IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

WILHELMINA RICHELLE WILLIAMS,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. CPU6-10-002038
	)	
NATIONWIDE MUTUAL FIRE INSURANCE CO. AND MUNCIE INSURANCE AND FINANCIAL SERVICES, INC.,	)	
	)	
Defendants,	)	

Submitted February 13, 2013
Decided March 14, 2013

Benjamin A. Schwartz, Esquire, counsel for Plaintiff
Miranda Clifton, Esquire, counsel for Defendants

DECISION AFTER TRIAL

In this breach of contract action the Court is called upon to determine whether Defendants are liable to Plaintiff for damages sustained to her vehicle on August 6, 2009; three days after the cancellation of her vehicle insurance policy on August 3, 2010. On February 13, 2013, the Court held a bench trial in this matter and reserved decision. This is the Court's decision following a review of the testimony and evidence presented at trial.

FACTUAL BACKGROUND

On February 24, 2009, Wilhelmina Richelle Williams (hereinafter "Plaintiff") purchased an automobile insurance policy for her 2004 GMC Envoy from Nationwide Mutual Fire Insurance Co. (hereinafter "Nationwide") through its registered agent Muncie Insurance and Financial Service, Inc. (hereinafter "Muncie" and collectively referred to as "Defendants").

Per the insurance policy, Plaintiff was required to pay a down payment of $191.41 followed by five (5) monthly installments of $186.52 for a total of $1,074.00.[1] Plaintiff paid the required down payment on February 24, 2009.[2] On March 24, 2009, Plaintiff paid the entire first monthly installment.[3] On April 20, 2009, Plaintiff paid $100.00.[4] On May 8, 2012, an installment bill was issued for $155.17.[5] Two days later, on May 10, 2009, her policy was canceled for non-payment.[6] On May 14, 2009, Plaintiff tendered a payment of $127.87 even though she only owed $96.52 at that time.[7] She testified that $127.87 was what she was instructed to pay by Muncie's representative.

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[1] See Defendants' Exhibit 1.
[2] Id.
[3] Id.
[4] Id.
[5] Id.
[6] Id.
[7] Id.

On May 30, 2009, Plaintiff's policy was again canceled for non-payment.[8] Then, on June 15, 2009, Plaintiff paid $136.00 and was charged a $15.00 rewrite fee by Muncie.[9] She testified that this was how much she was instructed to pay by Muncie's representative. On this same date, Plaintiff's policy was reinstated.[10] Shortly thereafter, she received a bill from Nationwide for $53.48.[11] On July 5, 2009, Plaintiff's policy was canceled for non-payment.[12] On July 14, 2009, Plaintiff paid $127.99 and was charged a $15.00 rewrite fee by Muncie.[13] At trial, she again stated that this was what she was instructed to pay by Muncie's representative. According to the notations of that payment created by Muncie's representative, there remained a balance due on the account of $93.61.[14] On July 21, 2009, Nationwide sent Plaintiff her Delaware Insurance Identification Card with an effective date of July 14, 2009, a bill for $57.49 and notice that her policy would be canceled on August 3, 2009 if she failed to pay.[15]

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[8] Id.
[9] Id.
[10] Id.
[11] Id.
[12] Id.
[13] Id.
[14] See Defendants' Exhibit 5.
[15] See Defendants' Exhibit 3.

On August 3, 2009, Plaintiff's policy was, indeed, canceled for non-payment.[16] On August 6, 2009, Plaintiff was involved in a single-vehicle accident that resulted in total destruction of her 2004 GMC Envoy. On November 11, 2009, Pennsylvania Department of Motor Vehicle reported the vehicle repossessed with an odometer reading of 96415 miles.[17]

Accordingly, Plaintiff seeks damages in the amount of $17,850.13 for the Defendants' breach of contract, plus costs.

DISCUSSION

To prevail on a breach of contract claim, a plaintiff must prove three (3) elements by a preponderance of the evidence:

(1) the existence of a contract, whether express or implied;

(2) the breach of an obligation imposed by the contract; and

(3) resultant damage to the plaintiff.[18]

In the case *sub judice,* there is no dispute that the parties entered into an automobile insurance contract. Thus, the issues presented to this Court are whether Defendants satisfactorily performed their duties under the contract, and if Defendants breached their duties, whether the Plaintiff is owed any damages.

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[16] See Defendants' Exhibit 2.

[17] See Plaintiff's Exhibit 4.

[18] *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

At trial, Plaintiff advanced the argument that Defendants were estopped from disclaiming coverage because Muncie repeatedly accepted partial payments and charged Plaintiff over-payments and under-payments. The doctrine of equitable estoppel applies when a party intentionally, or unintentionally, induces another to detrimentally rely on the party's conduct.[19] "To establish an estoppel, it must appear that the party claiming the estoppel lacked knowledge and the means of knowledge of the truth of the facts in question, that he [or she] relied on the conduct of the party against whom the estoppel is claimed, and that he [or she] suffered a prejudicial change of position in consequence thereof."[20] "The party seeking the application of estoppel has the burden of proof."[21] "In addition, estoppel must be established by clear and convincing evidence."[22] "Unless only one inference can be drawn from the evidence, the existence of estoppel is a question to be determined by the trier of fact."[23]

In total, Plaintiff paid $869.79 toward her insurance policy for the six (6) month policy period, including the down payment. Muncie collected each payment as the registered agent for Nationwide and charged at a minimum $30.00 in additional fees. Plaintiff tendered two (2) full payments, one (1) over-

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[19] *Burge v. Fid. Bond & Mortg. Co.*, 648 A.2d 414, 420 (Del. 1994).
[20] *Mizel v. Xenonics, Inc.*, 2007 WL 4662113 (Del. Super. Oct. 25, 2007).
[21] Id.
[22] Id.
[23] Id.

payment and three (3) under-payments. Plaintiff represented that she made each payment in cash and in the amount directed by Muncie's representative.

