

**OFFICE OF THE INSURANCE COMMISSIONER  
MARYLAND INSURANCE ADMINISTRATION**

**K.T. and S.T.,<sup>1</sup>**

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**Plaintiffs,**

\*

**v.**

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**Case No. 27-1001-22-00090**

**BALTIMORE EQUITABLE  
INSURANCE**

\*

**Defendant.**

\*

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\* \* \* \* \*

**DECISION**

K.T. and S.T.<sup>2</sup> (“Plaintiffs”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Baltimore Equitable Insurance (“Defendant”) breached its contractual obligations by failing to fully pay their first-party claim for damages under a perpetual homeowner’s insurance policy (the “Policy”) issued by Defendant to S.C., with an effective date of January 9, 1985. Plaintiffs’ claim was for damage to a residence previously owned by S.C. (the “Dwelling”) located in Baltimore, Maryland, allegedly caused by a fire on November 27, 2021 (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiffs have not satisfied their burden of demonstrating that

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<sup>1</sup> The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s privacy.

<sup>2</sup> Defendant issued a perpetual homeowner’s policy to S.C. covering the Dwelling with an effective date of January 9, 1985. Plaintiff K.T. is the granddaughter of S.C. On September 10, 2020, S.C. added Plaintiff K.T. to the deed of the Dwelling. On November 16, 2020, S.C. died. Following S.C.’s death, Plaintiff S.T. was appointed as the personal representative to handle S.C.’s estate.

Defendant breached its duty of coverage by cancelling the Policy and by denying coverage for the losses claimed by Plaintiffs due to the November 27, 2021 fire.

### **I. STANDARD OF REVIEW**

Section 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (90) days of the receipt of such a complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

“Good faith” is defined in §27-1001 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

Further, an insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

## **II. PROCEDURAL BACKGROUND**

On December 13, 2022, the Administration received Complaint No. 27-1001-22-00090 (the "Complaint") stating a cause of action in accordance with § 27-1001. In the Complaint, Plaintiffs allege that Defendant disclaimed coverage for the fire loss and breached its obligations under the Policy by cancelling the Policy and refusing to pay the fire loss claim. As a result, Plaintiffs allege that they have been unable to make repairs or reside in the Dwelling. Further, Plaintiffs allege that by disclaiming coverage for the fire loss and refusing to pay the claim, Defendant materially breached its contractual obligations under the Policy and failed to act in good faith.

On December 22, 2022, as required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. On January 23, 2023, Defendant submitted its response to the Complaint and accompanying documents. Defendant acknowledged that it issued a perpetual homeowner's policy to S.C. covering the Dwelling with an effective date of January 9, 1985, and a yearly anniversary date of January 9<sup>th</sup>. On March 13, 2023, the parties consented to an extension of time to file the Decision until March 29, 2023.

## **III. FINDINGS**

Based on a complete and thorough review of the written materials submitted by the parties, the Administration finds that Plaintiffs have not established by a preponderance of the evidence that they are entitled to coverage for the Claim under the Policy.

Defendant issued a perpetual homeowner's policy to S.C. with an effective date of January 9, 1985. In relevant part, the Policy provides,

**SECTIONS I AND II CONDITIONS**

**5. Cancellation**

...

**b.** We may cancel this Policy for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice shall be mailed to you, at your last address known to us, by a "first-class mail tracking method." Proof of mailing will be sufficient proof of notice.

...

**3.** When this Policy has been in effect for more than 45 days, we may cancel:

**(a)** If there has been a material misrepresentation of fact which if known to us would have caused us not to issue the Policy; or

**(b)** If the risk has changed substantially since the Policy was issued. This can be done by letting you know in writing, including our reason for cancellation, at least 45 days before the date cancellation takes effect.

....

On September 10, 2020, S.C. executed a Life Estate Deed with Plaintiff K.T. stating, in relevant part that Plaintiff K.T.,

shall obtain the whole and entire estate free of all and any right, title, and interest of any of party to these presents, or those claiming by, through, or under them; and from and immediately after the death of the said party of the second part, as to all of the property hereinbefore described or so much thereof as may be remaining and undisposed of in the exercise of the powers aforesaid, then unto and to [Plaintiff K.T.], her personal representatives and assigns, forever in fee simple.

