

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

APRIL MUNOZ,)	
)	
Plaintiff,)	
)	
v.)	
)	
SAFECO INSURANCE COMPANY)	
OF INDIANA, et al.,)	
)	
Defendants.)	Civil Action No. 6:15-CV-012-C

ORDER

On this day the Court considered:

- (1) Defendants Safeco Insurance Company of Indiana and Christian Tenorio’s (Safeco) Motion for Summary Judgment, filed January 28, 2016;
- (2) Plaintiff April Munoz’s Response to Defendants’ Motion for Summary Judgment, filed February 18, 2016;
- (3) Defendants’ Reply to Plaintiff’s Response to Motion for Summary Judgment, filed March 3, 2016; and
- (4) Defendants’ Objections to Plaintiff’s Summary Judgment Evidence, filed March 3, 2016.¹

Having considered the foregoing, the Court is of the opinion that Defendants’ motion should be **GRANTED**.

¹The Court notes that it was not necessary to consider the Declaration of Kerry Freeman in ruling on this motion for summary judgment. Accordingly, the Court did not consider that evidence or the objections to that evidence raised by Defendants.

I. BACKGROUND

Plaintiff, April Munoz, owns a home in San Angelo, Texas, that is insured by Defendant Safeco. In 2014, a hailstorm caused damage to her home, and she later filed a claim under the homeowner's insurance policy. Safeco used Defendant Christian Tenorio, an insurance adjuster, to inspect the property and assess the damage. Safeco and Munoz subsequently disagreed about the extent of the damage and the proper amount payable under the policy. After repeated communications back and forth and a second appraisal of the damage, Munoz filed this civil action in state court, seeking damages for (1) breach of contract, (2) violation of the Texas Insurance Code, and (3) violations of the Texas Deceptive Trade Practices Act (DTPA). Safeco removed the case to this Court and now seeks summary judgment on all claims.

II. STANDARD

Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” when viewed in the light most favorable to the non-moving party, “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.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (internal quotes omitted). A dispute about a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Id.* at 248. In making its determination, the court must draw all justifiable inferences in favor of the non-moving party. *Id.* at 255. Once the moving party has initially shown “that there is an absence of evidence to support the non-moving party’s case,” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986), the non-movant must come forward, after adequate time for discovery, with significant probative evidence showing a triable issue of fact. Fed. R.

Civ. P. 56(e); *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990).

Conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation are not adequate substitutes for specific facts showing that there is a genuine issue for trial. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993). To defeat a properly supported motion for summary judgment, the non-movant must present more than a mere scintilla of evidence. *See Anderson*, 477 U.S. at 251. Rather, the non-movant must present sufficient evidence upon which a jury could reasonably find in the non-movant's favor. *Id.*

III. DISCUSSION

A. Breach of Contract

As a preliminary matter, the Court notes that Munoz has accepted a timely payment from Safeco based on the second appraisal and has informed the Court that she intends to file a Rule 41 stipulation of dismissal for her breach of contract claim. Pl.'s Br. in Supp. of Her Resp. to Defs.' Mot. for Summ. J. ¶ 2. Because she does not raise any argument regarding this claim and appears content to waive it, the Court is of the opinion that no genuine issue of material fact exists as to breach of contract and summary judgment should be entered in favor of Safeco.

B. Extra-contractual Claims: Texas Insurance Code & Deceptive Trade Practices Act

The remaining question, then, is whether Munoz can maintain her extra-contractual claims under the Insurance Code and the DTPA without a claim for breach of contract. Safeco argues that each of these claims cannot survive without an underlying cause of action for breach of contract for one reason or another, citing a line of cases to that effect. Munoz responds that

Safeco misinterprets Texas law and that the extra-contractual claims remain viable even without a breach of contract claim, citing other cases.

Without reaching the nuances of the extensive legal analysis conducted by each party, the Court notes that controlling case law from the United States Court of Appeals for the Fifth Circuit and the Supreme Court of Texas very clearly hold that “[t]here can be no recovery for extra-contractual damages for mishandling claims unless the complained of actions or omissions caused injury independent of those that would have resulted from a wrongful denial of policy benefits.” *Parkans Int’l LLC v. Zurich Ins. Co.*, 299 F.3d 514, 519 (5th Cir. 2002) (citing *Provident American Ins. Co. v. Castaneda*, 988 S.W.2d 189, 198–99 (Tex. 1998)). In this case, Munoz does not offer any facts demonstrating how she suffered any damages other than those that would have resulted from a wrongful denial of benefits covered by her insurance policy. See Pl.’s Am. Original Pet. ¶¶ 15–27. As for the alleged misrepresentations of coverage that occurred post-loss, these are not actionable as a matter of law. *Castaneda*, 988 S.W.2d at 200 n.55. Munoz has now been fully satisfied for the loss to her home by Safeco’s prompt payment of an appraisal award, and there is no evidence that she has suffered additional damage as a result of any bad faith or failure to pay by Safeco.² Accordingly, even if the Court were to conclude that these causes of action were viable without an underlying cause of action for breach of contract, Munoz would still not be entitled to recovery because she has failed to adequately show resulting damages. Because the Court is of the opinion that Munoz has not shown how she

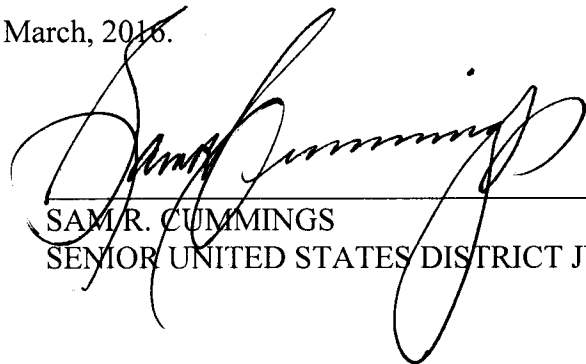
²The Court is of the opinion that Safeco’s initial refusal to pay was the result of a reasonable disagreement between the parties as to the value of the loss and the evidence clearly shows that Safeco timely paid the appraisal award after the appraisal process determined the correct value of the loss. Munoz concedes that she has now been fully satisfied for the loss to her home under her insurance policy.

suffered independent, additional damages to support her extra-contractual claims, there can be no recovery for any of these claims and Safeco is entitled to summary judgment. *Parkans Int'l LLC*, 299 F.3d at 519.

IV. CONCLUSION

For the foregoing reasons, the Court is of the opinion that no genuine issue of material fact exists as to Plaintiff's breach of contract claim and Plaintiff has been fully satisfied for that injury. Plaintiff has not shown how she suffered any independent, additional damages to support her extra-contractual claims beyond the breach of contract damages for which she has been satisfied. Accordingly, the motion for summary judgment is **GRANTED** and judgment will be entered in favor of Defendants.

SO ORDERED this 17th day of March, 2016.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE