STATE OF SOUTH CAROLINA COUNTY OF YORK Ina Shtukar Steinberg, Plaintiff, v. South Carolina Property and Casualty Instance Guaranty Association, as a statutory successor in interest to St. Johns Insurance, insolvent insurer, Defendant.	IN THE COURT OF COMMON PLEAS Civil Action No. 2024-CP-46-1308 **ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court upon Plaintiff's Motion for Summary Judgment and Defendant's Cross Motion for Summary Judgment. A hearing on these matters was conducted on March 12, 2025, before the undersigned. Present at the hearing were Mary D. LaFave, Esq. representing Defendant and Ina Shtukar Steinberg, Esq. appearing *pro se*. Based on the findings of fact and conclusions of law contained herein, the Defendant's Motion for Summary Judgment is GRANTED and Plaintiff's Motion for Summary Judgment is DENIED.

UNDISPUTED FACTS

It is undisputed that this litigation pertains arises from a hail claim filed by the Plaintiff against her insurer, St. Johns Insurance Company, which was thereafter denied by the insurer. *See* Pl's Compl., ¶ 5 [Exhibit 1 to Defendant's Cross Motion for Summary Judgment]. After the initial denial of the claim, St. Johns was declared insolvent. *Id.* at ¶ 6. Following the insolvency, Plaintiff timely renewed her claim with the South Carolina Property and Casualty Guaranty Insurance Association ("SCGA"). Following an investigation into the claim, SCGA maintained denial of

the claim. *See* May 7, 2022 SCGA Denial Letter [Exhibit 2 to Defendant's Cross Motion for Summary Judgment]. The basis of the denial was that the hail damage found on the Plaintiff's roof was pre-existing the policy inception, and the subject policy did not provide coverage for pre-existing conditions. *Id.* In support of this decision, the denial letter included the Haag Engineering report which concluded that any hail damage to the Plaintiff's roof resulting in functional damage occurred prior to the policy period. *Id.*

RELEVANT PROCEDURAL BACKGROUND

Plaintiff, proceeding *pro se*, Ina Shtukar Steinberg filed her Complaint on April 1, 2024, against SCGA[1] alleging three claims for 1) breach of contract for failure to pay her hail claim; 2) breach of covenant of good faith for failure to pay her hail claim; and 3) declaratory judgment on claims practices of the insolvent insurer and duties of insurers in South Carolina. *See generally* Pl's Compl. On October 10, 2024, the Court granted SCGA's Motion to Dismiss in Part, which dismissed all causes of action except Plaintiff's breach of contract claim. *See* October 10, 2024, Order Granting SCGA Mot. to Dismiss in Part. On February 10, 2025, Plaintiff filed a motion for summary judgment on her breach of contract claim alleging that the Defendant cannot carry its burden of proof that a policy exclusion applies. *See* Pl.'s Mot. For Summary Judgment. On March 3, 2025, SCGA filed a Cross Motion for Summary Judgment.

This matter came before the Court on March 12, 2025. At the hearing, Plaintiff raised a procedural objection, asking the Court to decline to consider Defendant's Brief and supporting evidence because they were untimely filed and served under SCRCP 6, to the extent Defendant

[1] The South Carolina Property and Casualty Insurance Association Guaranty Act, S.C. Code Ann. §38-31-60(b) (herein the "Act") states that SCGA is considered the insurer only within the confines of a "covered claim" and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. §38-31-20(8) defines "covered claim" as one that is afforded coverage under the terms and conditions of the insolvent insurer's policy.

filed and served these materials 18 hours before the hearing. Plaintiff also argued that she was deprived of an opportunity to respond and that the Supreme Court did not limit its consideration of timeliness to affidavits, but applied it to all evidence submitted at the eleventh hour, impacting the other side's ability to respond. The Court, after providing both parties an opportunity to be heard, overruled this objection finding that the Plaintiff had been provided all of the materials that were submitted by the Defendant that had been exchanged in discovery or otherwise provided for months or years; thus, there was no surprise to the Plaintiff.

Plaintiff also objected to the admissibility of the Haag Engineering Report such that it is inadmissible hearsay and did not meet the business records exception under South Carolina Rules of Evidence, Rule 803. The Court, after providing both parties an opportunity to be heard, overruled this objection finding that the Haag Engineering Report is admissible and does meet the business records exception to the Hearsay Rule.

Plaintiff disputes the denial of coverage on numerous grounds and seeks summary judgment that the denial of coverage was improper under the terms and conditions of the subject policy. Defendant seeks declaratory judgment that the denial is proper based on the evidence and the subject policy declarations, terms, conditions and exclusions. The parties have had adequate time to complete discovery and, upon filing competing motions for Summary Judgment, these motions are ripe for consideration.

STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment is appropriate if the court finds there are no genuine issues of material fact. The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Upon meeting this burden, the moving party shall be entitled to judgment as

a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). All ambiguities, conclusions and inferences arising from the evidence "must be construed most strongly against the moving party." *Ellis v. Davidson*, 358 S.C. 509, 517- 18, 595 S.E.2d 817, 821 (Ct. App. 2004). However, when the plain, palpable and disputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Id.*

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party "may not rest upon the mere allegations or denials in his pleading." Rule 56(e), SCRCP. Instead, the non-moving party "must set forth specific facts showing that a genuine issue of material fact exists for each essential element of the plaintiff's claim." *Hansson, supra. See also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023) (holding that "mere scintilla of evidence" is not the correct standard of proof for determining whether the non-moving party has shown the existence of a genuine issue of material fact necessary to survive a motion for summary judgment).

LAW AND ANALYSIS

It is well established in South Carolina that insurance policies are subject to general rules of contract construction. *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327, 330 (1999). "When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used." *Id.* The Court must enforce, not write, contracts of insurance and must give policy language its plain and ordinary meaning. *Id.* An insurer's obligation under a policy of insurance is defined by the terms of the policy itself and cannot be enlarged by judicial construction. *S.C. Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471, 474 (Ct. App. 1990). "Where a contract exists, claims within the contract's scope must be brought under contract law." *Hood v. United Services Auto Association*, 910 S.E.2d 767, 770, 445 S.C. 1, 7 (S.C., 2025).

As this Court is well familiar, insurers have the right to limit their liability provided they do not contravene a statutory provision or public policy. *Burns v. State Farm Mut. Auto Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989). Generally, policy exclusions are construed strongly in favor of coverage and the insurer bears the burden of establishing the exclusion's applicability. *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 701 S.E.2d 33, 35 (2010). "However, if the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend coverage that was never intended by the parties." *S.C. Farm Bureau Mut. Ins. Co. v. Wilson*, 344 S.C. 525, 530, 544 S.E.2d 848, 850 (Ct. App. 2001) (quoting *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (Ct. App. 1993).

In South Carolina, the burden of proof is on the insured to prove that their claim falls under the policy's coverage. *Garrett v. Pilot Life Ins. Co.*, 241 S.C. 299, 128 S.E.2d 171, 173 (S.C.1962). Here, Plaintiff is unable to meet that burden because the uncontroverted evidence reflects that the Plaintiff's alleged roof damage occurred prior to the policy period. At the hearing, Plaintiff argued that two internal emails[2] regarding the retention of an expert supported the notion that the insurer was not acting in good-faith in investigating the claim. Specifically, Plaintiff argued that the insurer was faced with two conflicting expert reports: the Davis Services' Report from the field adjuster and the Haag Engineering Report from the professional engineer, both of which were retained prior to the decision to deny the claim. Plaintiff further argued that the carrier had a duty to resolve all doubt as to the policy coverage in Plaintiff's favor. Plaintiff also argued that the insurer's internal emails showed an initial recommendation to pay the claim, but the Court's examination of the email revealed that the author of the email did not understand the purpose of

[2] Plaintiff was not able to readily reference these emails in the hearing, but they were shown to the Court by counsel for the Defendant and reviewed fully in consideration of Plaintiff's position.

the retention of the engineer and that this recommendation was before the Haag Engineering Report concluded the damage pre-existed the policy.

The Court does not agree with the Plaintiff that the subject emails created a material question of fact as to the veracity of the investigation or that Plaintiff's claim fell within the coverage of her homeowner's policy. Instead, the emails reflected an internal discussion about engagement of a forensic expert to determine whether the hail damage occurred prior to the policy period. Defendant argues, and the Court agrees, that this is precisely what the insurer should have done under the circumstances and the denial based on the engineering report was appropriate. Further, the Court does not agree that the reports were conflicting since both reports reflect that hail damage was present, but the Haag Engineering Report is the only one that addresses the age of the damage before the policy period.

The Homeowners' Policy at issue here, Policy Number #SC31019957 ("the Policy") provided insurance coverage for Plaintiff's residence located at 1687 Saybrook Court, Rock Hill, South Carolina 29732, for effective dates 08/10/2021 to 08/10/2022. Any coverage was subject to the declarations, terms, conditions, and exclusions of the Policy. The clear and unambiguous language of the Policy provides that coverage may apply "only to loss which occurs during the policy period." *See* Policy, p. 33, Section I – Conditions, §P [Exhibit 3 to Defendant's Cross Motion for Summary Judgment]. The Policy states, in pertinent part:

> **P. Policy Period**
>
> This policy applies only to loss which occurs during the policy period.

Further, the Policy provides a clear and unambiguous exclusion from coverage for pre-existing damage:

EXISTING DAMAGE EXCLUSION ENDORSEMENT

It is understood and agreed that this policy is not intended to and does not provide coverage for any damages which occurred prior to policy inception.

It is also understood and agreed that this policy is not intended to and does not provide coverage for any claims or damages arising out of workmanship, repairs and/or lack of repairs arising from damage which occurred prior to policy inception.

It is understood and agreed that this policy does not provide coverage for any stated amount until and unless all structures covered by your previous policy have been fully and completely repaired. Prior to the completion of such repairs, coverage will be limited to the greater of: 1) the actual cash value of the property at the time of a covered loss occurring during this policy period; or (2) the cost of repairing the property to the state at which it existed at the time of a covered loss, provided that such repairs have been made.

This endorsement applies to all coverage under this policy.

See id. at p. 51.

On August 19, 2021, nine (9) days after the renewal of the policy, St. Johns received the first notice of loss. During its investigation of the claim, St. Johns retained the services of Haag Engineering ("Haag") to inspect the property and collect evidence of the alleged hail damage. On November 16, 2021, Haag inspected the subject property. On December 10, 2021, Haag provided the final report to St. Johns, concluding to a reasonable degree of engineering certainty that 1) the inspection revealed no remaining indications of a recent hailstorm as no spatter marks were visible on roof or building appurtenances; and 2) hail-caused bruises were aged in appearance and weather records revealed that the most likely storm to cause the observed hail caused damage occurred in 2015. *See* Haag Engineering Report [Exhibit 1 to Defendant's Cross Motion for Summary Judgment]. The report further concluded that any damage to the roof was aged in appearance which further supported the conclusion that the storm in question occurred in 2015. *See id*. Thereafter, St. Johns sent Plaintiff a denial letter that contained a detailed explanation of the grounds for denial of the claim, including that the expert engineers concluded that the hail damage occurred prior to

the inception of the Policy. Upon transfer of the claim to SCGA, SCGA maintained denial of the claim, affirming the reasoning outlined in St. Johns' denial letter to Plaintiff.

Plaintiff attempts to argue that the Davis Claims Services Report ("Davis Report") recommended approval of the claim and a full roof replacement, thereby creating a duty on the insurer to approve the claim. *See* Pl.'s Mot. For Summary Judgment at p. 9. Plaintiff both relies on an incorrect standard of law and misconstrues the effects of the Davis Report. Davis Claims Services was retained to conduct a repair estimate, not provide an expert engineering report. The estimate clearly and unambiguously provides: "THIS IS A REPAIR ESTIMATE ONLY… RECEIPT OF THIS ESTIMATE IS NOT TO BE INTERPRETED AS AN ACCEPTANCE OF LIABILITY OR A SETTLEMENT OF THIS CLAIM. THIS ESTIMATE IS NOT AN AUTHORIZATION TO REPAIR." *See* Davis Report [Exhibit 4 to Defendant's Cross Motion for Summary Judgment]. As such, the Haag Engineering Report remains the sole, undisputed engineering report in the record of this matter and provides the good faith basis for the denial.

Prior to the parties' cross motions, the parties were engaged in discovery for almost ten (10) months. Plaintiff has had ample time and opportunity to conduct discovery, retain experts, and provide evidence to support her claim for coverage. By filing her motion for summary judgment, Plaintiff concedes that this case is ripe for Summary Judgment. Plaintiff has presented no evidence to challenge the denial of coverage and the expert opinions of Haag who timely inspected the subject roof and rendered conclusions based on established engineering principles. Plaintiff contends, and argued before the Court, that the only issue before this Court is-whether the evidence before the insurer was completely free from doubt that the hail damage to Plaintiff's roof was 'old hail' that predated the consummation of the policy. *See further,* Pl.'s Response in Opposition.

This Court finds that this is not the correct standard of care for an insurer and further concludes that that the record does not contain evidence to create a question of fact that a hailstorm caused roof damage within the policy period to trigger the Policy. Plaintiff cannot meet her burden in this regard. Furthermore, even if Plaintiff can show that the damage occurred in the policy period, which she cannot, the Court finds that the evidence reflects that Plaintiff's roof damage was old and occurred before the policy inception. Therefore, Plaintiff's claim is excluded by the pre-existing damage exclusion which also supports the carrier's denial of coverage. Accordingly, this Court finds that there is no genuine issue of material fact as to whether Plaintiff's claim is covered under the Policy and as such Defendant is entitled to judgment as a matter of law. The Plaintiff's hail claim was properly denied by the insurer and, subsequently, by the Defendant.

ORDER

Therefore, **IT IS ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED**. **IT IS FURTHER ORDERED** that Defendant South Carolina Property and Casualty Insurance Guaranty Association's Cross Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

York Common Pleas

Case Caption: Ina Shtukar Steinberg , plaintiff, et al VS Sc Property And Casualty Insurance Guaranty Association , defendant, et al

Case Number: 2024CP4601308

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge