

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

LINDA SIMS

PLAINTIFF

v.

CASE NO. 4:23-CV-00813-LPR

**STATE FARM FIRE AND CASUALTY
COMPANY**

DEFENDANT

**DEFENDANT STATE FARM FIRE AND CASUALTY
COMPANY'S MOTION FOR SUMMARY JUDGMENT**

Comes Defendant, State Farm Fire and Casualty Company ("State Farm"), by and through its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., and for its Motion for Summary Judgment, states:

1. On April 21, 2023, Plaintiff filed her Complaint against State Farm alleging breach of contract and bad faith.
2. In response, State Farm filed its Partial Answer and a Partial Motion to Dismiss – Bad Faith and this Court dismissed the bad faith claim on November 2, 2023.
3. Discovery has concluded in this matter and Plaintiff has not revealed any evidence to support her remaining breach of contract claim.
4. Specifically, Plaintiff cannot show that State Farm had a contractual duty to pay for her January 12, 2020, loss because the Policy expressly excluded losses resulting from corroded and rusted pipes and from pipes which leak from under the surface of the ground and into the building structure.
5. Plaintiff has provided no evidence that this type of loss should be covered, and her own contractor confirmed the pipe failed because it was old, rusted and oxidized. Exhibit C, Deposition of Alejandro Lopez Botello, 8:1-4; 17:24-18:12; 19:14-21.

6. Further, State Farm's expert has also confirmed that the pipe failed because it was improperly installed and that it failed months before the water level rose enough to penetrate the slab foundation and enter Plaintiff's home.

7. State Farm has now provided proof that it had no duty or obligation under the Policy to pay for Plaintiff's loss because it is expressly excluded. Further, Plaintiff is unable to meet proof with proof at this point.

8. Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986)

9. The following exhibits are attached to this Motion:

- a. Exhibit A, Certified Copy of Policy at Issue
- b. Exhibit B, Deposition of Linda Sims (relevant excerpts as cited in brief)
- c. Exhibit C, Deposition of Alejandro Lopez Botello (relevant excerpts as cited in brief)
- d. Exhibit D, Aaron Probst Expert Report

10. Defendant is simultaneously filing on this same date its brief in support of this motion and its statement of material facts, which Defendant adopts and incorporates by reference as if stated word for word herein.

WHEREFORE, Defendant, State Farm, respectfully requests that this Court grant its Motion for Summary Judgment, that Plaintiff's Complaint be dismissed with prejudice, and for all other proper relief.

Respectfully submitted,

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GATES & WOODYARD, P.L.L.C.**
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Emily M. Runyon (Ark Bar No. 2005172)
Jacob A. McElroy (Ark Bar No. 2017242)

CERTIFICATE OF SERVICE

I, Emily Runyon, hereby certify that on November 12, 2024, I filed the foregoing with the Clerk of Court and shall send notification of such filing to the following:

Austin Porter Jr.
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Emily M. Runyon