IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTHA GOMEZ,

Plaintiff,

v.

FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN

Defendant.

CIVIL ACTION NO.
4:24-cv-00099-WMR

ORDER

Before the Court is Defendant Foremost Insurance Company Grand Rapids, Michigan's Motion to Dismiss ("Motion"). [Doc. 12]. After review, the Defendant's Motion is **GRANTED**.

I. BACKGROUND

The Complaint alleges as follows. Plaintiff entered into an insurance agreement (the "Policy") with Defendant to insure her dwelling located at 3743 Miller Dr. NE, Dalton, GA 30721. [Doc. 7 at 2]. While the Policy was in effect, on or about April 1, 2023, a tree fell on Plaintiff's garage at her residence destroying the entire garage. [*Id.* at 3-4]. Plaintiff alleges that the Policy's terms covered damage to her garage, and so she filed a claim with Defendant for the damage to the garage's structure. [*Id.* at 2-4]. Plaintiff alleges that Defendant did not formally deny her

claim; however, she claims Defendant refused to pay for the damage to the garage's structure and would only pay for damage to the contents inside the garage. [*Id.* at 4].

After the alleged refusal of payment, on October 5, 2023, Plaintiff sent a demand letter to Defendant for payment of the claim. [*Id.*]. Plaintiff alleges that in response, Defendant refused to "pay or adjust the claim and instead only forwarded an incomplete and uncertified copy of the Policy." [*Id.*]. Plaintiff further alleges that after a phone call, Defendant then sent "a more complete, but still incomplete copy of the policy." [*Id.* at 4-5].

On or about January 19, 2024[1], Plaintiff sent a second demand letter to Defendant "to adjust the claim and provide coverage," specifically citing the Policy and "explaining why the [g]arage was covered by the [p]olicy." [*Id.* at 5]. Defendant responded to the second demand letter and denied the claim, allegedly citing "an exclusion not previously provided" to Plaintiff when she first "demanded a copy of her entire policy on October 5, 2023." [*Id.* at 5-6]. Plaintiff alleges that Defendant relied upon a "Notice of Exclusion of Coverage for a Specific Structure," which stated that "the structures listed in the endorsement are excluded from coverage[]" in denying the claim. [*Id.* at 5]. Plaintiff contends, however, that this exclusion did

[1] Plaintiff's Complaint states that she sent the first demand letter "on October 5, 2023" and the second demand letter "[o]n or about January 19, 2023." [Doc. 7, ¶¶ 16,18]. This discrepancy between the dates appears to merely be a scrivener's error, which is further supported by the following paragraph which states that Defendant replied to the demand letter "instantaneously . . . on January 26, 2024[.]" [*Id.* at ¶ 18].

not "list a single structure that [was] excluded from coverage." [*Id.*]. Plaintiff claims that this exclusion was "not listed on [her] Declaration Page as a form or endorsement that applies" to the insured dwelling. [*Id.* at 6]. Plaintiff further alleges that Defendant has acted in bad faith, been stubbornly litigious, and caused her unnecessary trouble and expense because of its denial of coverage. [*Id.*].

Based on the foregoing allegations, Plaintiff brought this action for breach of contract, promissory estoppel, unjust enrichment, bad faith insurance pursuant to O.C.G.A. § 33-4-6, and attorney's fees and costs of litigation pursuant to O.C.G.A. §§ 13-6-11 and 9-15-14 against Defendant. *See* [Doc. 7].

II. LEGAL STANDARD

Under the Federal Rules of Civil Procedure, a party may move to dismiss an action for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "A district court considering a motion to dismiss shall begin by identifying conclusory allegations that are not entitled to an assumption of truth . . . ." *Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010). Next, a court must "accept[ ]the facts alleged in the complaint as true, drawing all reasonable inferences in the plaintiff's favor." *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2010).

