IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ANA JAMES, Plaintiff, v. GUARDIAN INSURANCE COMPANY, Defendant.	)	CIVIL NO SX-10-CV-435 ACTION FOR BREACH OF CONTRACT, ETC.

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Motion for Summary Judgment, accompanying Memorandum in Support ("Motion") and Statement of Undisputed Facts ("SOF"), all filed June 27, 2014; Plaintiff's Opposition and Countermotion for Summary Judgment and Memorandum of Law in Support ("Countermotion"), Response to Defendant's Statement of Undisputed Material Facts ("SOF Response") and Counterstatement of Undisputed Material Facts ("Counter SOF"), all filed October 9, 2014; and Defendant's Reply to Plaintiff's Opposition and Opposition to Countermotion and Response to Plaintiff's Counterstatement of Undisputed Facts ("Counter SOF Response"), all filed November 21, 2014. For the reasons that follow, Defendant's Motion will be granted in part, Plaintiff's Countermotion will be denied, judgment will enter in accordance with this Memorandum Opinion, and Plaintiff's Complaint will be dismissed with prejudice.

BACKGROUND

This case arose following an October 1, 2008 motor vehicle accident ("Accident") between Jamison James ("Jamison") and Plaintiff Ana James (no relation to Jamison; Counter SOF ¶8). SOF ¶1. Plaintiff was an insured of Defendant Guardian Insurance Company pursuant to personal auto insurance policy (PAP 164588-07) ("First Party Policy"), effective for a one-year term

commencing May 7, 2008, relative to Plaintiff's 2005 Toyota RAV-4. SOF, ¶2, Exhibit 1.[1] Jamison filed no claim against Plaintiff for property damage or bodily injury as a result of the accident. SOF ¶7. Jamison also maintained an automobile liability policy issued by Guardian, with coverage limits of $10,000 for a single bodily injury claim and $10,000 for a property damage claim arising from an accident. SOF ¶¶3, 21.

Plaintiff initially informed Defendant following the Accident that she would not file a first party claim under her own policy but would file a third party claim against Jamison's policy. SOF ¶23; Counter SOF ¶14. However, after Jamison denied fault for the Accident and Guardian required resolution of the traffic charges against Jamison before paying Plaintiff's claim under his policy, on December 2, 2008, Plaintiff advised Guardian to process her property claim under her First Party Policy. SOF ¶24, Exhibit 5; Counter SOF ¶24.

On or about December 8, 2008, Defendant informed Plaintiff that it would pay her the sum of $10,455 on her property damage claim, reflecting the actual cash value of Plaintiff's vehicle in "Excellent" condition ($13,955), less deductible ($1,000), and less salvage ($2,5000) (SOF ¶¶25-26, Exhibit 6), and prepared its settlement check for delivery to Plaintiff. SOF ¶29, Exhibit 7. Defendant now claims that Plaintiff failed to respond to its offer to settle (SOF ¶30), yet Guardian's File Activity Sheet reflects that "Ana refused check" on December 18, 2008. Countermotion, Affidavit of Ana James, Exhibit 8. Plaintiff claimed on April 17, 2014 that the value of her vehicle on October 9, 2008 was between $17,290 and $17,940, according to Kelley Blue Book. SOF ¶32,

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[1] That First Party Policy provided Plaintiff with liability coverage for claims of third parties with limits of $10,000/person for bodily injury; $20,000/accident for bodily injury; and $10,000 in property damage; coverage for medical payments incurred by Plaintiff, with limits of $1,000; and for property damage to Plaintiff's vehicle in the amount required to repair or, in the event of a total loss, the actual cash value, adjusted for depreciation and physical condition, less deductible and recovery from other sources. SOF, Exhibit 1, Part D.

Exhibit 8, Interrogatory Response No. 17.[2]

Following her rejection of the proffered property damage settlement, on or about March 6, 2009, Plaintiff filed a lawsuit in the Superior Court (SX-09-CV-123) against Jamison James for personal injuries and property damage arising from the Accident. SOF ¶36. On or about October 9, 2009, Plaintiff and Jamison, acting through his insurer Guardian, settled that case for $20,000, the maximum coverage under Jamison's policy ($10,000 for property damage and $10,000 for bodily injury). SOF ¶¶37-38; Counter SOF ¶33. As a part of the settlement, Plaintiff executed a Release by which Plaintiff released Jamison and Guardian from liability except that Plaintiff "specifically does not release any claims she may have against Guardian Insurance Company pursuant to and/or under her own insurance policy with Guardian, which may arise out of the above described accident." SOF ¶¶38-40, Exhibit 10; Counter SOF ¶34, Exhibit 16.

By letter of counsel dated March 6, 2010, Plaintiff contacted Defendant and demanded $20,000 to settle "her breach of contract and bad faith claims against Guardian" for "its failure to timely indemnify her for property damages, personal injuries, loss of use and transportation costs under her auto policy." SOF ¶¶43-45, Exhibit 11. Guardian responded to Plaintiff by May 6, 2010 letter of counsel reiterating Guardian's previous offer for property damage under Plaintiff's First Party Policy in the amount of $10,455, less the amount paid to Plaintiff in her settlement with Jamison ($10,000), to which Guardian was subrogated pursuant to the policy's terms, for total offer of $455. SOF ¶46, Exhibit 3. Defendant's letter also stated that under her First Party Policy Plaintiff was entitled, upon submission of proof, to reimbursement for medical expenses for which

[2] Plaintiff presently claims that her vehicle had an actual cash value on the date of loss in the amount of $15,875, based upon the valuation noted in Plaintiff's April 29, 2008 Application for Automobile Insurance, as prepared by agent/producer Carlton Williams. Countermotion, 1; Counter SOF ¶7, Exhibit 2.

she had not been reimbursed by the settlement with Jamison, subject to a maximum of $1,000. *Id.*[3]

Plaintiff filed this action on September 29, 2010 alleging breach of contract, breach of fiduciary duty, and breach of duty of good faith and fair dealing.

DISCUSSION

A moving party will prevail on a motion for summary judgment where the record shows that there is no unresolved genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), applicable pursuant to Super. Ct. R. 7; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The reviewing court must determine whether there exists a dispute as to a material fact, the determination of which will affect the outcome of the action under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Such a dispute is genuine if the evidence is such that a reasonable trier of fact could return a verdict for the nonmoving party. *Id.* In analyzing the evidence, the court must consider the pleadings and full factual record, drawing all justifiable inferences in favor of the nonmoving party, to determine whether the movant has met its burden of showing that there is no unresolved genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A party opposing a motion for summary judgment may not rest upon the allegations or denials within its pleadings, but must set forth specific facts showing that there is a genuine issue for trial, such that the jury or judge as fact finder could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248. The nonmoving party asserting that a fact is genuinely disputed must support the assertion by "citing to particular parts of materials in the

[3] Subsequent to filing suit, Plaintiff submitted to Defendant copies of "medical bills in excess of several thousand dollars." SOF Response ¶53.

record..." Fed. R. Civ. P. 56(c)(1)(A). *See also Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008), citing Rule 56(e) prior to its 2010 amendment. "As to materiality, only those facts that 'might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.'" *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248).

I. There are no material facts in dispute.

Each party argues that there are no material facts in dispute that would preclude determination on the merits at this stage, Defendant seeking entry of summary judgment on its Motion and Plaintiff seeking summary judgment on her Countermotion. Plaintiff disputes various facts alleged by Defendant to be undisputed, and Defendant disputes certain facts Plaintiff alleges to be undisputed. However, the Court agrees with the direct and implicit assertions of the parties and finds that to the extent that facts in the record are disputed, such disputes do not relate to genuine issues of material fact that preclude entry of judgment on Defendant's Motion and Plaintiff's Countermotion.

