of a potential claim where that company's own insured has decided not to file a claim. Ultimately, the only relationship between Travelers and Farm Bureau was that they happened to insure the same piece of property. With no special relationship between Farm Bureau and Travelers, Farm Bureau's claim for equitable indemnification fails.

CONCLUSION

For the forgoing reasons, Travelers's motion for summary judgment is hereby **GRANTED** and Farm Bureau's claims for equitable indemnification against Travelers are hereby dismissed with prejudice. As all allegations against Travelers have now been resolved, upon payment of the sum of One Hundred Fifteen Thousand, One Hundred Forty and 40/100 (\$115,140.40) Dollars pursuant to this Court's orders of January 5, 2021 and March 4, 2021, Travelers shall be **DISMISSED** from this action with prejudice.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762