....

S.C. died on November 16, 2020. Plaintiffs assert that on December 9, 2020 and December 10, 2020, Plaintiff K.T. contacted Defendant. Plaintiffs assert that Plaintiff K.T. left a voice message with Underwriter Kathy Aull, however, Plaintiff K.T. did not receive a response.

In Plaintiffs' production of records, Plaintiffs produced a page of phone records showing outbound calls from Plaintiff K.T. from December 6, 2020 through December 11, 2020, including three calls on December 9, 2020 and December 10, 2020, to a contact number for Defendant. Defendant acknowledges that Ms. Aull received a voicemail from Plaintiff K.T. on December 9, 2020 in which Plaintiff K.T. stated,

Hi Kathy. My name is [Plaintiff K.T.]. I am the Granddaughter of S.C. I believe she is one of your insureds. If you could please give me a call back at 443-934-8680, I had some questions about [the Dwelling].

....

Defendant acknowledges that Ms. Aull did not respond to the voice message.

On January 11, 2021, Defendant sent a letter addressed to S.C. stating that while the replacement cost value of the Dwelling was estimated at \$368,000, the Dwelling was insured at that time for \$295,000. Defendant's letter recommended increased coverage. A second letter proposing additional coverage was addressed to S.C. on February 8, 2021. There is no evidence in the record demonstrating that Plaintiffs responded to the January 11, 2021 or February 8, 2021 letters.

On May 19, 2021, Plaintiff S.T. was appointed as the personal representative to administer the estate of S.C.

On November 22, 2021, Defendant sent another letter addressed to S.C. proposing to increase coverage for the Dwelling under the Policy. In this correspondence, Defendant stated that while the replacement cost value of the Dwelling was estimated at \$408,000, the Dwelling was insured at that time for \$295,000. There is no evidence in the record demonstrating that Plaintiffs responded to this letter.

On November 27, 2021, Plaintiff K.T. contacted Defendant and reported a loss due to fire in the Dwelling. Plaintiff K.T. also reported that she was now the owner of the Dwelling.

On November 29, 2021, Defendant was notified that Plaintiff S.T. was the personal administrator for the estate of S.C. Defendant also received S.C.'s death certificate and the Life Estate Deed executed by S.C. and Plaintiff K.T.

On December 3, 2021, Defendant sent a letter to Plaintiff S.T. stating that it was unable to continue providing insurance protection under the Policy for the Dwelling, and that protection would stop on January 18, 2022. As the basis for the cancellation, Defendant stated that "[t]he named insured is deceased."

On December 8, 2021, Defendant sent another letter to Plaintiff S.T. stating that there was no coverage under the Policy for the November 27, 2021 loss. As the basis for the denial, Defendant stated that the Policy required S.C. to notify Defendant of any change in ownership of the Dwelling. S.C. executed a life estate deed to Plaintiff K.T. on September 10, 2020. After S.C.'s death, "all ownership and interest in [the Dwelling] immediately and automatically transferred to [Plaintiff K.T.] on November 16, 2020." Defendant concluded that, [b]ecause S.C. no longer had any right, title, or interest in [the Dwelling] after November 16, 2020, there was no insurable interest under the above referenced BEI homeowner's policy at the time of the claimed loss to [the Dwelling] on November 27, 2021." Defendant stated that the first notice that it received of S.C.'s death was due to the claimed loss on November 27, 2021 and that Defendant later learned of the Life Estate Deed to Plaintiff K.T. As a result, Defendant stated that it was preparing to close the account of a deceased insured and that it would issue a check to Plaintiff S.T. for S.C.'s deposit amount.

On January 12, 2022, Defendant sent a letter to Plaintiff K.T. rescinding its cancellation notice dated December 3, 2021. Defendant's letter further stated that coverage under the Policy would remain in force.

In response to Defendant's Request for *Report Related to Fire or Carbon Monoxide Incident*, requested on November 27, 2021, the Baltimore City Fire Department prepared a report which revealed a domestic dispute between the occupants of the Dwelling preceded the fire, when one occupant placed a leather coat belonging to the second occupant on the stove in the residence, igniting a fire in the kitchen. The investigation did not reveal the remnants of a leather coat and the Incident Report, dated November 14 2022, classified the cause of the fire as undetermined.

Then, on November 16, 2022, Defendant sent a letter Plaintiff S.T. stating, "[w]e regret to inform you that we are unable to continue providing insurance protection under the [Policy] for the [Dwelling]." As the basis for the cancellation, Defendant stated, "The named insured does not reside at the insured location."

On December 13, 2022, the Administration received Complaint No. 27-1001-22-00090 stating a cause of action in accordance with § 27-1001.

#### **IV. DISCUSSION**

At all relevant times, the Policy specifically stated that Defendant, "may cancel this Policy for the reasons stated below by letting you know in writing of the date cancellation takes effect... if the risk has changed substantially since the Policy was issued." The evidence demonstrates that Plaintiff K.T. contacted Defendant on three occasions in December 2020. Further, the evidence demonstrates that Plaintiff K.T. left a voice message for Underwriter Kathy Aull on December 9, 2020, indicating that she was related to S.C. and that she requested a call

back. There is no evidence in the record that Ms. Aull responded to Plaintiff K.T.'s voicemail. Further, there is no evidence in the record demonstrating that either Plaintiff K.T. or Plaintiff S.T. made any further attempts to notify Defendant of the change to the ownership of the Dwelling, prior to reporting the fire loss on November 27, 2021.

Further, there is no evidence in the record indicating that Plaintiffs notified Defendant that the Dwelling was occupied by any other individuals prior to the findings in the Incident Report, dated November 14 2022, by the Baltimore City Fire Department. Based on the findings in the Incident Report, Defendant sent a cancellation letter to Plaintiff S.T. on November 16, 2022. As the basis for the cancellation, Defendant stated in the letter that the named insured does not reside at the insured location. Moreover, as there is no evidence demonstrating that Plaintiffs notified Defendant that the Dwelling was occupied by other individuals at the time of the fire loss on November 27, 2021, Plaintiffs did not notify Defendant of a factor that materially and substantially changed the risk.

Based on these findings, Plaintiffs have not met their burden of proving that Defendant breached any obligation owed under the Policy or that they are entitled to coverage for the November 27, 2021 fire loss under the Policy.

#### **V. CONCLUSIONS OF LAW**

In accordance with § 27-1001, the Administration concludes:

1. Plaintiffs have not established by a preponderance of the evidence that the Policy obligates Defendant to pay a claim for damage to the Dwelling caused by a fire on November 27, 2021.
2. Plaintiffs did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiffs did not establish by a preponderance of the evidence that Plaintiffs are entitled to damages as a result of the Claim.



4. Plaintiffs did not establish by a preponderance of the evidence that Defendant breached its obligation under the Policy to cover and pay the Claim.

5. Since a breach is a necessary element of a failure to act in good faith, Plaintiffs did not establish that Defendant failed to act in good faith.

6. Since Plaintiffs did not establish a breach or failure by Defendant to act in good faith, there is no basis for the Administration to address the issue of special damages.


## **VI. DECISION**

Based on the foregoing findings and conclusions, it is the Administration's Decision on This 29<sup>th</sup> day of March, 2023 that Defendant did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

This Decision shall take effect as a Final Decision if no administrative hearing is requested or appeal is taken in accordance with § 27-1001(f) and (g).

**KATHLEEN A. BIRRANE**  
Insurance Commissioner

BY:

signature on original  


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ERICA J. BAILEY, Hearing Officer  
Associate Commissioner - Office of Hearings

## APPEAL RIGHTS

**If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision, or to appeal the decision to the Circuit Court under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. § 27-1001(f) and (g) (2017 Repl. Vol.).**