STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	C/A NO.: 2014-CP-44-00132
	)	
South Carolina Farm Bureau Ins. Co.,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING CROSS-DEFENDANT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**
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.	)	

This matter came before the Court on Cross-Defendant The Travelers Home and Marine Insurance Company's ("Travelers") Motion for Summary Judgment. 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 By-pass 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 their Answer to the within action, Mr. and Mrs. Driggers and Tammy D. Floyd asserted cross-claims against Travelers alleging that:

(1) Travelers and Mr. McKenzie "have conspired with one another with the object . . . of avoiding the payment by the Travelers of any sums toward the lawful claims of Mr. and Mrs. Driggers and Tammy D. Floyd;

(2) Travelers' "delay in investigating, processing, and paying the McKenzie claim has damaged [them] in that they have not yet been paid the value of their claim; and that they have had to claim against their own policy of insurance, which should have been secondary; and in that they have had to defend this action"; and

(3) Travelers has "acted in legal bad faith toward the rights [of] these defendants and have damaged these defendants."

Travelers's Answer to the cross-claims denies these allegations and includes several affirmative defenses, including that the cross-claimants are without standing to prosecute their cross-claims against Travelers and that the cross-claimants are strangers to the subject insurance contract with no rights thereunder.

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), SCRCP. 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

"Standing to sue is a fundamental requirement in instituting an action." *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). It is a part of the concept of justiciability that concerns whether a party may make a legal claim or argument. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App.2008). The general rule in South Carolina is that for parties to have standing, they must have (1) a personal stake in the subject matter of a lawsuit and (2) be a real party in interest. *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007). "A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994).

Beyond the general rule are three elements that must be met: (1) the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of - the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely

speculative, that the injury will be redressed by a favorable decision. *Smiley v. S.C. Dep't of Health and Env'tl Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

Travelers cites *Park v. Safeco* to support its position that the Cross-Claimants are strangers to its policy and therefore do not have standing to assert any of the cross-claims asserted against it. *See Park v. Safeco Insurance Company of America,* 251 S.C. 410, 162 S.E.2d 709 (1968). In *Park v. Safeco*, Mr. Park, who alleged that he had been injured in a motor vehicle accident in which a Mr. McCall was at fault, brought a declaratory judgment action against McCall's automobile liability carrier, Safeco Insurance Company ("Safeco"). Mr. Park also named his own uninsured motorist carrier, Southern Home Insurance Company ("Southern Home"), as a defendant. He sought a judicial determination as to whether Safeco had successfully denied liability coverage to McCall, among other things. He had not brought suit against McCall. The Supreme Court affirmed the lower court's having sustained Safeco's demurrer. One of the grounds was that, because Mr. Park had not procured a judgment against McCall, and was a stranger to the Safeco insurance contract, he lacked standing to seek declaratory judgment as to that policy:

> Counsel for plaintiff argues, with some appeal, that an injured party should have as much right to ask the court to determine the validity of a tortfeasor's liability insurance policy as the insurer or the insured. We think the fallacy of this argument lies in the fact that the injured person is not a party to the contract and has, under the facts of this case, no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against McCall.

Id. at 415, 162 S.E.2d at 711.

Travelers contends that *Park v. Safeco* is controlling, as the Cross-Claimants are not

parties to the insurance policy issued by Travelers and therefore do not have primary standing to litigate their allegations against Travelers.

Cross-Claimants contend that, as a required loss payee and the actual owners of the insured property, they have rights under Travelers's policy. Specifically, Cross-Claimants allege that they have, at a minimum, an equitable lien on the subject property that Travelers is legally obligated to pay.

The Cross-Claimants do not allege that they have any contractual relationship with Travelers. Rather, they admit the allegations in paragraph ten (10) of the Complaint that Defendant McKenzie occupied the house in question pursuant to a "rent to own" agreement, according to which he was to have insured the property and listed Cross-Claimants as loss payees, insureds or additional insureds. Cross-Claimants were not listed as loss payees, insureds or additional insureds on the Travelers policy. Apparently concerned that was the case, Cross-Claimants purchased their own policy insuring their own interests in the property.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for civil conspiracy.**

Cross-Claimants' allegations of civil conspiracy fail as a matter of law. A civil conspiracy is "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage." *Lee v. Chesterfield Gen'l Hosp, Inc.*, 289 S.C. 6, 10-11, 344 S.E.2d 379, 381-82 (Ct. App. 1986), citing *Charles v. Texas Co. (Charles I)*, 192 S.C. 82, 5 S.E.2d 464 (1939). It cannot be contended that Travelers's adjustment and resolution of the claim of its insured, Defendant McKenzie, pursuant to their contract injured Cross-Claimants – let alone that it was done for that purpose. Cross-Claimants are strangers to Travelers contract, a fact of which they were very well aware as evidenced by their procurement of an insurance contract of their own with Plaintiff Farm Bureau.

Even if Travelers had breached a contract with Cross-Claimants, it would not amount to civil conspiracy. "A mere breach of contract is not a civil conspiracy; the damages for breach of contract cannot satisfy the requirement of special damages." HUBBARD AND FELIX, THE SOUTH CAROLINA LAW OF TORTS, 2d ed. p. 387, citing *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989).

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for breach of contract.**

Next, Cross-Claimants allege that Travelers's purported delay in adjusting its named insured's claim has damaged them. The fallacy of this allegation is that Travelers's duties with regard to the adjustment of the claim were owed to its name insured – not to Cross-Claimants.

Similar to the situation presented in *Park v. Safeco*, Cross-Claimants are not parties to the Travelers insurance contract and have no standing to complain about how the claim of the named insured, Defendant McKenzie, was resolved. After all, when they became concerned that their alleged interests had not been protected under Defendant McKenzie's policy, they could have taken steps then to enforce the provision in the buy and sell agreement that purportedly required that their interests be protected under the policy. Instead, they chose to purchase a policy of their own to protect their interests.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for bad faith.**

Finally, Cross-Claimants cannot assert a bad faith claim against Travelers because they are not parties to the Travelers insurance contract. "The elements of an action for bad faith refusal to pay benefits under an insurance contract include: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable

action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured." *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (quoting *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992).

CONCLUSION

Ultimately, Cross-Claimants are strangers to the insurance contract between Travelers and Defendant McKenzie. As such, Cross-Claimants' claims are without legal foundation, as a result of which Travelers is entitled to summary judgment.

For the forgoing reasons, Travelers's motion for summary judgment is hereby **GRANTED** and all the cross-claims against Travelers are hereby dismissed 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