DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Court Address: 1437 Bannock St., Denver, CO 80202	DATE FILED: December 9, 2016 CASE NUMBER: 2016CV30578
Plaintiff(s), **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** And Defendant(s), **TIMIKA THOMAS**	▲ COURT USE ONLY ▲ Case Number: 16CV30578 Ctrm: 275

ORDER RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Plaintiff's Motion for Summary Judgment; to which Defendant did not respond. The Court, having reviewed the Motion, the relevant legal authority, the court file, and being otherwise fully advised in the premises, HEREBY FINDS and ORDERS as follows:

FACTUAL BACKGROUND

On or around May 20, 2010, Defendant Timika Thomas was involved in an automobile accident and allegedly sustained injuries. Compl. ¶ 4; Answer ¶ 4. Defendant had an automobile insurance policy issued by Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm"). Compl. ¶ 5; Answer ¶ 5. At the time of the accident, Defendant resided in Michigan. Compl. ¶ 2; Answer ¶ 2. Pursuant to the insurance policy and Michigan law, Plaintiff paid Defendant work loss benefits. Compl. ¶ 6; Answer ¶ 6.

On or around June 22, 2014, Defendant was awarded Social Security Disability Insurance benefits, including a lump sum for retroactive benefits from November 2010 to the present. Compl. ¶ 10 and Ex. 3 (Social Security Administration Notice of Award); Answer ¶ 10.The Social Security Disability Benefits were as a result of the injury or injuries sustained in the automobile accident of May 20, 2010. Of the lump sum retroactive Social Security benefits, $48,564.49 was duplicative of the timeframe and benefits State Farm paid Defendant. *See* Compl. ¶ 10 and Ex. 2 (State Farm Payment Log), Ex. 3 (Social Security Administration Notice of Award); *see* Answer ¶ 10.

After receiving the Social Security benefits, Defendant failed to hold the benefits in trust for State Farm as required by the policy. Compl. ¶ 19; Answer, Attach. A (letter from Defendant to Plaintiff admitting she had spent the Social Security benefits received). In addition, Defendant failed to reimburse State Farm for the allegedly duplicative benefits. Compl. ¶ 20; Answer, Attach. A (letter from Defendant to Plaintiff admitting did not pay back State Farm and her inability to pay back benefits).

On October 24, 2016, Plaintiff filed its Motion for Summary Judgment. Defendant did not respond to the motion.

STANDARD OF REVIEW

Summary judgment is proper only when the pleadings, affidavits, depositions, or admissions establish that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c); *see also Huydts v. Dixon*, 606 P.2d 1303, 1306 (1980). "A material fact is a fact that affects the outcome of a case." *Trigg v. State Farm Mut. Auto. Ins. Co.*, 129 P.3d 1099, 1101 (Colo. App. 2005). "A court must afford all favorable inferences that may be drawn from the undisputed facts to the nonmoving party, and must resolve all doubts as to the existence of a triable issue of fact against the moving party." *Cotter Corp. v. American Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004).

The moving party has the burden of establishing the nonexistence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Urban v. Beloit Corp.*, 711 P.2d 685, 687 (Colo.1985). "This burden has two components: an initial burden of production on the moving party, which burden when satisfied then shifts to the nonmoving party, and an ultimate burden of persuasion, which always remains on the moving party." *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). "Once the moving party has met this initial burden of production, the burden shifts to the nonmoving party to establish that there is a triable issue of fact." *Continental*, 731 P.2d at 713. If the nonmoving party does not file a response to the motion, the motion is not deemed confessed. *Meyer v. State of Colorado Dept. of Revenue*, 143 P.3d 1181, 1184 (Colo. App. 2006). Rather, the moving party must still establish all of the elements necessary for summary judgment under C.R.C.P. 56. *Id.* On summary judgment, the court's "role is simply to determine whether the evidence proffered by plaintiff would be sufficient, if believed by the ultimate factfinder, to sustain [a] claim." *Jones v. Barnhart*, 349 F.3d 1260, 1265-66 (10th Cir. 2003).

LEGAL ANALYSIS

A. <u>Michigan law governs this contract dispute.</u>

State Farm claims that while this suit is being brought in Colorado, the substantive law of Michigan should apply to State Farm's breach of contract claim. In support of its argument, State Farm states that Michigan law should apply because of a choice of law provision in the policy. The policy provides that "the law of the State of Michigan will control . . . in the event of any disagreement as to the interpretation and application of any provision in this policy." Pl.'s Mot. for Summ. J. Ex. 2 at 10.