II. Defendant is entitled to entry of judgment as a matter of law on Plaintiff's breach of contract claim.

Plaintiff alleges that Defendant breached the First Party Policy procured by Plaintiff from Guardian which was in force and effect at the time of the Accident. "Plaintiff is not making a claim under her policy; she is suing Guardian for breach of contract, breach of good faith and fair dealing and bad faith for failing to pay Ms. James under her 'full coverage' policy." Countermotion, 4. The breach of contract claim appears to be twofold: Guardian failed to pay $15,875, less deductible, as the actual cash value due for damages to Plaintiff's car; and that Guardian failed to

pay the $1,000 "first party bodily injury claim" under the "medical payments" policy provision. *Id.* 4-5.[4]

Defendant responds that the actual cash value of Plaintiff's vehicle on the date of the Accident was $13,955, less deductible ($1,000) and salvage ($2,500), and that the full $10,455 due under the policy's collision damage provision was offered to Plaintiff by check dated December 10, 2008, as soon as Plaintiff advised Guardian to proceed to pay the claim under her First Party Policy. Counter SOF Response ¶30; SOF ¶¶24-29, Exhibit 7. Secondly, Guardian responds that despite its solicitation, Plaintiff did not present proof of any medical payments subject to reimbursement under the policy (except one bill for $87.74) until after this litigation was filed, such that Guardian was under no obligation to pay the $1,000 medical payment reimbursement due under the policy. SOF ¶¶52-53.[5]

To establish a breach of contract claim, the moving party has the burden of proving "four elements: (1) an agreement, (2) a duty created by that agreement, (3) a breach of that duty, and (4) damages." *Arlington Funding Services, Inc. v. Geigel*, 51 V.I. 118, 135 (V.I. 2009) (*citing Galt Capital, LLP v. Seykota*, 2007 U.S. Dist. LEXIS 53199, at*6 (D.V.I. July 18, 2007).

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[4] Plaintiff apparently has abandoned her previous position that she was entitled to damages for breach of contract "against Guardian Insurance due to its failure to timely indemnify her for property damages, personal injuries, loss of use and transportation costs under her auto policy." SOF, Exhibit 11, March 6, 2010 letter of Plaintiff's counsel to Guardian's Vice President.

[5] Plaintiff does not claim that before filing suit she had provided Guardian with proof of medical payments subject to reimbursement. Rather, she states that she had executed and delivered to Guardian's adjuster as part of the "loss claim package" a release of medical information form and that "it was reasonable to believe that Guardian would gather evidence of medical injuries and expenses." In the context of discovery in this litigation, Plaintiff "provided medical information regarding my injuries as well as bills totaling thousands of dollars in medical expenses that I incurred from the accident." SOF, Exhibit 8, Interrogatory Response No. 20; Countermotion, 5, Exhibit 11.

The parties agree that the First Party Policy constituted a binding contract between Plaintiff and Defendant that created duties on Guardian as insurer. The parties disagree as to whether Guardian breached any duty under the contract that resulted in damages to Plaintiff.

V.I. CODE ANN. tit. 22, § 846 states that "every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy." In the Virgin Islands "[t]he interpretation, construction and legal effect of an insurance policy is a question to be determined by the court *as a matter of law.*" *Certain Underwriters at Lloyds v. Robert Ellis Brown, Inc.*, 2013 U.S. Dist. LEXIS 3809, at *9 (D.V.I. Jan. 10, 2013) (*quoting Coakley Bay Condominium Ass'n v. Continental Ins. Co.*, 26 V.I. 348, 354 (D.V.I. 1991)), emphasis in original.

Courts "should read policy provisions to avoid ambiguities, if possible, and not torture the language to create them." *Robert Ellis Brown, Inc.*, 2013 U.S. Dist. LEXIS 3809, at *9-10 (*quoting Devcon Int'l Corp. v. Reliance Insurance Co.*,2007 U.S. Dist. LEXIS 78672, at *7 (D.V.I. 2007). "If the terms of a policy are unambiguous, it must be construed according to its plain language." *Id., quoting Devcon Int'l Corp.*, 2007 U.S. Dist. LEXIS 78672, at *8.

