

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-1586

(Summary Calendar)

SHERRIE RICHARDSON,

Plaintiff-Counter-
Defendant-Appellant,

versus

GOLDEN RULE INSURANCE COMPANY,

Defendant-Counter-
Plaintiff-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CV-1864-X)

(November 24, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:*

Plaintiff Sherrie Richardson brought suit against defendant Golden Rule Insurance Company ("Golden Rule"), alleging that Golden Rule fraudulently misrepresented the terms of a life insurance policy purchased by her now-deceased husband, Joe D. Richardson, and unlawfully refused to pay her as beneficiary the face value of

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the insurance policy. The district court granted summary judgment in favor of Golden Rule, and Richardson now appeals. We affirm in part and reverse and remand in part.

The summary judgment record¹ supports the district court's findings that the effective date of the policy was August 1, 1988, and that Sherrie Richardson either knew or should have known of that effective date. Accordingly, we affirm the district court's holding))that Richardson's cause of action for fraudulent misrepresentations is barred by the Texas Insurance Code's statute of limitations))and judgment thereon.

However, we do not construe the district court's order as granting summary judgment for Golden Rule on Sherrie Richardson's contract claim for the proceeds of her husband's life insurance policy.² Golden Rule, in its motion for summary judgment, failed

¹ We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Central R.R.*, 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Once the movant carries its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. *Id.* at 324-25, 106 S. Ct. at 2553-54. While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

² Golden Rule argues that Richardson never pled a contract cause of action for the proceeds of the policy. The record,

to move for summary judgment on its contention that because Joe Richardson committed suicide on July 23, 1990, it need not pay the proceeds of the policy to Sherrie Richardson, the beneficiary.³ Consequently, Richardson failed to address the issue in her response to Golden Rule's motion for summary judgment. Moreover, the district court's otherwise thorough opinion also did not address either Richardson's contract claim or whether Joe Richardson committed suicide. Accordingly, we reverse the summary judgment as to the contract claim and remand this matter to the district court for further proceedings consistent with this opinion. Of course, we express no opinion as to the merits of

however, does not support this assertion. For example, Richardson alleged as an alternative claim in her amended complaint "that as beneficiary of the Policy, she is entitled to collect the face amount thereof." Golden Rule's counterclaim for a declaratory judgment stated that "[a]n immediate need exists for a judicial declaration that Golden Rule acted properly in denying the claim for the face value of the policy in the amount of the premiums paid under said policy to the amount of the premiums paid by the insured during his lifetime for the policy." The joint status report, signed by both parties, described the parties' contentions as follows: "Alternatively, Plaintiff sues for the face amount of the insurance policy (\$100,000) plus 12% damages under Article 3.62 of the Texas Insurance Code plus reasonable attorneys' fees"; "Defendant . . . says it is not liable to Plaintiff in any amount except for the return of premiums paid since it says the insured took his own life within two years of the effective date of the policy." Moreover, the report also stated that the parties needed time before trial for discovery, "primarily for depositions to be taken by both parties on [the] issue of suicide vs. accidental death."

³ The policy issued by Golden Rule provided that "[i]f the insured takes his or her own life, while sane or insane, within two years of the policy date, we will limit the proceeds to the amount of the premium you paid." Thus, if Joe Richardson did in fact commit suicide in July 1990, Golden Rule need only refund the premiums paid by the Richardsons because two years had not elapsed from the effective date of the policy))August 1, 1988.

Sherrie Richardson's contract claim for the proceeds of the life insurance policy or any affirmative defenses raised by Golden Rule.

AFFIRMED in part and REVERSED and REMANDED in part.