

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)
)
 Charlie L. Jones,)
)
 Plaintiff,)
)
 v.)
)
 Certain Interested Underwriters at Lloyd's,)
 London Subscribing to Policy Number)
 TMASHO144229, Tapco Underwriters)
 Inc.; Creech, Roddey & Watson; and)
 Crawford & Company,)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Civil Action No. 2016-CP-43-00414

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANT
CERTAIN INTERESTED
UNDERWRITERS AT LLOYD'S,
LONDON SUBSCRIBING TO POLICY
NUMBER TMASHO144229**

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Defendants)
SC Court of Appeals

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DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a Motion for Summary Judgment, pursuant to Rule 56(c), SCRPC, filed by Defendants Certain Interested Underwriters at Lloyd's, London Subscribing to Policy Number TMASHO144229 ("Underwriters"), Tapco Underwriters, Inc. ("Tapco"), and Crawford & Company ("Crawford") (collectively, "Defendants"). Defendants requested that this Court grant them summary judgment as to all causes of action set forth in Plaintiff's Complaint on the grounds that there exists no genuine issue of material fact and Defendants are entitled to judgment as a matter of law. This Court held a hearing on the Defendants' motion on June 5, 2017 and the motion was granted as to Tapco and Crawford by Order filed June 9, 2017.¹ This Court took the motion under advisement as to Defendant Underwriters.

UNDISPUTED FACTS

The following facts are not in dispute. At all times relevant to this action, Plaintiff resided at 901 Manning Street, Sumter, South Carolina ("Property"). On July 7, 2015, Plaintiff obtained a

¹ Defendant Creech, Roddey & Watson filed a separate motion for summary judgment which was likewise heard on June 5, 2017 and granted by an Order filed on July 10, 2017.

policy of homeowners' insurance, Policy Number TMASHO144229 (the "Policy"), from Underwriters for the Property. The Policy insures the Property against certain enumerated perils, and is subject to several exclusions from coverage. Of particular importance to this case, the Policy insures against damage to the interior of the property caused by a windstorm or hail, but only if a Wind Event (as defined below) occurs. Section I (2) of the Policy – "Perils Insured Against" - states, in pertinent part:

Windstorm or hail. This peril does not include loss to the inside of a building or the property contained in a building caused by rain, snow, sleet, sand or dust *unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.*

(emphasis added).

On October 12, 2015, Plaintiff filed a claim against the Policy, claiming that the Property sustained water damage to the roof during a storm on October 5, 2015 (the "Claim"). On October 18, 2015, an insurance adjuster inspected the roof and the Property. The adjuster did not find any evidence that a Wind Event occurred or that any Wind Event was the cause of the roof's deterioration. Rather, the adjuster found that the roof is significantly aged, has incurred substantial wear and tear over an extended period of time and leaks as a result.² On November 3, 2015, another insurance adjuster also inspected the roof and came to the same conclusions regarding the absence of a Wind Event and the cause of the roof's deterioration. Thereafter, Plaintiff's Claim was denied.

Plaintiff's Complaint alleges causes of action for breach of contract and bad faith refusal to pay a first-party insurance claim. Underwriters submits that Plaintiff has been unable to adduce any evidence that the Plaintiff suffered a compensable loss under the Policy. The Court concludes

² In his deposition Plaintiff admitted that his roof was "worn out due to age" and was probably "70 plus years old." He also admitted that the roof had leaked prior to the storm.

that Underwriters is entitled to judgment as a matter of law as to both causes of action for the reasons that follow.

DISCUSSION

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder.” *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton*, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, “[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 198, 659 S.E.2d at 203. “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006). “Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Id.*

Insurance policies are subject to the general rules of contract construction. *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). “Courts must

enforce, not write, contracts of insurance....” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting *Sloan Constr. Co. v. Central Nat'l Ins. Co.*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)). The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). If the contract's language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect. *Id.*

The Policy in this case is clear and unambiguous. It does not cover damage caused by rain unless a Wind Event occurs. There is no evidence in the record before this Court that a Wind Event occurred during the storm or that a Wind Event caused deterioration to the roof on the Property. The deterioration of the roof due to age and substantial wear and tear is not a peril insured against in the Policy. Absent a Wind Event occurring, there is no compensable loss under the Policy, and Underwriters is entitled to judgment as a matter of law.

In response to Underwriters' Motion, Plaintiff made several unsupported assertions. First, he alleged that Underwriters had failed to cooperate in discovery. Plaintiff previously filed one or more motions to compel which this Court heard and kept under advisement. The Court invited Plaintiff to supplement the record to explain what items he believed the Defendants had failed to turn over. It further requested that Underwriters affirm to the Court whether certain documents exist, which was done by way of letter from Underwriters' counsel dated May 3, 2017.³ The Court finds no basis for Plaintiff's contention that Underwriters has prevented him from obtaining the necessary discovery to pursue his case.

³ Underwriters actually provided documents to Plaintiff that he did not request in any effort to convince Plaintiff that it was not hiding anything from him.

Plaintiff further indicates that he has been unable to take the Defendants' depositions, but there is no evidence before the Court that Plaintiff has ever attempted to do so.⁴

Plaintiff further asserts that the storm that gave rise to his claim involved copious amounts of rain, which "was more than enough to remove the tar from [the] roof" of the Property. This unsupported, self-serving statement does not change the Court's conclusion, because even if it is true, the washing away of roof tar by torrential rainfall does not meet the Policy's definition of a Wind Event.

Plaintiff also raised an issue with respect to Underwriters' cancellation of the Policy following the events that gave rise to the claim. However, he makes no credible assertion, and there is no evidence before this Court, that such cancellation caused him any damages, even if it was unwarranted. It is the denial of Plaintiff's Claim following the storm that gives rise to his alleged damages and to his causes of action for breach of contract and bad faith. Logically, if Underwriters was within its rights to deny the Claim because there was no compensable loss under the Policy, it cannot be held liable for breach of contract or for bad faith as a matter of law.

It is therefore ORDERED that Underwriters' Motion for Summary Judgment is GRANTED. This case is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Presiding Judge

September _____, 2017.
Sumter, South Carolina

⁴ Plaintiff also filed what he styled as "Plaintiff Evidentiary Objections, to Evidence in Defendants Motion for Summary Judgment." In essence, Plaintiff takes issue with the contents of the affidavits that Underwriters submitted in support of its Motion for various reasons, but the Court finds nothing procedurally or substantively faulty about them.



Sumter Common Pleas

Case Caption: Charlie L Jones -VS Lloyds Of London , defendant, et al
Case Number: 2016CP4300414
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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