The language of the First Party Policy determines Guardian's contractual duties to pay Plaintiff's collision damage and medical payments claims. As to the former, the carrier's "limit of liability for loss will be the lesser of the: 1. Actual cash value of the... damaged property; or 2. Amount necessary to repair or replace the property.... An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the loss." SOF, Exhibit 1, Part D. Two estimates to repair Plaintiff's vehicle substantially exceeded the value of the vehicle

on the date of loss, determined by the Kelley Blue Book to be $13,955. SOF, Exhibit 6, December 8, 2008 letter of Guardian's adjuster to Plaintiff.[6]

There is no genuine issue of material fact as to value of Plaintiff's vehicle on the date of the Accident, which the Court finds to be $13,955. The payment tendered to Plaintiff by Guardian's check of December 10, 2008 was based upon that value, less the undisputed $1,000 deductible (SOF, Exhibit 1, Declarations page; Counter SOF ¶3), and less $2,500 salvage (SOF ¶¶25-25; Motion, Affidavit of Karen John ¶¶12, 26-28).[7]

Following the Accident, Plaintiff initially advised Guardian that her claim should be processed through the liability coverage of Jamison James to avoid any increase in premiums in connection with her First Party Policy. SOF ¶¶22-23; Counter SOF ¶14. Following delays in the

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[6] Plaintiff does not dispute the propriety of determining value with reference to Kelley Blue Book. Indeed, Plaintiff previously suggested that her vehicle was properly valued on October 9, 2008 at between $17,290 and $17,940, depending on applicable mileage, referencing Kelley Blue Book. SOF, Exhibit 8, Interrogatory Response No. 17, attaching AJ00002-AJ00003. Those valuations provided by Plaintiff apply to the "retail value" rather than "private party value." Kelley Blue Book notes that "Private Party Value assumes the vehicle is sold 'as is.'... This value may also be used to derive Fair Market Value for insurance and vehicle donation purposes." SOF, Exhibit 6. Defendant also notes that Plaintiff's reference to Kelley Blue Book valuation was for a vehicle that included a roof rack, not a feature on Plaintiff's vehicle. Plaintiff has now revised her valuation claim to $15,875, based upon insurance agent Carlton Williams' "Estimated Current Value" noted on Plaintiff's April 29, 2008 Application for Automobile Insurance. Countermotion, 1; Counter SOF ¶7, Exhibit 2. Plaintiff presents no explanation as to how that valuation was reached by the insurance agent, nor does she presently offer any countervailing date of Accident valuation of her vehicle to that set forth by Defendant's adjuster on December 8, 2008.

[7] Karen John, Guardian's Vice President/Claims states by her Affidavit that payment of Plaintiff's property damage claim under the First Party Policy "was subject to the normal and customary terms governing the value of a vehicle that is deemed a total loss, including applicable deductibles, salvage, and an adjustment for depreciation and physical condition." Motion, Karen John Affidavit ¶12. The applicable deductible is specifically set forth in the policy in the amount of $1,000. Adjustment for depreciation and physical condition is also specifically stated in Part D of the policy, and reflected in the Kelley Blue Book valuation. The policy does not, however, specifically note an adjustment for salvage. The policy's General Provisions (Part F) arguably applies regarding salvage, providing: "If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall: 1. Hold in trust for us the proceeds of the recovery; and 2. Reimburse us to the exact extent of our payment." The record, however, is devoid of proof that Plaintiff retained and/or sold to some third party her damaged vehicle, or that she received a salvage payment of $2,500 from any source. The policy language and the record are viewed in accordance with the proposition that "a contract of insurance is to be construed liberally in favor of the insured and strictly as against the insurer." *Leocadio Camacho v. Alliance Ins. Co.,* 13 V.I. 219, 222 (V.I. Terr. Ct. 1977), citations omitted. Accordingly, Guardian is not entitled to any adjustment for salvage.

judicial adjudication of traffic charges against Jamison, on or about December 2, 2008, Plaintiff informed Guardian that she had determined to make a claim under her First Party Policy. SOF ¶24, Exhibit 5; Counter SOF ¶24. Within one week thereafter, by letter of December 8, 2008, Guardian's adjuster advised to Plaintiff of the settlement of her property damage claim under her First Party Policy. SOF ¶25, Exhibit 6. On December 10, 2008, Guardian prepared its check in payment of Plaintiff's property damage claim in the amount of $10,455. SOF ¶29, Exhibit 7. On or about December 18, 2008, Plaintiff refused to accept the check (Counter SOF, Exhibit 8), advising Guardian that the payment sum "was for less than the actual cash value of my vehicle as stated on my policy. ...It wouldn't even cover the note on my car, never mind provide me with funds to purchase a replacement vehicle. ...I knew that this offer was unfair and unreasonable." SOF ¶31, Exhibit 8, Interrogatory Response No. 7.