Muncie's representative, Vice President Randie Williams (hereinafter "Williams") who testified at trial, could neither confirm nor deny Plaintiff's representations regarding payment, including how much Plaintiff was told to pay each time she went to Muncie's office. However, Williams did confirm that Muncie would accept partial payments from clients. Williams also did not know whether reinstatement fees or any other additional fees were charged to Plaintiff's account. However, Williams testified that Muncie does charge various fees, including reinstatement fees, and the amount charged will differ from account to account.

The record demonstrates that the issues with Plaintiff's account began after April 2009, when Muncie accepted a partial-payment of $100.00. Afterwards, it is clear to this Court that each party believed that Plaintiff owed a different amount until the accident. For example, on July 14, 2009, after Plaintiff made a payment of $127.99, Muncie's account notations show a balance of $93.61 still due. Conversely, as per Nationwide's notification sent to Plaintiff on July 21, 2009, Plaintiff only owed $57.49. During this time, Plaintiff believed that her bill was paid in full because she paid the amount she was told to by Muncie's representative on July 14, 2009.

All that is clear and, left undisputed at trial, is that Plaintiff faithfully went to Muncie's office every month to pay her insurance premium. Each time, she spoke to an agent or representative who told her how much was due on her account and she paid the amount that she was told to pay. In short, the Court is convinced that Plaintiff reasonably relied on Muncie's representatives to provide her with accurate information regarding the amount due on her account. Although Plaintiff should have known the amount due each month at the beginning of the contract period, after Muncie accepted multiple partial payments and over-payments, Plaintiff had no way of knowing how much she owed after April 2009. Therefore, she reasonably relied on Muncie's representations regarding payment and suffered a prejudicial change of position in consequence.

Since the Court has determined that Defendants are estopped from disclaiming coverage, the Court must now determine the damages to which Plaintiff is entitled. As stated in the insurance policy, "ACUTAL CASH VALUE: The limit of our coverage is the actual cash value of your auto or its damaged parts at the time of loss. To determine actual cash value, we will consider: 1. Fair market value; 2. Age; and 3. Condition of the property; at the time of loss."[24]

[24] See Plaintiff's Exhibit 3.

Plaintiff's expert, Lee F. Slaughter, Jr., testified at trial to his opinion regarding the value of a 2004 GMC Envoy. Although Plaintiff's expert did not personally inspect Plaintiff's vehicle, he nevertheless opined that a similar vehicle in clean condition would retail for approximately $10,175.00 and a similar vehicle in average condition would retail for approximately $6,200.00.

Defendants' did not provide their own expert to dispute the findings and opinions of Plaintiff's expert. Nevertheless, the Court notes that "[t]he burden of proof is, of course, on the Plaintiff to prove both the misrepresentations alleged and the damages." [25] Here, the Court does not find that Plaintiff proved that the vehicle was in clean condition. The vehicle had an odometer reading of approximately 96500 miles at the time of the accident.[26] Her expert did not conduct a vehicle inspection either before or after the accident and no other convincing evidence of the vehicle's condition was presented by either party at trial.

Therefore, the Court is compelled to find that Plaintiff's vehicle was in average condition and, accordingly award Plaintiff $6,200.00. Plaintiff's award shall be lowered to reflect the $500.00 deductible which must be paid by the insured as per the agreement.[27] Therefore, Plaintiff's award is $5,700.00.

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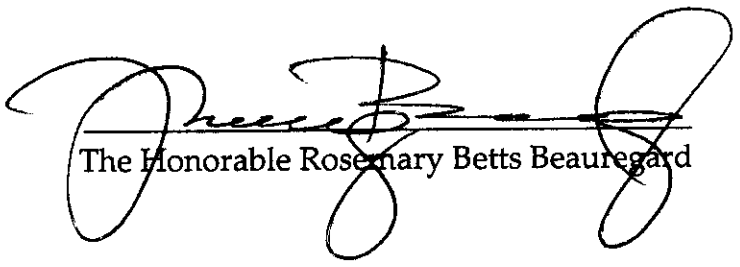
[25] *Lips v. Worth*, 95C-04-038-WTQ, 1997 WL 719097 (Del. Super. Oct. 6, 1997).
[26] See Plaintiff's Exhibit 4.
[27] See Plaintiff's Exhibit 3; See also, Defendant's Exhibit 1.

CONCLUSION

As to the Plaintiff's claim for breach of contract, the Court finds that the Defendants are liable to the Plaintiff in the amount of $5,700.00.

Therefore, the Court enters judgment in favor of the Plaintiff, Wilhelmina Richelle Williams, for $5,700.00 against the Defendants, with costs.

IT IS SO ORDERED, this 14th day of March 2013.



The Honorable Rosemary Betts Beauregard