

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**GULF BREEZE PRESBYTERIAN
CHURCH,**

Plaintiff,

v.

Case No. 3:21cv909-TKW-EMT

**CHURCH MUTUAL INSURANCE
COMPANY,**

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

This case is before the Court based on Defendant's motion for summary judgment (Doc. 26). No response was filed.¹ Upon due consideration of the motion, its supporting documents (Docs. 25-1 through 25-10), and the entire case file, the Court finds that the motion is due to be granted.

This is a run-of-the-mill insurance dispute between an insured and its insurer in which the insured (Plaintiff) alleges that the insurer (Defendant) breached its obligations under the insurance policy by not paying a claim for hurricane damage to the insured's building. *See* Doc. 10 (amended complaint). Defendant denies that

¹ Plaintiff unsuccessfully attempted to voluntarily dismiss this case before the response deadline for the motion for summary judgment, *see* Doc. 29, but it did not thereafter respond to the motion for summary judgment or request that consideration of the motion be deferred under Fed. R. Civ. P. 56(d) because discovery had not yet closed.

it breached the insurance policy, *see* Doc. 15 (answer), and argues in its motion for summary judgment that it is entitled to judgment as a matter of law on the breach of contract claim because it is undisputed that Plaintiff has not repaired the damage to the building and the policy unambiguously provides that Defendant “will not pay on a Replacement Cost basis for any loss of damage [u]ntil the lost or damaged property is actually repaired or replaced.” Doc. 25-1, at 55 (¶7.a.(3)(a)).

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Although “summary judgment cannot be granted as a sanction for merely failing to file a response to a motion for summary judgment,” *Trs. of Cent. Pension Fund of Int’l Union of Operating Eng’rs & Participating Emps. v. Wolf Crane Serv., Inc.*, 374 F.3d 1035, 1040 (11th Cir. 2004), if a party fails to properly address the other party’s assertion of fact, the Court can “consider the fact undisputed for purposes of the motion” and “grant summary judgment if the motion and supporting materials ... show that the movant is entitled to it.” Fed. R. Civ. P. 56(e)(2), (3).

Here, based on Plaintiff’s failure to respond to the motion for summary judgment, the Court finds that it is undisputed (at least for summary judgment purposes) that Plaintiff’s building was covered under an insurance policy issued by Defendant; that the policy covered damage caused by windstorm; that the building

suffered windstorm damage from Hurricane Sally; that Plaintiff submitted a claim to Defendant for the replacement cost value (RCV) of the damage, less the applicable deductible; that Plaintiff has not repaired the damage; and that Defendant did not pay the claim. It is also undisputed that Plaintiff did not submit a claim for the actual cost value (ACV) of the covered loss and that the record contains no evidence of the ACV of the loss from which it could be inferred that the ACV of the loss exceeds the applicable deductible.

The policy unambiguously provides that Defendant is not required to pay an RCV claim until the damaged property is repaired, and both the Florida courts and the Eleventh Circuit have construed similar policy language to mean that the insurer is not obligated to pay a replacement cost claim until the repair or replacement has been completed. *See Buckley Towers Condo., Inc. v. QBE Ins. Corp.*, 395 Fed.Appx. 659, 662-64 (11th Cir. 2010); *State Farm Fire & Casualty Co. v. Patrick*, 647 So.2d 983, 984 (Fla. 3d DCA 1994) (cited with approval in *Ceballo v. Citizens Prop. Ins. Corp.*, 967 So. 2d 811, 815 (Fla. 2007)). This Court has ruled likewise. *See Metal Products Co., LLC v. Ohio Sec. Ins. Co.*, 2021 WL 1345525 (N.D. Fla. Apr. 12, 2021) (granting summary judgment in favor of the insurer in breach of contract suit filed by an insured seeking additional insurance proceeds because the claim was based on an RCV estimate, not an ACV estimate, and the undisputed evidence

showed that the insured had not repaired the damage to the property), *aff'd*, 2022 WL 104618 (11th Cir. Jan. 11, 2022). The same result is warranted here.

In sum, because it is undisputed that Plaintiff has not repaired the damage to the insured building, Defendant did not breach the insurance policy by not paying the RCV claim submitted by Plaintiff. Additionally, because there is no evidence of the ACV of the covered loss, Plaintiff cannot establish that Defendant breached the policy by not paying the ACV of the loss—particularly since Plaintiff admitted in discovery that has not made an ACV claim. Accordingly, it is

ORDERED that Defendant's motion for summary judgment (Doc. 26) is **GRANTED**. The Clerk shall enter judgment in favor of Defendant and close the case file.

DONE and ORDERED this 15th day of March, 2022.

T. Kent Wetherell, II

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UNITED STATES DISTRICT JUDGE