In Colorado, "choice of law provisions are ordinarily given effect as they are considered a clear manifestation of the parties' intention." *Mountain States Adjustment v. Cooke*, No. 15CA0605, 2016 WL 2957746, at *3 (Colo. App. May 19, 2016) (citing *Pirkey v. Hosp. Corp. of Am.*, 483 F.Supp. 770, 773 (D.Colo. 1980). The provision will be given effect "unless there is no reasonable basis for their [the parties] choice or unless applying the chosen state's law would be contrary to the fundamental policy of the state whose law would otherwise govern." *Target Corp. v. Prestige Maint. USA, Ltd.*, 351 P.3d 493, 497 (Colo. App. 2013).

Here, the parties had a reasonable basis for their choice of law provision designating Michigan law to control contract disputes. The undisputed facts demonstrate that the contract was

negotiated and agreed to in Michigan, and at the time the contract was entered into, Defendant resided in Michigan and State Farm is licensed to do business in Michigan. Furthermore, there is no fundamental policy in Colorado articulating that applying Michigan law in the present case would be incorrect. Instead, the policy in Colorado is to generally apply a contract's choice of law provision. *See Mountain States Adjustment*, No. 15CA0605, 2016 WL 2957746, at *3. Therefore, due to the choice of law provision in the parties' contract, Michigan law governs.

B. <u>Defendant breached the contract (insurance policy) between the parties.</u>

"Under Michigan law, the elements of a breach of contract claim are: (1) the existence of a contract between the parties, (2) the terms of the contract require performance of certain actions, (3) a party breached the contract, and (4) the breach caused the other party injury." *Burton v. William Beaumont Hosp.*, 373 F.Supp.2d 707, 718 (E.D.Mich. 2005) (citing *Webster v. Edward D. Jones & Co.*, 197 F.3d 815, 819 (6th Cir. 1999)).

Here, the undisputed facts demonstrate that the parties had a contract. The contract was the automobile insurance policy issued by State Farm that was in effect at the time of the automobile accident.

State Farm argues that, pursuant to Michigan law and the parties' contract, State Farm is entitled to reimbursement of duplicative work loss benefits, and Defendant's failure to hold the benefits in trust and then reimburse Plaintiff constitutes a breach of their contract.

Pursuant Section 500.3109(1), Michigan Compiled Laws, any state or federal government benefits are to be subtracted from the personal protection insurance benefits that are paid for the same automobile injury. Mich. Comp. Laws § 500.3109(1) (West 2016). Furthermore, Michigan case law supports the proposition that State Farm is entitled to set-off any government benefits from the insurance benefits its provides. *See Grau v. Detroit Auto. Inter-Ins. Exch.*, 383 N.W.2d 616, 617-18 (Mich. App. 1985); *Minister v. State Farm Mut. Auto. Ins. Co.*, 551 N.W.2d 410, 41 (Mich. App. 1996); *Perez v. State Farm Mut. Auto. Ins. Co.*, 344 N.W.2d 773 (Mich. 1984). State Farm incorporates this right of reimbursement into its policy. In the State Farm Car Policy Booklet, State Farm states: "Any amount payable under Personal Injury Protection Coverage shall be reduced by any amount paid, payable or required to be paid under federal or state law." Pl.'s Mot. for Summ. J. Ex. 2 at 7. The Policy Booklet also provides that, if State Farm makes a payment under this policy and the insured recovers from another party, the insured must hold the proceeds from the recovery in trust for State Farm and then reimburse State Farm to the extent of its payment. Pl.'s Mot. for Summ. J. Ex. 2 at 9.

Here, the undisputed facts demonstrate Defendant received duplicate benefits from State Farm and the Social Security Administration for her work losses as a result of injuries sustained in the automobile accident on May 20, 2010. The duplicative benefits were for the period from November 2010 to the present and totaled $48,564.49.

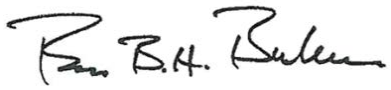
Furthermore, the undisputed facts also demonstrate that Defendant failed to hold the proceeds she received from the Social Security Administration in trust and then failed to reimburse State Farm. Thus, she has breached the terms of the parties' contract, the State Farm automobile insurance policy, and caused State Farm to be denied reimbursement of $48,564.49.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Summary Judgment is GRANTED. Judgment is hereby entered in favor of Plaintiff State Farm and against Defendant Timika Thomas in the amount of $48,564.49 plus interest. The three-day jury trial set to commence on January 23, 2017, is HEREBY VACATED.

DATED this 9th day of December 2016.

BY THE COURT.



Ross B.H. Buchanan
Denver District Court Judge