STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2016-CP-40-06305
ELLA LIM and KWONG CHEUNG, Plaintiffs, vs. AMGUARD INSURANCE COMPANY, CONSULTATIVE INSURANCE GROUP, IN.C, CHERYLE WALLER, and ROB REA, Defendants.	)	**ORDER**

This matter came before the Court on Plaintiffs' Motion for Reconsideration of the Court's Order filed April 11, 2019 granting Defendant AmGuard Insurance Company's (hereinafter "AmGuard") Motion for Summary Judgment (hereinafter the "Order"). For the reasons stated below, Plaintiffs' Motion for Reconsideration is DENIED.

In their Motion, Plaintiffs argue, "pursuant to Rules 52 and 50 of the South Carolina Rules of Civil Procedure" that the Court should reconsider the Order because it failed to consider multiple genuine issues of material fact presented by Plaintiffs.

As an initial matter, Plaintiffs appear to be moving under the wrong rules. Rule 50 governs Motions for a Directed Verdict and/or a Judgment Notwithstanding a Verdict, including appeals thereof, and is clearly inapplicable to the Order, which granted a Rule 56 pre-trial Motion for Summary Judgment. Rule 52 dictates the findings of fact and conclusions of law that the court must make when it tries a case without a jury or with an advisory jury, and is equally inapplicable here. In fact, Rule 52(a) specifically states that it is not applicable to motions under Rule 56. In any event, a more appropriate vehicle for the Motion would have been Rule 59(e). Courts have

identified three circumstances in which a Rule 59(e) motion may be granted: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at [the hearing]; or (3) to correct a clear error of law or prevent manifest injustice." Slachta v. Reliance Std. Life Ins. Co., 444 F. Supp. 2d 587, 592 (D.S.C. 2006) (quoting United States ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002)).

Plaintiffs argue that the Order failed to consider the following: (1) Plaintiffs' pre-fire request to be named as insureds under the Policy[1] and documents indicating that Plaintiffs had an interest in the Property as mortgagees; (2) evidence that Lim did not know and was justified in not knowing the true amount of alcohol sales and food sales at the time Sushi Time, LLC applied for the Policy; (3) AmGuard's own inspection failed to reveal any uncovered activities occurring at the Property; and (4) evidence that Plaintiffs were damaged as the sole members of Cheung's Chinatown, LLC, the owner of the Property.

But the Order expressly states that the Court considered Plaintiffs' Memorandum of Law in Opposition to AmGuard's Motion for Summary Judgment, where Plaintiffs presented to the Court the very evidence they now claim the Court did not consider. See Order at p.1. Since the Court did consider the evidence, the Motion is denied. Further, Plaintiffs have not satisfied their burden of proving the existence of any of the three circumstances under which a motion for reconsideration could be granted. Accordingly, the Motion is denied. Regardless, the Court will briefly address each of the four pieces of evidence Plaintiffs claim the Court failed to consider.

I. THE ORDER PROPERLY CONSIDERED ALL EVIDENCE OF THE PLAINTIFFS' INSURED STATUS

[1] Unless otherwise indicated herein, all capitalized terms have been defined in the Order and those definitions are applicable here.

The Order dedicates three pages of text to the finding that Plaintiffs were not insureds under the Policy at the time of the fire. See Order at pp.15-18. In fact, the Order specifically addressed Plaintiffs' argument that they should qualify as insureds under the Policy because they were listed on the Application as mortgagees of the Property, finding that argument unavailing. Id. at p.18. Regardless of whether the Plaintiffs *requested* to be included on the Policy before the fire, they were not included, and Plaintiffs have presented no evidence that they were. Nor have Plaintiffs filed a claim to reform the Policy to include them as insureds. Simply put, the Plaintiffs were not insureds under the Policy at the time of the fire.

II. THE ORDER PROPERLY CONSIDERED ALL EVIDENCE REGARDING MISREPRESENTATIONS ON THE POLICY'S APPLICATION

Plaintiffs argue that there is a genuine issue of material fact as to whether Sushi Time, LLC misrepresented the amount of alcohol sales and food sales on the Application because Waller testified that new restaurant businesses may not know this information and because Lim did not know this information. As to Plaintiffs' first point, the Order expressly found that Sushi Time, LLC made the misrepresentation about the sales of food and alcohol after it was operating for approximately four months. See Order at p.19. Therefore, Waller's testimony about what a *new* restaurant owner may or may not know is not material here. Next, it is inconsequential whether Lim knew the amount of alcohol sales compared to the amount of food sales. Lim admitted that Jerry Britt was authorized by Sushi Time, LLC to purchase insurance coverage. Jerry Britt made the misrepresentations on the Application. The Policy was void based on these material misrepresentations.

III. THE ORDER PROPERLY CONSIDERED EVIDENCE OF AMGUARD'S INSPECTION OF THE PROPERTY

The fact that the Order does not discuss a pre-fire inspection of the Property that AmGuard commissioned does not warrant reversal. Plaintiffs have not presented evidence that Pandora was operating as a Sushi Restaurant or another type of restaurant that sold more food than alcohol. It is not material whether an inspection commissioned by AmGuard uncovered Pandora's true operations, when Sushi Time, LLC and the Plaintiffs here have admitted that Pandora did not operate the type of business that AmGuard thought (because of Sushi Time's Application) it was insuring. The Policy was void based on these materials misrepresentations.

IV. THE ORDER PROPERLY CONSIDERED EVIDENCE OF PLAINTIFFS' LACK OF DAMAGES

Plaintiffs admit, even in their Motion, that they were not the owners of the Property - - Cheung's Chinatown, LLC was. Even though Plaintiffs are the sole members of Cheung's Chinatown, LLC, the LLC and the Plaintiffs are separate and distinct legal entities. The Order considered these arguments and properly found that Plaintiffs individually did not suffer any damages.

In sum, Plaintiffs have not presented evidence of any of the three circumstances under which the Court should grant the Motion: (1) a change in controlling law; (2) new evidence that was not available at the hearing; or (3) a clear error of law or manifest injustice. Instead, Plaintiffs argue that the Order failed to consider certain arguments that Plaintiffs made before the Court. But the Order specifically states that that the Court considered all arguments made in the briefs and at the hearing. In fact, the Order specifically discusses many of the issues Plaintiffs claim it does not. Plaintiffs' Motion for Reconsideration is DENIED.

IT IS HEREBY ORDERED!

L. Casey Manning
Presiding Judge, Fifth Judicial Circuit

Sept. 25, 2019