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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

LATONYA FINLEY,
Plaintiff and Appellant,

v.

STATE FARM FIRE & CASUALTY
INSURANCE COMPANY,
Defendant and Respondent.

A133327

(Alameda County
Super. Ct. No. RG-10518983)

Latonya Finley sued State Farm Fire & Casualty Insurance Company¹ (State Farm) after it denied her claim under a renter's insurance policy. State Farm moved for, and the trial court granted, summary judgment on the ground Finley made misrepresentations both during the application process and claim investigation that voided her policy. Finley has appealed. We affirm the judgment on the ground there is no triable issue of material fact and State Farm is entitled to judgment as a matter of law.

FACTUAL AND PROCEDURAL BACKGROUND

Finley applied for renter's insurance from State Farm on February 3, 2010. She sought coverage for personal property located at 1429 16th Street in Oakland, an apartment she told State Farm's agent she was renting. She had previously owned the apartment, but had lost it to foreclosure, information she did not impart during the application process. She was also asked if she had suffered any losses, insured or not, during the preceding five years. She answered, no. When asked if she conducted a child

¹ The proper defendant is actually State Farm General Insurance Company.

care business at the apartment, she also said no. State Farm then accepted Finley's application and issued her an insurance policy for the apartment's contents, with a \$50,000 limit.

Two months later, on or about April 9, 2010, Finley made a claim under the policy for \$45,891 in losses due to fire damage.

During the claims process, Finley made the following representations to State Farm:

- She was paying \$1,500 a month in cash to rent the apartment;
- Her rental agreement, dating from 2008, was with Prime Property Management;
- The only prior insurance claim she had made was for a 2006 loss related to premises on Bryant Street;
- She was a childcare provider for a few children and ran that business from the 16th Street premises.

Not only were several of these representations inconsistent with those Finley had made in connection with her application, but State Farm's investigation into the claim raised numerous red flags.

For example, State Farm's investigator visited the address where Finley supposedly paid rent, and found only vacant property and no leasing office. Nonetheless, the investigator managed to locate the owner of Prime Property Management, Sedalia Benton. According to Benton, although she knew Finley, Benton had never collected any rent from her and had never managed the apartment she claimed to rent. Finley, in turn, never produced a lease or receipts confirming payment of rent.

State Farm also discovered Finley had made another insurance claim—in August 2009 (only six months before applying to State Farm), with a different insurance company, Mercury, for vandalism to the 16th Street premises. Finley filed suit against Mercury when the claim was not resolved to her satisfaction. Had State Farm been apprised of this claimed loss at the outset, it would have rejected Finley's application.

Finley's insurance policy stated it would be "void" if she "intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether

before or after a loss.” On this ground, and others, State Farm denied Finley’s claim in a letter dated June 7, 2010.

Finley responded with this lawsuit accusing State Farm of breach of contract, negligence, and breach of the implied covenant of good faith and fair dealing. After successfully demurring to Finley’s negligence claim, State Farm answered the remaining causes of action on October 8, 2010. It generally denied Finley’s allegations and asserted various affirmative defenses, including defenses based on her misrepresentations and concealment of material information.

On June 13, 2011, State Farm moved for summary judgment, asserting Finley’s misrepresentations voided the renter’s insurance policy and absolved it of liability. State Farm submitted declarations from its agents, investigators, and from the owner of Prime Property Management. Finley filed opposition on August 25, 2011. Noting State Farm’s “position” that she had “engage[d] in concealment or fraud,” Finley’s primary response was that “State Farm never indicated with specificity what concealment or fraud [she] committed.” She submitted no declaration of her own denying the misrepresentations and no evidence showing she ever rented the insured premises.

Following a hearing on September 1, 2011, the trial court issued a written order granting summary judgment and, on September 15, 2011, entered judgment in favor of State Farm. The judgment also awarded State Farm \$3,720 of then-unpaid discovery sanctions, as well as costs of suit. After the trial court denied Finley’s motion for reconsideration, she filed a timely notice of appeal.²

DISCUSSION

“ ‘The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite

² On April 23, 2012, Finley requested this court take judicial notice of the trial court’s tentative ruling on a discovery motion and of a report showing a mediation session in Finley’s suit against Mercury. Neither of these documents are relevant to our disposition of Finley’s appeal, and it appears neither was before the trial court. We therefore deny the request. (*Eden Township Healthcare Dist. v. Sutter Health* (2011) 202 Cal.App.4th 208, 225, fn. 14.)

their allegations, trial is in fact necessary to resolve their dispute.’ ” (*Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 72.) A motion for summary judgment should be granted if the submitted papers show there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. A defendant meets the burden of showing a cause of action has no merit if he or she shows that one or more elements of the cause of action cannot be established or that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of material fact exists. (*Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 229.)

On appeal, we review the grant of summary judgment under the same standard. (*Haney v. Aramark Uniform Services, Inc.* (2004) 121 Cal.App.4th 623, 631, fn. 1.) “ ‘[W]e review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained.’ ” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334) When there is no dispute as to the relevant facts, we exercise our independent judgment as to their legal effect. (*Acceptance Ins. Co. v. Syufy Enterprises* (1999) 69 Cal.App.4th 321, 325)” (*Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 739-740.)

When an insurance policy contains a concealment and fraud provision such as the one in Finley’s policy, and when the undisputed facts show an insured violated that provision, the insurer may indeed void the policy and defeat, on summary judgment, a cause of action for breach of contract seeking payment of a claim. (*TIG Ins. Co. of Michigan v. Homestore, Inc.* (2006) 137 Cal.App.4th 749, 752, 763 [affirming summary judgment]; *Cummings v. Fire Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1414-1417, 1419 (*Cummings*) [same]; cf. *Mitchell v. United National Ins. Co.* (2005) 127 Cal.App.4th 457, 469, 473 (*Mitchell*) [noting additional, statutory basis under Insurance Code sections 331 and 359 permitting rescission of an insurance policy based on an insured’s negligent or inadvertent failure to disclose a material fact during the application process].)

Here, the undisputed evidence shows Finley made material misrepresentations to State Farm when she applied for insurance and throughout the claims process. When she applied, she misrepresented that she was renting the premises, that she conducted no business on them, and that she had made no recent insurance claims. During the claims process, she admitted conducting a business on the premises, but reiterated and embellished her other misrepresentations.

These misrepresentations, which go to the core of whether to issue a *renter's* policy, were “reasonably relevant to the insured’s investigation” and of “importance” to “a reasonable insurer.” (*Cummings, supra*, 202 Cal.App.3d at p. 1417; see also *Mitchell, supra*, 127 Cal.App.4th at p. 475, italics omitted [“ ‘ “that the insurer has demanded answers to specific questions in an application for insurance is in itself usually sufficient to establish materiality as a matter of law” ’ ”].) Indeed, had it known about her claims history, State Farm would have refused to issue her a policy on the basis of her failure to disclose the 2009 Mercury claim, alone. (See *Mitchell, supra*, at p. 474 [“[t]he test for materiality is whether the information would have caused the underwriter to reject the application, charge a higher premium, or amend the policy terms, had the underwriter known the true facts”].)

At best, Finley suggests there are tangential disputes—all of which are irrelevant to State Farm’s summary judgment motion. For example, she points to circumstantial evidence that she *resided* at the apartment, but never contests she obtained renter’s insurance for an apartment *she did not rent*. She also points to documents, excluded by the trial court, showing her supposed landlord, Prime Property Management, had been reprimanded by the California Department of Real Estate. This reprimand, however, is irrelevant to whether she ever rented from the company and whether she misrepresented to State Farm that she did.

Finley similarly protests that while she was asked during the application process about claims made during the preceding five years, State Farm’s “practice” was to pay attention only to claims made during the preceding three years. However, her 2009 claim to Mercury was well within the shorter three-year window, and State Farm’s question

about claims within the preceding five years clearly called for disclosure of that 2009 claim.³

There is also no merit to Finley's argument that State Farm's evidence violated provisions of the Evidence Code. Based on the record before us, it appears Finley never raised any of these objections in the trial court and has therefore waived them. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 282-283.) In any event, State Farm's evidence entitling it to summary judgment did not arise from a confidential mediation (Evid. Code, § 1119), was not "prejudicial" (*id.*, § 352), and does implicate the rule that the existence of insurance is inadmissible to prove wrongdoing (*id.*, § 1155).

The undisputed facts thus show State Farm is entitled to void Finley's policy and Finley's breach of contract claim therefore fails. Her claim for breach of the implied covenant of good faith and fair dealing likewise fails because no benefits are due under the void policy and State Farm reasonably withheld claim payments there under. (See *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1151 ["there are at least two separate requirements to establish breach of the implied covenant: (1) benefits due under the policy must have been withheld; and (2) the reason for withholding benefits must have been unreasonable or without proper cause"].)

³ The evidence of State Farm's policy of being concerned only with claims during the preceding three years was a company activity log (her Exhibit No. 6). The trial court sustained State Farm's objections to this exhibit on relevancy grounds since it has no bearing on what Finley said in connection with her application and, in any event, the 2009 claim is within the asserted three-year window. Finley did not present any evidence of her own raising a triable issue as to whether she made misrepresentations about her prior claims history. When a party "purport[s] to dispute . . . statements of material facts without reference to any evidence," that party's approach is "totally deficient." (*California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22 ["Without a separate statement of undisputed facts with references to supporting evidence in the form of affidavits or declarations, it is impossible for the [opposing party] to demonstrate the existence of disputed facts.']; see also *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.) Although Finley represented herself in the trial court and continues to do so on appeal, she is bound by these fundamental principles applicable to summary judgment motions. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [a party may choose to act as her own attorney, but she must still follow correct rules of procedure].)

DISPOSITION

The judgment is affirmed. State Farm is awarded its costs on appeal.

Banke, J.

We concur:

Marchiano, P. J.

Margulies, J.