III. DISCUSSION

The Complaint alleges state laws claims for breach of contract, promissory estoppel, unjust enrichment, bad faith insurance pursuant to O.C.G.A. § 33-4-6, and attorney's fees and costs of litigation pursuant to O.C.G.A. §§ 13-6-11 and 9-15-14. For the reasons discussed below, the Court concludes that Plaintiff has failed to state a legally cognizable claim for all counts.[2]

A. Plaintiff's breach of contract claim must be dismissed.

Plaintiff first brings a claim for breach of contract against Defendant because Plaintiff claims it failed to pay or adjust her claim for the structural damage to her garage. [Doc. 7 at 7-8]. Plaintiff contends that her garage falls within the definition of "dwelling" and is thus covered under the Policy. [*Id.* at 8]. However, Defendant argues that Plaintiff's garage is not covered under her Policy because it does not "meet the dictionary definition that provides that plain and ordinary meaning of the term 'dwelling.'" [Doc. 12 at 5].

The Policy itself does not expressly define "dwelling." Thus, the Court must determine whether "dwelling" is ambiguous or not, in accordance with Georgia contract law. *See Ace Am. Ins. Co. v. Wattles Co.*, 930 F.3d 1240, 1252 (11th Cir. 2019) ("Under Georgia law, an insurance policy is a contract and subject to the

[2] Though federal courts should "freely give leave" for a plaintiff to amend their complaint "when justice requires[,]" this Court declines to extend such leave in the instant case as no amendment would cure the issues with both law and fact present. Fed. R. Civ. P. 15(a)(B)(2).

ordinary rules of contract construction."); *see also State Farm Mut. Auto. Ins. Co. v. Staton*, 685 S.E.2d 263, 265 (Ga. 2009) ("The existence . . . of an ambiguity in an insurance policy is a matter of law for the court.").

The "cardinal rule" in interpreting an insurance policy is "to determine and carry out the intent of the parties." *Nat'l Cas. Co. v. Ga. Sch. Bds. Ass'n*, 818 S.E.2d 250, 253 (Ga. 2018). In doing so, a court should "consider the insurance policy as a whole," and attempt to "give effect to each provision" and "harmonize the provisions with each other." *Id.* "An insurance [policy] will be deemed ambiguous only if its terms are subject to more than one reasonable interpretation," and "should be read as a layman would read it[.]" *State Farm*, 685 S.E.2d at 265; *York Ins. Co. v. Williams Seafood of Albany*, 544 S.E.2d 156, 157 (Ga. 2001). And when an insurance policy is found to be ambiguous, "it will be construed liberally against the insurer and most favorably for the insured[;]" however, a court cannot "create an ambiguity where none, in fact, exists." *State Farm*, 685 S.E.2d at 265-66.

First, a court should "determine if the instrument's language is clear and unambiguous." *Am. Empire Surplus Lines Ins. Co. v. Hathaway Dev. Co.*, 707 S.E.2d 369, 371 (Ga. 2011) (citation omitted). If unambiguous, a court "simply enforces the [policy] according to the terms and looks to the [policy] alone for the meaning." *Id.* (citation omitted). When the policy does not define the term at-issue, a court is to "look to the commonly accepted meaning of the term." *Id.* (citation omitted).

Although the policy does not define "dwelling," the present case does not raise a legitimate issue of ambiguity. "Dwelling" is defined almost consistently the same throughout various dictionaries and sources. *See, e.g.*, BALLENTINE'S LAW DICTIONARY (3rd ed. 2010) ("A place of abode for people."); *Legal Definition: dwelling*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/dwelling ("a structure where a person lives and especially sleeps"); CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/dwelling ("a house or place to live in"); DICTIONARY.COM, https://www.dictionary.com/browse/dwelling ("a building or place of shelter to live in; place of residence; abode; home"); OXFORD LEARNER'S DICTIONARIES, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/dwelling ("a house, apartment, etc. where a person lives"); COLLINS DICTIONARY, https://www.collinsdictionary.com/us/dictionary/english/dwelling ("a place to live in; residence; house; abode").

Many Georgia statutes define "dwelling" in the same manner. *See, e.g.*, O.C.G.A. § 16-7-1(a)(1) ("any building, structure, or portion thereof which is designed or intended for occupancy for residential use"); O.C.G.A. § 8-3-201(9) ("any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families"); O.C.G.A. § 31-41-12(4) ("the interior or exterior of a structure, all or part of which is designed or

used for human habitation"); O.C.G.A. § 7-1-1000(8) ("a residential structure that contains one to four units").

It appears that the commonly accepted meaning of the term "dwelling" is a residential structure in which an individual lives and occupies. Plaintiff's garage is, therefore, not such a structure. Plaintiff does not claim that she or another individual used the garage as a residence or place to live. The pictures Plaintiff provided in her Complaint further evidence the likelihood the garage was not occupied because of its dilapidated condition. [Doc. 7-3]. Based on the pleadings and the common meaning of "dwelling," a layman would not read the Policy's use of "dwelling" to include Plaintiff's garage.

Moreover, a plain reading of Plaintiff's policy would inform a layman that her garage is not covered under the policy. Plaintiff's Policy states that Defendant "provide[s] insurance only for insured losses that occur during the [p]olicy [p]eriod shown on the [d]eclaration [p]age unless the loss is excluded elsewhere in the policy." [Doc. 7-1 at 10]. Plaintiff's declaration page shows that she has two forms of coverage: "Coverage A – Dwelling" and "Coverage C – Personal Property." [Doc. 7-2 at 2]. "Coverage A – Dwelling" is the only pertinent coverage here.

Coverage A – Dwelling covers the "dwelling shown on the [d]eclarations [p]age" and any structure that is attached to the dwelling. [Doc. 7-1 at 10]. The declaration page of Plaintiff's Policy describes the dwelling as being a frame

construction, one family, primary occupancy structure built in 1945 and located at 3743 Miller Dr. NE, Dalton, GA 30721. [Doc. 7-2 at 2]. No other building or structure is described on Plaintiff's declarations page. And, as Plaintiff concedes, her garage was not attached to the house. [Doc. 13 at 13]. Thus, the proper and normal construction of Plaintiff's Policy would be that the only structure covered under her policy is the one in which she resides (i.e., the structure that is described on the declarations page).

This Court's conclusion is consistent with the Georgia Court of Appeals, which reached the same conclusion pertaining to a case with similar facts. *See Tudor v. American Employers Insurance Company*, 173 S.E.2d 403 (Ga. App. 1970). In *Tudor*, the Court of Appeals considered whether a garage was considered a "dwelling" within the terms of an insurance contract.[3] *Id.* at 406. The Court noted "the only definition of the term 'dwelling' contained in the policy" was "the contract distinguish[ing] between property which is attached to the principal building (listed under Coverage A -- Dwelling) and private structures appertaining to the premises and located thereon (Coverage B -- Appurtenant Private Structures)." *Id.* Based on

[3] The Georgia Court of Appeals references to both "occupied dwelling" and "dwelling" in its opinion. *Tudor*, 173 S.E.2d at 406. At first glance, it appears that the court is attempting to construe "occupied dwelling," however, the court only concerns itself with defining "dwelling" in the context of the insurance contract. *Id.* And in doing so, it concludes that "from the definition of dwelling contained in the policy," the court could not "construe the policy to include disconnected structures or 'out buildings'" or a garage that "was some 22 to 30 feet from the house . . . ."

this definition of "dwelling," the court found that "dwelling" did not encompass "disconnected structures or 'out buildings,'" including "the garage in question." *Id.*

The same distinction between coverage options is present here. Plaintiff's Policy distinguishes between "Coverage A – Dwelling" and "Coverage B – Other Structures." [Doc. 7-1 at 10]. The difference between coverage options further supports the conclusion that the Policy creates an unambiguous and notable distinction between types of structures that are insured. Coverage A – Dwelling covers the "dwelling shown on the [d]eclarations [p]age" and any structures physically attached to it. [*Id.*]. Coverage B – Other Structures covers "other structures shown on the [d]eclarations [p]age." [*Id.*].

