

**ENTERED**

November 08, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DINA CASTRO,

Plaintiff,

VS.

AMGUARD INSURANCE COMPANY,

Defendant.

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CIVIL ACTION NO. 4:22-CV-00291

**ORDER**

Before the Court is Defendant AmGuard Insurance Company’s Motion for Summary Judgment. Doc. #11. Plaintiff Dina Castro did not file a response and the deadline to do so has passed. Having considered Defendant’s arguments and the applicable legal authorities, the Court grants Defendant’s Motion for Summary Judgment.

**I. Background**

Plaintiff Dina Castro (“Plaintiff”) owns property located at 710 Banton Street in Channelview, Texas (the “Property”) that was insured by Defendant AmGuard Insurance Company (“Defendant”). Doc. #11 at 2. Defendant issued Plaintiff a homeowner’s insurance policy from June 20, 2020, through June 20, 2021 (the “Policy”). Doc. #11, Ex. 1 at 3. Plaintiff alleges that during Winter Storm Uri in February 2021, the freezing temperatures caused pipes in her home to burst, resulting in water damage to the interior of the Property. *See* Doc. #1, Ex. 4 at 3. Plaintiff notified Defendant about the damages, and on March 6, 2021, an adjuster for Defendant inspected the Property. Doc. #11 at 2. Although the inspection confirmed that there was water damage in the living room, kitchen, and master bedroom of the Property due to busted pipes, the

adjuster estimated that the damages totaled \$1,671.85. Doc. #11, Ex. 2 at 9. The deductible for the Policy was \$2,500. *Id.* As such, on March 23, 2021, Defendant notified Plaintiff via a letter that it was unable to issue any payment because the damages to the Property were less than the Policy's deductible. Doc. #11, Ex. 4.

On November 23, 2021, Plaintiff sued Defendant in the Harris County Civil Court at Law No. 1, claiming that Defendant breached the parties' contract, violated the Texas Insurance Code, and breached its duty of good faith and fair dealing when it refused to pay her the full amount that she was entitled under the Policy. Doc. #1, Ex. 4. Defendant removed the case to this Court on January 28, 2022 (Doc. #1), and now moves for summary judgment as to all of Plaintiff's claims (Doc. #11).

## **II. Legal Standard: Federal Rule of Civil Procedure 56**

Summary judgment is appropriate if the moving party "shows that there is no genuine dispute as to any material fact" and that it "is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "The movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact." *Lincoln Gen. Ins. Co. v. Reyna*, 401 F.3d 347, 349 (5th Cir. 2005). "Once the movant does so, the burden shifts to the nonmovant to establish an issue of fact that warrants trial. All reasonable inferences must be viewed in the light most favorable to the party opposing summary judgment, and any doubt must be resolved in favor of the non-moving party." *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 302 (5th Cir. 2020) (cleaned up). However, "[s]ummary judgment may not be thwarted by conclusional allegations, unsupported assertions, or presentation of only a scintilla of evidence." *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012).

### **III. Analysis**

#### **a. Breach of Contract Claim**

Defendant argues that Plaintiff's breach of contract claim fails as a matter of law she did not put forth any evidence to rebut Defendant's determination that the cost of the damages to the Property were below the Policy's deductible. Doc. #11 at 7. To survive summary judgment under Texas law, "the insured must come forward with facts that raise a question of material fact as to the existence of a covered claim. Then, and only then, will the burden re-shift to the insurer to prove an exclusion or provide another reason for not paying." *Royal Surplus Lines Ins. Co. v. Brownsville Indep. Sch. Dist.*, 404 F. Supp. 2d 942, 949 (S.D. Tex. 2005). Because Plaintiff did not file a response, she failed to meet her burden as the insured to provide the Court with facts and evidence to prove that the damages to the Property were covered by the Policy. As it stands, the evidence before the Court shows that the damages to the Property amounted to \$1,671.85, less than the Policy's \$2,500 deductible. Without any evidence to the contrary, there is no genuine dispute of material fact. Accordingly, Defendant is entitled to summary judgment as to Plaintiff's breach of contract claim.

#### **b. Texas Insurance Code Claims**

Next, Defendant contends that because Plaintiff's breach of contract claim fails, so too must her claims for extra-contractual liability pursuant to the Texas Insurance Code. *See* Doc. #11 at 7. Under Texas law, "an insured cannot recover *any* damages based on an insurer's statutory violation if the insured had no right to receive benefits under the policy and sustained no injury independent of a right to benefits." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018) (emphasis in original). First, because Plaintiff failed to prove that the damages to the Property were covered by the Policy, she did not have a right to receive any benefits under the

Policy. Further, Plaintiff's statutory claims are based on the unpaid coverage benefits alleged in her breach of contract claim, rather than an independent injury. *See* Doc. #1, Ex. 4 at 6–7 (stating that the Texas Insurance Code claims are based on Defendant's "refusal to pay" the benefits owed under the Policy). Plaintiff does not allege any injury independent of her rights to benefits, therefore her claims under the Texas Insurance Code fail.

**c. Breach of Duty of Good Faith and Fair Dealing Claim**

Finally, Defendant contends it is entitled to summary judgment as to Plaintiff's breach of duty of good faith and fair dealing claim because a "genuine and reasonable dispute exists as to whether a covered cause of loss occurred." Doc. #11 at 8. To bring a common law claim for breach of the duty of good faith and fair dealing, a plaintiff must prove "(1) that the insurer either denied or delayed payment and (2) that the insurer should have known that it was reasonably clear that the claim was covered." *Royal Surplus Lines Ins. Co.*, 404 F. Supp. 2d at 950. If an insurance company investigates and has evidence showing that an insurance claim may be invalid, then a bad faith action fails. *Id.* at 951.

It is undisputed that Defendant denied payment to Plaintiff, so only the second prong is at issue. Plaintiff fails to point to any evidence showing that Defendant should have known that it was reasonably clear that her claims were covered by the Policy. As previously noted, Defendant investigated the damages to the Property and reasonably determined based on its adjuster's estimate that the Policy's deductible was not met. *Id.* Plaintiff does not present any evidence to the contrary. As such, Plaintiff's breach of good faith and fair dealing claim fails, and Defendant is entitled to summary judgment as to this claim.

**IV. Conclusion**

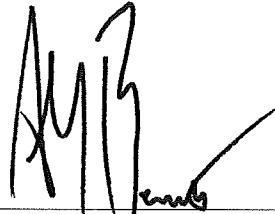
In conclusion, Plaintiff's breach of contract claim fails as a matter of law because she did

not put forth any evidence showing that her claim was covered by the Policy. Without an independent injury, Plaintiff's statutory claims under the Texas Insurance Code based on the same alleged breach of contract must fail as well. Finally, Plaintiff's common law breach of good faith and fair dealing claim fails because she does not present any evidence showing that Defendant should have known that her claims were covered by the Policy. Accordingly, Defendant's Motion for Summary Judgment (Doc. #11) is hereby GRANTED, and this case is DISMISSED WITH PREJUDICE.

It is so ORDERED.

**NOV 08 2023**

Date



The Honorable Alfred H. Bennett  
United States District Judge