IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DENNIS L. CHESTNUT, Plaintiff	:	NO. 15-00,569
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DAVID A. GARDNER, individually and t/d/b/a DAVID A. GARDNER AGENCY, Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the court is Defendant's Motion for Summary Judgment, filed December 12, 2016. Argument on the motion was heard January 24, 2017.

In his Complaint, Plaintiff alleges that he purchased liability insurance (for his tree cutting business) from Defendant, that the insurance was cancelled without notice to him, and that he had a loss which was as a consequence not covered. Plaintiff claims that Defendant was negligent in failing to notify him of the cancellation or procure substitute insurance for him. Plaintiff seeks reimbursement for the amount he had to pay as a result of the loss and also for loss of business which allegedly resulted from his lack of insurance for a period following the notice he eventually did get, until he was able to procure substitute insurance. Defendant denies that Plaintiff did not receive notice of cancellation and also alleges in New Matter that, inter alia, a superseding cause relieves him of any liability.

In his Motion for Summary Judgment, Defendant contends he is entitled to judgment as a matter of law as Plaintiff has failed to overcome the rebuttable presumption raised by the "mailbox rule" (and thus the court should presume that

Plaintiff did receive the notice of cancellation), and further, that Plaintiff is barred from recovery by the doctrine of contributory negligence. Plaintiff did not file any response to the motion.

While there might be an issue of fact regarding whether Plaintiff received the notice of cancellation,[1] the court agrees with Defendant that a superseding event makes that notice irrelevant. Plaintiff's policy ran from August 12, 2012 through August 12, 2013.[2] The loss occurred August 18, 2013, and was not covered because the insurance was no longer in effect. But, the policy *would have expired* even if it had not been cancelled as Plaintiff never paid the renewal premium. Plaintiff knew that the premium was due in August.[3] By failing to make the renewal premium, Plaintiff was negligent. He is thus barred from recovery for Defendant's alleged negligence under the contributory negligence doctrine, which prevents recovery when a plaintiff's own negligence, however slight, contributes to his injury in a proximate way. *See* Gorski v. Smith, 812 A.2d 683 (Pa. Super. 2001). His claim for reimbursement for the uncovered loss is thus precluded.

As for the claim for loss of business, Plaintiff alleges in his Complaint merely that Defendant was negligent because he failed to procure replacement coverage, and that as a result, Plaintiff was forced to cease business operations for three months while he obtained replacement coverage, causing a loss of revenue of $15,000.00. Again setting aside the fact that no response was filed to the motion, and thus Plaintiff has not pointed to any evidence which would support his claim, the Complaint itself does not set forth any factual basis on which to

[1] For purposes of this discussion the court will not consider that Plaintiff has not filed an Answer and thus has not pointed to the evidence which would rebut the presumption raised by the mailbox rule.
[2] See Exhibit A attached to the motion for summary judgment, at page 24.

find Defendant negligent for the three month lapse, even if one assumes that Defendant had a duty to procure the replacement coverage.[4] Plaintiff testified in his deposition that he did not get the replacement coverage until he did because he did not have the money to get it. See Exhibit A at pages 43 and 44. And, even though he later says that he *did* have the money, Id. at page 51, he also says that he contacted another insurance agency within a few days of finding out he no longer had coverage and it took that agency three months to obtain replacement coverage. Id. None of these allegations supports the imposition of a duty on Defendant or a finding of negligence on Defendant's part. Defendant is thus entitled to judgment as a matter of law with respect to this claim as well.

ORDER

AND NOW, this day of January 2017, for the foregoing reasons, Defendant's Motion for Summary Judgment is hereby GRANTED. Judgment is hereby entered in favor of Defendant and against Plaintiff.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Orso, Esq.
Mary Lou Maierhofer, Esq., P.O. Box 628, Hollidaysburg, PA 16648
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson

[3] See Exhibit A at page 23.
[4] In his deposition, Exhibit A to the motion, Plaintiff testified that he did not return to Defendant to seek replacement coverage, so the court is hard-pressed to understand why Defendant would have had any such duty to Plaintiff in the first place. See pages 38 and 41-42.