The only dwelling or structure shown and described on the declarations page is Plaintiff's place of abode located at 3743 Miller Dr. NE, Dalton, GA 30721. [Doc. 7-2 at 2]. Neither a garage nor any other unattached structure is listed or described on the declarations page. [*Id.*]. The Policy's structure alone would lead most laymen to conclude that Plaintiff's garage would be insured under Coverage B – Other Structures,[4] not Coverage A – Dwelling unless it was physically attached to

[4] Plaintiff's policy covers only two types of property: Coverage A – Dwelling and Coverage C – Personal Property. [Doc. 7-2 at 2]. However, Plaintiff discusses "Coverage B – Other Structures" in her Complaint and references a "Notice of Exclusion of Coverage for a Specific Structure" provided in her first letter from Defendant, which she alleges did not exclude her garage from being insured. [Doc. 7 at 5-6]. However, as Defendant notes, [Doc. 16 at 4, fn. 1], and the declarations page shows, [Doc. 7-2 at 2], Plaintiff's policy does not include "Coverage B – Other Structures" because she had not purchased such coverage for the policy period in which the garage

Plaintiff's place of abode. As Plaintiff's garage was not physically attached to her place of abode, it is not covered under Coverage A – Dwelling of the Policy. [Doc. 13 at 13].

Based on the foregoing discussion, the Court finds that the Policy is not ambiguous and can be plainly read to limit the definition of "dwelling" to Plaintiff's place of abode. Being that the Court finds no ambiguity in the language of the Policy, Plaintiff's garage was not covered by its terms, and Plaintiff's claim for breach of contract must be DISMISSED.

B. Plaintiff's promissory estoppel claim must be dismissed.

In the alternative to her breach of contract claim, Plaintiff brings a claim for promissory estoppel. [Doc. 7 at 8-10]. Plaintiff alleges that, in exchange for premium payments, she relied upon Defendant's promise to "provide insurance coverage for her dwelling" and Defendant "reasonably expected that [Plaintiff] would rely on its promise . . . ." [*Id.* at 9]. Plaintiff further alleges that she did in fact rely on the promise, and if Defendant "is not required to fulfill [its] promise to provide insurance coverage for [Plaintiff's] dwelling, including the Garage, injustice will result to the detriment of [Plaintiff]." [*Id.*].

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was damaged. Thus, the extent to which "Coverage B – Other Structures" covers her garage is not relevant because she never purchased that particular coverage option.

In its Motion, Defendant argues that Plaintiff cannot maintain a claim for promissory estoppel (even in the alternative) because promissory estoppel is not applicable when there is a valid contract between the parties. [Doc. 12 at 6]. In response, Plaintiff argues that Rule 8(d) of the Federal Rules of Civil Procedure allows her to plead claims in the alternative, even if they are contrary to one another. [Doc. 13 at 15]. Plaintiff further contends that in order to determine whether the policy is a binding contract, discovery must be conducted. [Doc. 13 at 16]. However, as Defendant has articulated, Plaintiff has not disputed the validity of the Policy. [Doc. 12 at 6]. Rather, Plaintiff has expressly stated that "the [p]olicy is a binding contract between the [p]arties." [Doc. 7 at 7].

When parties have "entered into a contract the consideration of which was a mutual exchange of promises [and] [t]he promises exchanged were bargained for[,] [p]romissory estoppel is not present." *Bank of Dade v. Reeves*, 354 S.E.2d 131, 133 (Ga. 1987). Relying on the Georgia Supreme Court's holding in *Reeves*, the Eleventh Circuit has stated succinctly that "where a plaintiff seeks to enforce an underlying contract which is reduced to writing, promissory estoppel is not available as a remedy." *Adkins v. Cagle Foods JV, L.L.C.*, 411 F.3d 1320, 1326 (11th Cir. 2005) (citing *Reeves*, 354 S.E.2d at 133).

Although Plaintiff states the contract is binding only within her count for breach of contract, she incorporated by reference all previous paragraphs of her

Complaint into her count for promissory estoppel. [Doc. 7 at ¶¶ 27; 38]. Thus, her statement about the Policy's validity carried over to her count for promissory estoppel. Though Plaintiff is correct that she may bring claims for relief under contradictory legal theories, she still must have sufficiently asserted the requisite factual basis for each claim. Since Plaintiff has conceded the policy is contractually binding and in writing, "promissory estoppel is not available as a remedy." *Adkins*, 411 F.3d at 1326. Plaintiff's promissory estoppel claim cannot move forward, and it must be DISMISSED.

C. Plaintiff's unjust enrichment claim must be DISMISSED.

Plaintiff brings a claim for unjust enrichment in the alternative. In her Complaint, Plaintiff contends that the premium payments she paid to Defendant "enriched" it and "was used by [Defendant] to further enrich" itself. [Doc. 7 at 10]. Plaintiff further alleged that the supposed unjust enrichment was to her detriment. [*Id.*].

Similar to its argument against Plaintiff's promissory estoppel claim, Defendant argues that Plaintiff does not dispute the validity of the Policy, and since there is a valid contract, unjust enrichment cannot apply. [Doc. 12 at 7]. Plaintiff rebuts again by arguing that Rule 8(d) of the Federal Rules of Civil Procedure enables her to plead claims in the alternative, even if they are contrary to one another. [Doc. 13 at 15]. Plaintiff further argues that dismissal of her unjust enrichment claim

would be premature because discovery must be conducted to determine the validity of the contract. [*Id.* at 16]. However, as Defendant points out again, Plaintiff has not disputed the validity of the Policy. [Doc. 12 at 7]. Instead, as noted previously, Plaintiff stated that "the [p]olicy is a binding contract between the [p]arties." [Doc. 7 at 7].

"Unjust enrichment applies when as a matter of fact there is no legal contract . . . ." *Tuvim v. United Jewish Cmtys., Inc.*, 680 S.E.2d 827, 829-30 (Ga. 2009) (internal quotations and citation omitted); *see also Camp Creek Hosp. Inns, Inc. v. Sheraton Franchise Corp.*, 139 F.3d 1396, 1413 (11th Cir. 1998) ("Recovery on a theory of unjust enrichment . . . is only available 'when as a matter of fact there is no legal contract.'" (quoting *Reg'l Pacesetters, Inc. v. Halpern Enters., Inc.*, 300 S.E.2d 180, 185 (Ga. App. 1983)).

Here, Plaintiff stated that there is "a binding contract between the [p]arties," [Doc. 7 at 7]. Just like her promissory estoppel claim, Plaintiff incorporated this statement into her count for unjust enrichment. [Doc. 7 at ¶ 38]. Again, this is an unfortunate side effect and consequence of Plaintiff's haphazard pleading. *See Georgia Realty & Ins. Co. v. Oakland Consol. of Ga. Inc.*, 148 S.E.2d 53, 55 (Ga. App. 1966) (dismissing cause of action for quantum meruit (similar to unjust enrichment) for failure to state a claim where the count for quantum meruit incorporated allegations of an express contract). Being that the policy's validity is

uncontested, Plaintiff's claim for unjust enrichment must be DISMISSED for her failure to state a claim.

D. Plaintiff's bad faith insurance claim must be dismissed.

Plaintiff's fourth claim is for bad faith insurance pursuant to O.C.G.A. § 33-4-6. Plaintiff states that she sent two demand letters to Defendant seeking payment for her damaged garage and both were denied. [Doc. 7 at 11-12]. Plaintiff contends that Defendant's refusal to pay or adjust her insurance claim was "in bad faith as no reasonable interpretation of the [p]olicy would exclude coverage for the loss of the Garage." [*Id.* at 11]. Defendant rebuts by arguing that refusal to pay "is not in bad faith if the claim is not covered under the policy," and even if covered by the policy, Plaintiff "must show that the insurer's refusal to pay was 'frivolous and unfounded' . . . ." [Doc. 12 at 8].

To prevail on a bad faith claim against an insurer under O.C.G.A. § 33-4-6, the plaintiff must prove: "(1) that the claim is covered under the policy; (2) that a demand for payment was made against the insurer within 60 days prior to filing suit; and (3) that the insurer's failure to pay was motivated by bad faith." *Lawyers Title Ins. Corp. v. Griffin*, 691 S.E.2d 633, 636-37 (Ga. App. 2010) (internal quotations and citation omitted).

"O.C.G.A. § 33-4-6 is not a strict liability statute. An insurance company that fails to make a payment on a covered claim within sixty days of a demand faces a

penalty only if its nonpayment was motivated by bad faith." *Turner v. CMFG Life Ins. Co.*, No. 23-11387, 2023 U.S. App. LEXIS 22648, at *4 (11th Cir. 2023) (citing *Lavoi Corp. v. Nat'l Fire Ins. of Hartford*, 666 S.E.2d 387 (Ga. App. 2008)). Under Georgia law, "[p]enalties and forfeitures are not favored. The right to such recovery must be *clearly shown*." *S. Gen. Ins. Co. v. Kent*, 370 S.E.2d 663, 665 (Ga. App. 1988) (internal quotations and citation omitted) (emphasis added). Because O.C.G.A. § 33-4-6 imposes a penalty, its requirements "are strictly construed." *Villa Sonoma at Perimeter Summit Condo. Ass'n v. Com. Indus. Bldg. Owners All., Inc.*, 824 S.E.2d 738, 743 (Ga. App. 2019).

The plaintiff "bears the burden of proving bad faith, which is defined as any frivolous and unfounded refusal in law or in fact to comply with the demand of the policyholder to pay according to the terms of the policy." *Ga. Farm Bureau Mut. Ins. Co. v. Williams*, 597 S.E.2d 430, 432 (Ga. App. 2004). "If there is any reasonable ground for the insurer to contest the claim, there is no bad faith." *State Farm Mut. Auto. Ins. Co. v. Harper*, 188 S.E.2d 813, 817 (Ga. App. 1972). "Ordinarily, the question of bad faith is one for the jury. However, when there is no evidence of unfounded reason for the nonpayment, . . . the court should disallow imposition of bad faith penalties." *Taylor v. Gov't Emps. Ins. Co.*, 830 S.E.2d 235, 237 (Ga. App. 2019) (citation omitted) (emphasis maintained).

Here, Plaintiff has failed to show "that the claim is covered under the policy . . . ." *Lawyers Title Ins. Corp.*, 691 S.E.2d at 636. As discussed in Section A, Plaintiff failed on her breach of contract claim because her policy does not cover damage to her garage. Thus, Plaintiff has failed to show that her claim is covered under her Policy.

Moreover, even if assuming all facts plead as true, Plaintiff has also failed to allege any facts that would lead the Court to find that Defendant's failure to pay was "motivated by bad faith." *Id.* at 637. Aside from general background, Plaintiff only states that Defendant "refused to pay or adjust in bad faith" and "said denial was in bad faith as no reasonable interpretation of the Policy would exclude coverage for the loss of the Garage." [Doc. 7 at 11]. These statements alone fail to "clearly show[]" that Defendant acted in bad faith. *S. Gen. Ins. Co.*, 370 S.E.2d at 665. Nor are these statements enough to show that Defendant's refusal was "frivolous and unfounded," *Ga. Farm Bureau*, 597 S.E.2d at 432.

Plaintiff has failed to allege any facts to demonstrate that Defendant had an "unfounded reason for the nonpayment[;]" thus, the Court must "disallow imposition of bad faith penalties." *Taylor v. Gov't Emps. Ins. Co.*, 830 S.E.2d 235, 237. Plaintiff's claim for bad faith insurance must be DISMISSED.