Thereafter, on or about March 6, 2009, Plaintiff filed suit against Jamison James, seeking compensation for property damage and personal injuries allegedly arising from the October 1, 2008 Accident. SOF ¶36. That action (SX-09-CV-123) was fully and finally settled on or about October 9, 2009 in the amount of $20,000, policy limits under Jamison's liability policy with Guardian ($10,000 for property damage and $10,000 for bodily injury). SOF ¶¶37-38.

The terms of the First Party Policy clearly indicate that Plaintiff cannot recover twice from different sources for the same property damage claim.[8] Plaintiff appears to disregard the policy's plain language and contends that she is entitled to payment in this action in the amount of the actual cash value of her vehicle on the date of the Accident (now valued by her at $15,875), less

[8] "If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall: 1. Hold in trust for us the proceeds of the recovery; and 2. Reimburse us to the extent of our payment." SOF Exhibit 1, Part F.

$1,000 deductible. Contrary to Plaintiff's contention, any payment for property damage due under her First Party Policy is plainly subject to reduction by the amount she has already received in settlement for precisely the same property damage.

Because Guardian promptly processed Plaintiff's property damage claim on her First Party Policy in the amount of the actual cash value of the vehicle on the date of loss,[9] and because Plaintiff is barred from recovering twice for the same loss, her claim for breach of contract fails as to the property damage claim.

Guardian also did not breach its obligations to Plaintiff under the medical payments provision of the First Party Policy. The policy terms limit Plaintiff's potential recovery to the sum of $1,000 for reimbursement of medical expenses.[10] Prior to filing her Complaint in this action, Plaintiff had provided Guardian with only one receipt for medical services in the amount of $87.74 (SOF ¶¶11-12), even though "medicals were requested from her the very first day" and on November 12, 2008 Plaintiff was told "that she should bring in all of her bills." Counter SOF Response ¶15, Exhibit 1, File Activity Sheet 00055.

Prior to litigation, by letter of May 6, 2010, Guardian's counsel wrote to Plaintiff's counsel. "If there are other receipts not yet submitted, we ask that you provide them for review. The total documented amount of Ms. James medical expenses, not to exceed the policy limit of $1,000, can

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[9] This is true notwithstanding Guardian's deduction for salvage, presently unsubstantiated. Payment of the actual cash value of the vehicle satisfied Guardian's obligation under the policy given the objections of Plaintiff at the time that the payment was unfair and unreasonable, as insufficient to cover the balance due on her car note or to provide her with a replacement vehicle, beyond the scope of Guardian's contractual obligations.

[10] Clearly, Plaintiff is not entitled to recover under the liability provisions of her First Party Policy. SOF, Exhibit 1, Liability Coverage Exclusion Endorsement: "We do not provide Liability Coverage for any person for 'Bodily Injury' to you or to any 'Family Member.'" Jamison James never presented any claim against Plaintiff and, therefore, the Liability Coverage provisions of the First Party Policy have no relevance to the October 1, 2008 Accident or to this action.

then be paid under her own medical coverage." SOF, Exhibit 3. Rather than submitting medical receipts, Plaintiff filed suit.[11]

Despite Plaintiff's contention that "it was reasonable to believe that Guardian would gather evidence of medical injuries and expenses," (SOF, Exhibit 8, Interrogatory Response No. 20), the contract placed no such affirmative obligation on Defendant. "When determining whether a given claim is covered under an insurance policy, the burden is on the insured to establish coverage in the first instance." *General Star Indemnity Co. v. V.I. Port Authority,* 48 V.I. 696, 701 (D.V.I. 2007) (*citing Nationwide Mut. Ins. Co. v. Cosenza,* 258 F.3d 197, 206 (3d Cir. 2001). Because Plaintiff failed to meet her burden to establish coverage where she had not provided proof of medical payments incurred, her claims as to Guardian's breach of the medical payments provision of the First Party Policy cannot survive.

III. Defendant is entitled to judgment as a matter of law on Plaintiff's breach of duty of good faith and fair dealing claim.

Plaintiff argues that Defendant "breached the duty of good faith and fair dealing by refusing to pay Plaintiff's claims under Jemison James' policy until it was sued;" "by insisting that Plaintiff not proceed against its other insured;" by "refus[ing] to settle her claim against their other insured;" and "by requiring Plaintiff to hire an attorney, file a case, sue Guardian's other insured and hire counsel on the tortfeasor's behalf against Plaintiff." Complaint, ¶¶36-38.

All these claims relate to Plaintiff's claims that she litigated against Jamison James that were concluded by settlement and Plaintiff's execution of a Release in favor of Jamison and Guardian, fully and finally releasing those parties as to "all claims of every nature and kind

[11] In discovery in litigation, Plaintiff has provided various receipts for medical services that appear to total more than $9,000. Countermotion, 5; Exhibit 11.

whatsoever," reserving unto Plaintiff claims she may have had under the First Party Policy. SOF ¶¶39-41, Exhibit 10. To the extent Plaintiff alleges bad faith with respect to acts of Guardian pertaining to the Jamison James policy, litigation defense, settlement and payment, such claims are barred by Plaintiff's Release.

Plaintiff also alleges bad faith and unfair dealing under her First Party Policy based upon Defendant's alleged failure to investigate Plaintiff's claims and to pay the actual cash value of her vehicle. Complaint ¶ 37; Countermotion, 6-7.

Under Virgin Islands law, to claim a breach of the implied duties of good faith and fair dealing, a plaintiff must allege: "(1) that a contract existed between the parties, and (2) that, in the performance or enforcement of the contract, the opposing party engaged in conduct that was fraudulent, deceitful, or otherwise inconsistent with the purpose of the agreement or the reasonable expectations of the parties." *Smith v. Virgin Islands Housing Authority*, 2011 U.S. Dist. LEXIS 19409, at *23 (D.V.I. Feb. 28, 2011) *(quoting LPP Mortgage Ltd. v. Prosper*, 50 V.I. 956, 961 (D.V.I. 2008). The Supreme Court of the Virgin Islands has held that "[t]he duty of good faith limits the parties' ability to act unreasonably in contravention of the other party's reasonable expectations. A successful claim... requires proof of acts amounting to fraud or deceit..." *Edwards v. Marriott Hotel Mgmt. Co. (V.I.), Inc.,* 2015 V.I. LEXIS 13, at*10 (V.I. Super. Ct. Jan. 29, 2015)(citing *Chapman v. Cornwall*, 58 V.I. 431, 441 (V.I. 2013) (*citing Pennick v. V.I. Behavioral Serv., Inc.*, 2012 U.S. Dist. LEXIS 23402, *8-9 (D.V.I. App. Div. Feb. 22, 2012) (internal quotation marks and citations omitted) (unpublished) and *Francis v. Pueblo Xtra Intern., Inc.*, 412 Fed. Appx. 470, 475 (3d Cir. 2010)).

The Court has held that Defendant did not breach its contract with Plaintiff. Even if Plaintiff

were correct Defendant's property damage settlement offer to Plaintiff under the First Party Policy was deficient in quantifying the actual cash value of her vehicle, Plaintiff concedes that Guardian tendered an offer within approximately two months of the accident and eight days after Plaintiff advised that she would seek payment under her First Party Policy. "On January 12, 2009, undersigned counsel contacted Mr. Rivera to reject Guardian's settlement of $10,455..." Counter SOF ¶26; SOF ¶29, Exhibit 7. The dispute in this case concerns the amount due Plaintiff under the terms of the First Party Policy, rather than the refusal of Guardian to pay Plaintiff's claim.

Guardian's response to Plaintiff's property damage claim and tender of settlement contradict Plaintiff's assertion that Defendant acted deceitfully or with fraudulent intent. While Plaintiff disputes Guardian's determination of the actual cash value of her vehicle, this dispute does not lead to a finding of bad faith and unfair dealing.

Further, following Plaintiff's settlement of the *James v. James* litigation, Defendant was entitled under the terms of the policy to take into account the property damage proceeds Plaintiff received from that other source for the same property damage (SOF, Exhibit 1, Part F). Accordingly, Defendant's subsequent settlement offer, offsetting the amount previously paid to Plaintiff for the same loss, does not construct a claim in bad faith or unfair dealing against Defendant.

Since Plaintiff never presented Guardian before filing suit with proof of more than one medical payment in the amount of $87.47, her claim for bad faith fails concerning the medical payments provision of the policy as well. As noted above, the Court finds that Guardian did not breach its contractual obligations to Plaintiff by failing to independently investigate the amount of Plaintiff's medical payments and to tender the $1,000 policy limits.

As such, based on the undisputed facts in the record and the parties' obligations under the First Party Policy, the Court cannot conclude that Defendant breached its implied duty of good faith and fair dealing and will dismiss Plaintiff's claim in this regard.

IV. Defendant did not breach its fiduciary duty with respect to Plaintiff.

In her Complaint, Plaintiff alleges a breach of an undefined fiduciary duty. Complaint, ¶38. However, Plaintiff presents no such theory in her Countermotion. The Court will briefly address Plaintiff's claim set out in her Complaint.

This Court has held that "to establish a claim for breach of fiduciary duty: (1) there must be a fiduciary relationship, (2) the fiduciary must have breached its duty imposed by such relationship, (3) the plaintiff must have been harmed, and (4) the fiduciary's breach must be a proximate cause of the plaintiff's harm." *Roebuck v. V.I. Housing Auth. & Gov't of the V.I.*, 2014 V.I. LEXIS 31, at *18-19 (V.I. Super. Ct. 2014)(*citing Watts v. Blake–Coleman*, 2012 U.S. Dist. LEXIS 43454, *12-13 (D.V.I. March 29, 2012)).

Even to the extent that Plaintiff were able to establish that Defendant owed Plaintiff a fiduciary duty as her insurer, such duty could arise only from the contractual relationship between the parties. The Court's determination that Guardian did not breach the First Party Policy concludes the inquiry. As Defendant did not breach its contract with Plaintiff, Plaintiff's claim that Defendant breached its fiduciary duty to Plaintiff must fail.

V. Defendant's Counterclaim.

By its Counterclaim, Defendant seeks, *inter alia,* "a declaratory judgment… that there is no payment due to Plaintiff under her Policy for damage to her vehicle, for loss of use, for personal

injury or medical expense, or for any other reason whatsoever" arising from the October 1, 2009 Accident. Counterclaim ¶33.

Because the plain language of the First Party Policy provides no coverage for loss of use or for personal injury, there are no unresolved issues of material fact in dispute, and Defendant is entitled to judgment declaring that no payment is due Plaintiff for loss of use or for personal injury.

The same is not true for claims for damage to Plaintiff's vehicle or for reimbursement of her medical expenses. As noted above, the policy requires Guardian to pay the actual cash value of the vehicle as of October 1, 2008 ($13,955), less deductible ($1,000), less proceeds recovered from Jamison James ($10,000). As also noted above, the record and the policy language fail to support Guardian's claim that it is entitled to deduct salvage ($2,500) from the payment due Plaintiff. The record and policy language do support a finding and judgment will enter to the effect that Guardian is obligated to satisfy Plaintiff's property damage claim in the amount of $2,955.

Similarly, the record and policy language are sufficient to establish Guardian's obligation to Plaintiff under the medical payments provision of the policy to reimburse Plaintiff for payment made for medical treatment arising from the October 1, 2008 Accident in the full policy limits of $1,000. While no payment was due prior to litigation as Plaintiff had not established her right to reimbursement, she has provided such proof in discovery sufficient to support such a finding and judgment will enter declaring that Guardian is obligated to pay Plaintiff the sum of $1,000 pursuant to the medical payments coverage provisions of the First Party Policy.

Because Guardian timely tendered payment for property damage upon Plaintiff's claim, although declined by Plaintiff; and because Guardian was not obligated to make payment under

the medical payments provision in the absence of Plaintiff's tender of proof, prejudgment interest will not apply as to either required payment due under the policy.

CONCLUSION

Based on the undisputed facts in the record, Defendant did not breach the First Party Policy. The plain meaning of the contract was sufficient to inform a reasonable person that any proceeds owed to the insured would be offset by any outside settlement funds received in connection with the same accident and loss. These terms were bolstered by additional language which clearly precluded double recovery. As such, Defendant did not owe a duty to pay Plaintiff any amount in excess of the actual cash value of her car, less deductible and less the amount she received from her outside settlement. Because Plaintiff had never provided proof of medical payments incurred prior to filing this action, Guardian was not obligated to make any payment under the medical payments provision of the policy. Judgment will enter dismissing with prejudice Plaintiff's breach of contract claims.

Defendant did not breach its implied duty of good faith and fair dealing because it initially offered Plaintiff what it considered a fair settlement, determined by a reasonable reading of the policy terms. Nothing in the record indicates that Defendant acted fraudulently or deceitfully while attempting to settle Plaintiff's claim. Judgment will enter dismissing Plaintiff's Complaint relative to her breach of good faith and fair dealing claim, her bad faith claim and her claim of breach of fiduciary duty.

On Defendant's Counterclaim, Guardian is entitled to entry of judgment that there is no payment due Plaintiff under the policy for loss of use or personal injury. However, judgment will also enter that Guardian is obligated to Plaintiff under the policy to pay Plaintiff's claim for

property damage in the sum of $2,955, without prejudgment interest. Further, judgment will enter that Guardian is also obligated to Plaintiff under the policy to reimburse her for medical payments incurred, in the amount of the full $1,000 policy limits, without prejudgment interest.

An Order will enter simultaneously with entry of this Memorandum Opinion granting Defendant's Motion for Summary Judgment in part; denying Plaintiff's Countermotion for Summary Judgment; awarding Plaintiff the total sum of $3,955 without prejudgment interest; and dismissing Plaintiffs' Complaint with prejudice.

DATED: July 14, 2015.

DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA GEORGE
Clerk of the Court

By: _____
Court Clerk Supervisor
7/15/15

CERTIFIED A TRUE COPY
DATE: July 23, 2015
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: _____
COURT CLERK II

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE:	)	
	)	**MISC NO. DAB 018/2018**
ORDER DESIGNATING CERTAIN OPINIONS FOR PUBLICATION.	)	

TO: Clerk of the Court
Counsel of Record
Law Library / LexisNexis / Westlaw

ORDER

THE PREMISES considered, it is hereby

ORDERED that the following memorandum opinions issued in the below listed cases are hereby designated FOR PUBLICATION.

Pappas v. Hotel on the Cay Time-Sharing Ass'n, Inc., opinion dated April 27, 2015;
Estate of Burnett v. Kazi Foods of the V.I., SX-12-CV-139; opinion dated May 24, 2016;
FirstBank of Puerto Rico v. Prosser, SX-09-CV-520, opinion dated June 22, 2015;
James v. Guardian Insurance Company, SX-10-CV-435, opinion dated July 14, 2015;
Nurse v. Parris, SX-14-CV-011, opinion dated May 3, 2016;
Charles v. Arcos Dorados USVI, Inc., SX-13-CV-336, opinion dated August 18, 2016;
McGary v. J.S. Carambola, LLP, SX-13-CV-289, opinion dated October 7, 2016;
Whyte v. Bockino, SX-15-CV-083, opinion dated January 26, 2017;
Chiverton v. World Fresh Market, LLC, SX-10-CV-575, opinions dated March 10 & 28, 2017;
People v. Melendez, SX-16-RV-003, opinion dated March 22, 2017;
Edwards v. Hess Oil V.I. Corp., SX-15-CV-382, opinion dated June 28, 2017;
In re: Red Dust Claims, SX-15-CV-620, *et seq.*, opinion dated July 7, 2017;
Hamed v. Yusuf, SX-12-CV-370, *et seq.*, opinions dated July 21, 2017 and March 14, 2018;
Toutouyoute v. St. Croix Trading Co., Inc., SX-16-CV-457, opinion dated May 31, 2018.

Finally, it is ORDERED that a copy of this Order be served on counsel for the parties in the above-captioned cases (or the party if proceeding *pro se*), be filed in each of above-captioned maters, and forwarded to the Law Library for distribution to LexisNexis and Westlaw, FORTHWITH.

Dated: October 1, 2018.

DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By: _____
Court Clerk Supervisor 10/1/18