E. ATTORNEY'S FEES AND COSTS OF LITIGATION

Plaintiff seeks attorney's fees and costs of litigation under O.C.G.A. § 33-4-6, or alternatively, under O.C.G.A. §§ 13-6-11 and 9-15-14. [Doc. 7 at 13]. In its Motion, Defendant contends that the claims under O.C.G.A. §§ 13-6-11 and 9-15-14 are barred in this instance because O.C.G.A. § 33-4-6 is the exclusive remedy for an insurer's refusal to pay a covered loss. [Doc. 12 at 9]. Plaintiff rebuts this argument by positing that Rule 8(d) of the Federal Rules of Civil Procedure allows her to plead claims in the alternative. [Doc. 13 at 15-17]. Thus, if her claim for bad faith insurance under O.C.G.A. § 33-4-6 were to fail, Plaintiff's claims under O.C.G.A. §§ 13-6-11 and 9-15-14 are not barred because they were pleaded in the alternative. [*Id.* at 16-17].

O.C.G.A. § 33-4-6(a) provides that if an insurer acts in "bad faith" in refusing to pay under a policy, the insurer is required to pay the policyholder "all reasonable attorney's fees for the prosecution of the action against the insurer." In regard to penalty statutes like O.C.G.A. § 33-4-6, the Georgia Supreme Court has articulated that

> [W]here the General Assembly has provided a specific procedure and a limited penalty for noncompliance with a specific enactment . . ., the specific procedure and limited penalty were intended by the General Assembly to be the exclusive procedure and penalty, and recovery under general penalty provisions will not be allowed.

McCall v. Allstate Ins. Co., 310 S.E.2d 513, 516 (Ga. 1984). As the Georgia Supreme Court concluded, O.C.G.A. § 33-4-6 is the exclusive remedy for an insurer's bad faith refusal to pay insurance proceeds. *See id.* (noting that O.C.G.A. § 33-4-6 bars bringing other statutory claims for attorney's fee and litigation costs).

Although the Court has granted dismissal on all other claims, it will still analyze the legal viability of Plaintiff's claims for fees and expenses. Since Plaintiff brings a claim under O.C.G.A. § 33-4-6, her claims for attorney's fee and litigation costs under O.C.G.A. §§ 13-6-11 and 9-15-14 are barred. *See Powers v. Unum Corp.*, 181 F. App'x 939, 944, n.8 (11th Cir. 2006) (finding that the district court properly concluded that O.C.G.A. § 33-4-6 barred a claim for attorney's fee and litigation expenses under O.C.G.A. § 13-6-11); *Howell v. S. Heritage Ins. Co.*, 448 S.E.2d 275, 276 (Ga. App. 1994) (holding that a plaintiff's separate claims for attorney fees and litigation costs were not authorized because the "penalties contained in O.C.G.A. § 33-4-6 are the exclusive remedies for an insurer's bad faith refusal to pay insurance proceed").

Additionally, though Plaintiff also brings claims for breach of contract, unjust enrichment, and promissory estoppel, her alternative claims do not negate the fact that her exclusive remedy for attorney's fees and litigation costs is O.C.G.A. § 33-4-6. *See Thompson v. Homesite Ins. Co. of Ga.*, 812 S.E.2d 541, 546 (Ga App. 2018) ("Even where the insured alleges other theories of recovery distinct from a bad faith

claim, absent a special relationship beyond that of insured and insurer, if such claims are predicated on the insurer's failure to pay a claim, O.C.G.A. § 33-4-6 is the exclusive vehicle through which the insured may make a claim for attorney fees against the insurer."). Accordingly, O.C.G.A. § 33-4-6 bars the Plaintiff's claims for attorney's fees and litigation expenses under O.C.G.A. §§ 13-6-11 and 9-15-14. Plaintiff's request for attorney's fees and litigation expenses must be DISMISSED.

IV. CONCLUSION

Defendant's Motion to Dismiss [Doc. 12] is **GRANTED**. Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED, this 7th day of March, 2025.

William M. Ray II

WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE