UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SHILOH CHRISTIAN CENTER,

Plaintiff,

v. **Case No. 6:20-cv-1774-CEM-LHP**

ASPEN SPECIALTY INSURANCE COMPANY,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion," Doc. 24), and Defendant's Motion for Summary Judgment ("Defendant's Motion," Doc. 25). For the reasons stated below, Plaintiff's Motion will be denied and Defendant's Motion will be granted.

I. BACKGROUND

Plaintiff is a church in Melbourne, Florida. (J. Gordon Dep., Doc. 25-2, at 6–7; Oct. 25, 2016 Report, Doc. 26-1, at 106). Defendant is an insurance company that issued several policies covering buildings operated by Plaintiff. (*E.g.*, 2014-2015 Policy, Doc. 25-1). In particular, Plaintiff maintained insurance coverage from Defendant from 2014 through at least 2018 under several year-long policies, each of which renewed the prior year's policy. Plaintiff owned two buildings, one located

on University Boulevard and a second on Sarno Road, both in Melbourne, Florida. (Doc. 25-2 at 12, 16). It is the Sarno Road property that is the subject of the dispute.

Plaintiff's 2014-2015 Policy was given Policy Number PRADXWL14 and was effective February 21, 2014. (Doc. 25-1 at 1). The original premium on the policy was $50,000. (*Id.*). On February 12, 2015, Plaintiff received a quote to renew this insurance coverage for another year—from February 21, 2015, to February 21, 2016—with a premium of $48,545. (Feb. 12, 2015 Quote, Doc. 25-5, at 4). That policy was given Policy Number PRADXWL15. (2016-2017 Policy, Doc. 25-10, at 1).[1]

According to emails in the record, in May 2015 Plaintiff asked its insurance agent, Crystal Elkins, to reach out to the policy's broker to see "what the premium would be without hurricane coverage." (Emails, Doc. 25-3, at 3). On June 22, 2015, Ms. Elkins confirmed that Plaintiff was looking to "refinance" and that the bank "need[s] to see the price with[out] hurricane coverage." (*Id.* at 4). On June 30, 2015, the broker responded to Plaintiff's agent that a reduced premium of $32,000 could be obtained if the policy were amended to cover "[a]ll perils, excluding Named Storm[s]," which would mean that "tornadoes and heavy wind/rain that are not named" would remain covered, while "named hurricanes" would *not* be covered.

[1] The 2015-2016 Policy itself does not appear to be in the record, but the policy number for that policy can be found on the 2016-2017 Policy, which is in the record.

(*Id.* at 5). On July 22, 2015, the broker followed up with Defendant and confirmed that Plaintiff's "Agent needs an idea of how much the RP would be to remove NS eff 7/16," to which Defendant responded that the "return premium to remove Named Storm will be $16,545." (*Id.* at 5–6). After this information was conveyed to Ms. Elkins, which made clear that the desired course of action was to "remove Named Storm," Plaintiff's agent responded: "please proceed per the insured." (*Id.* at 8). Plaintiff's choice was relayed by the broker to Defendant, (*id.* at 9), and an endorsement removing Named Windstorm coverage from the policy was issued on August 14, 2015, retroactively effective to July 16, 2015, (Endorsement 1, Doc. 25-4, at 1). The endorsement specifically stated that it was changing the policy and referenced Policy Number PRADXWL15. (*Id.*). The return premium was issued to Plaintiff that same day. (Doc. 25-3 at 11). Accordingly, the 2015-2016 Policy would no longer cover "named windstorms."

In January 2016, Plaintiff began the process of renewing the policy once again. According to emails between Defendant and the policy broker, the initial quote given to Plaintiff indicated a premium above $32,000, which would be too high given the change made to the policy the prior year to removed named windstorm coverage. (*Id.* at 12). On January 21, 2016, a revised quote was sent to Plaintiff's agent by the policy broker, who stated that the quoted policy "offers coverage for wind but excludes Named Storms," and that this was the "same

coverage provided after the Return Premium endorsement was issued last year." (*Id.* at 15). The revised quote itself makes clear that the policy would exclude coverage for "Named Windstorm." (Jan. 21, 2016 Quote, Doc. 25-6, at 1, 3). The 2016-2017 Policy, effective February 2016 through February 2017, was given Policy Number PRADXWL16, and the policy indicates that it is a "renewal" of Policy PRADXWL15. (Doc. 25-10 at 1). The premium for the policy was $22,500. (*Id.*). In the "deductible" section of the policy, it states that the applicable deductible would be $5,000 per occurrence, except that a $25,000 deductible would apply "as respects Wind and/or Hail (excluding Named Windstorm)." (*Id.* at 9).

On October 6, 2016, Plaintiff's Sarno Road property was struck by Hurricane Matthew, which Plaintiff contends caused massive damage to the property. (Jefferson Dep., Doc. 24-4, at 37–39). In particular, Plaintiff claimed that wind from the storm had caused a large piece of the property's roof to "lift[] up and flip[] over." (Doc. 24-4 at 41–43). In addition, the damage to the roof from the storm had allowed water to enter the property and cause additional damage. (*Id.* at 32–34, 37–39). At that time, the property was covered under the 2016-2017 Policy, and Plaintiff made a claim for coverage under that policy to Defendant on October 11, 2016. (McGowan Dep., Doc. 26-1, at 10; Loss Notice, Doc. 25-15, at 1). Plaintiff's claim reported the following damage to the Sarno Road property: "Water Damage from Roof Hurricane Matthew." (Doc. 25-15 at 1).

Two weeks later, after an inspection, Defendant denied the claim. (Oct. 25, 2016 Denial Letter, Doc. 25-16, at 1, 3). The denial letter listed several reasons for the decision, including because "there was no wind damage observed to the roof of the building," and because "the policy appears to specifically exclude Named Windstorm as a covered peril." (*Id.* at 2–3).

The final policy relevant to this action was the 2017-2018 Policy (Doc. 25-14). The quote sent by Defendant to Plaintiff, for that policy indicated that the policy would not cover, among other things, "Named Windstorm." (January 23, 2017 Quote, Doc. 25-13, at 2). The 2017-2018 Policy, which was effective February 2017 through February 2018, indicated that it was a "renewal" of the prior year's policy and was given Policy Number PRADXWL17. (Doc. 25-14 at 1). The premium for the 2017-2018 Policy was also $22,500 as in the prior policy. (*Id.*). During the effective period of the 2017-2018 Policy another hurricane, Hurricane Irma, swept through Florida and damaged Plaintiff's Sarno Road property on September 10, 2017. (Doc. 24-4 at 5–6, 50). According to an employee for Plaintiff, the storm caused similar damage to the property's roof as had been caused by Hurricane Matthew one year earlier. (*Id.*). As with its Hurricane Matthew claim, Plaintiff noted interior water damage from Hurricane Irma's impact to the roof. (*Id.* at 56–66). On August 4, 2018, a claim was made to Defendant under the 2017-2018 Policy for the damage, listing only "Hurricane Irma" as the "cause of loss." (2018 Claim, Doc. 25-

18, at 1).[2] After an inspection, Defendant denied this claim on February 28, 2019, listing several reasons including because the damage appeared to be "materially the same damage previously presented" in the Hurricane Matthew claim, and because of the "lack of coverage for damage due to named windstorm on this policy." (Feb. 28, 2019 Denial Letter, Doc. 25-19, at 1–2).

Plaintiff initiated this suit on September 1, 2020, alleging breach of contract and a declaratory judgment as to coverage under the policies. (*See generally* Compl., Doc. 1-2). The parties have each filed motions for summary judgment. (Doc. Nos. 24, 25). Plaintiff seeks summary judgment on its breach of contract claim, including an award of damages, and on its declaratory judgment claim, seeking a declaration that the damage suffered was covered by the policies at issue. (Doc. 24 at 25). Defendant seeks summary judgment in its favor on all of Plaintiff's claims. (Doc. 25 at 16).

II. LEGAL STANDARD

"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). A dispute is genuine "if the evidence is such

[2] The Hurricane Irma claim was made over a year after the storm through a public adjuster, after Plaintiff had assigned to the adjuster some portion of its benefits under the policy. (Doc. 25-18 at 1–2; Dragon Dep., Doc. 27-7, at 53–54). Plaintiff asserts that the delay in reporting the Hurricane Irma damage was due to purported misrepresentations by Defendant regarding what the policy covered. (J. Gordon Aff., Doc. 24-5, at 3)..

that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may "affect the outcome of the suit under the governing law." *Id.*

"The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313–14 (11th Cir. 2007). In ruling on a motion for summary judgment, the Court construes the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). However, when faced with a "properly supported motion for summary judgment," the nonmoving party "must come forward with specific factual evidence, presenting more than mere allegations." *Gargiulo v. G.M. Sales, Inc.*, 131 F.3d 995, 999 (11th Cir. 1997) (citing *Anderson*, 477 U.S. at 248–49 (1986)); *see also LaRoche v. Denny's, Inc.*, 62 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) ("The law is clear . . . that suspicion, perception, opinion, and belief cannot be used to defeat a motion for summary judgment.").

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. "[T]he proper inquiry on summary judgment is 'whether the evidence presents a sufficient disagreement

to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Stitzel v. N.Y. Life Ins. Co.*, 361 F. App'x 20, 22 (11th Cir. 2009) (quoting *Anderson*, 477 U.S. at 251–52). Put another way, a motion for summary judgment should be denied only "[i]f reasonable minds could differ on the inferences arising from undisputed [material] facts." *Pioch v. IBEX Eng'g Servs.*, 825 F.3d 1264, 1267 (11th Cir. 2016) (quoting *Allen*, 121 F.3d at 646).

III. ANALYSIS

"Summary judgment is particularly suited to cases of insurance coverage because the interpretation of a written contract is a matter of law to be decided by the court." *Int'l Ship Repair & Marine Servs., Inc. v. N. Assur. Co. of Am.*, No. 8:10-CV-2049-T-26AEP, 2011 WL 5877505, at *3 (M.D. Fla. Nov. 23, 2011). "The scope and extent of insurance coverage is determined by the language and terms of the policy." *Westport Ins. Corp. v. VN Hotel Grp., LLC*, 513 F. App'x 927, 930 (11th Cir. 2013) (quoting *Bethel v. Sec. Nat'l Ins. Co.*, 949 So. 2d 219, 222 (Fla. 3d DCA 2006)). The "terms of an insurance policy should be taken and understood in their ordinary sense and the policy should receive a reasonable, practical and sensible interpretation consistent with the intent of the parties—not a strained, forced or unrealistic construction." *Siegle v. Progressive Consumers Ins. Co.*, 819 So. 2d 732, 736 (Fla. 2002). "In construing a contract, the intention of the parties is paramount and the court will adopt an interpretation which under all circumstances ascribes the

most reasonable, probable, and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished." *All. Metals, Inc., of Atlanta v. Hinely Indus., Inc.*, 222 F.3d 895, 901 (11th Cir. 2000); *see Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 264 F. Supp. 3d 1294, 1300 (M.D. Fla. 2017), *aff'd*, 920 F.3d 704 (11th Cir. 2019) ("The touchstone of contract interpretation is the intent of the parties.").

The parties' dispute centers on the legal question of whether Plaintiff's policies with Defendant in place at the time of Hurricanes Matthew and Irma covered damage resulting from a named windstorm. Because—after considering the quotes provided to Plaintiff as part of the application process—the only "reasonable, practical and sensible interpretation" of the policies that would be "consistent with the intent of the parties" is that those policies did *not* cover such damage, the Court will grant summary judgment in Defendant's favor. *Siegle*, 819 So. 2d at 736.

The two policies in effect when Plaintiff's building incurred damage do not, alone, say anything explicit concerning damage resulting from a named windstorm. (*See generally* Doc. Nos. 25-10, 25-14). But Florida law instructs that "[e]very insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy *and as amplified, extended, or modified by any application therefor* or any rider or endorsement thereto." Fla. Stat. § 627.419(1) (emphasis added); *see State Farm Mut. Auto. Ins. Co. v. Mallard*, 548 So. 2d 733,

735 (Fla. 3d DCA 1989) ("Where the policy is 'amplified, extended, or modified' by inconsistent terms or conditions in the application, the inconsistent provisions are not disregarded. Rather, the policy is then construed taking into consideration those provisions."). Indeed, documents obtained during the application "bec[o]me part of the policy," and the "the insurer is entitled to rely on the representations made by an applicant in the application for insurance." *Peak Prop. & Cas. Ins. Corp. v. Ensslin*, 8:12-CV-2739-T-17TBM, 2014 WL 2124270, at *13 (M.D. Fla. May 21, 2014).

Using this standard to evaluate the policies at issue, undisputed facts make plain that named windstorm coverage was excluded from each of Plaintiff's policies from July 2015 forward. In and around that time period, Plaintiff—through its agent—affirmatively and proactively sought to remove named windstorm coverage from its policy to save on the premium owed to Defendant. That effort was successful and culminated in the endorsement removing named windstorm coverage from the policy in place in July 2015—Policy Number PRADXWL15—and the return to Plaintiff of part of the premium already paid. (*See generally* Doc. Nos. 25-3, 25-10). Specifically, the premium owed for the 2015-2016 Policy was reduced from approximately $50,000 to approximately $32,000. (Doc. 25-3 at 5). Thus, there

can be no reasonable debate that the 2015-2016 Policy excluded named windstorm coverage.[3]

Plaintiff contends, however, that the renewal of the 2015-2016 Policy—i.e., the 2016-2017 Policy—does not contain the same exclusions. But the record shows this contention to be false. First, the reduced premium Plaintiff earned as a result of dropping named windstorm coverage was carried through to the subsequent policies. (Doc. Nos. 25-10, 25-14).[4] Thus, Plaintiff continued to receive the benefit of its July 2015 bargain with Defendant: lower premiums in exchange for reduced coverage. Plaintiff's contrary argument is premised on the fact that the policies in effect during the hurricanes at issue did not themselves list an exclusion for named windstorms. (Doc. 24 at 15). But construing those policies to *include* coverage for named windstorms when the parties had explicitly bargained to *exclude* such coverage—without any subsequent agreement to the contrary—would be a "strained, forced or unrealistic construction" of the policies. *Siegle*, 819 So. 2d at 736. Indeed, such a

[3] Plaintiff does not appear to dispute that the damage it claimed under the policies resulted from "named windstorms." Indeed, the claims submitted to Defendant specifically listed "Hurricane Matthew" and "Hurricane Irma" as the *only* cause of the damage without any other additional cause listed. (Doc. Nos. 25-15, 25-18). Plaintiff attempts to argue in its Motion that, in addition to damage caused by a named windstorm, the building suffered "interior damage caused by rain." (Plaintiff's Motion at 16). But the record shows that the only cause of damage listed by Plaintiff on each of its actual claims to Defendant was the named windstorm itself, nothing else. (Doc. Nos. 25-15, 25-18). It is only "evidence" and not "a lawyer's arguments" that can "do the trick" on summary judgment. *See Shenzhen Kinwong Elec. Co., Ltd. v. Kukreja*, 18-61550-CIV, 2021 WL 5834244, at *33 (S.D. Fla. Dec. 9, 2021).

[4] Indeed, it appears that Plaintiff's premium was even *lower* for the 2016-2017 Policy and 2017-2018 Policy than it was for the 2015-2016 Policy (specifically, $22,500 versus $32,000).

result would be "absurd" under the circumstances. *See Mathews v. Ranger Ins. Co.*, 281 So. 2d 345, 349 (Fla. 1973) ("Every relevant statement in the application and the policy . . . is aimed at providing insurance coverage for church members taking flying instructions. To hold that such coverage is not present now would be an absurd result disallowed by any reasonable construction of the policy as dictated by the provisions of F.S. Section 627.419(1).").

And the Court's conclusion is bolstered by the fact that each of the policies that succeeded the 2015-2016 Policy to which the named windstorm exclusion endorsement was originally attached was denoted a "renewal" of the policy that preceded it and given an identical policy identification number. This continuous chain of renewals is strong evidence of the parties' intent to carry over exclusions from one policy to the next because, absent any indication of contrary intent, a party to an insurance contract "is entitled to assume that the terms of the renewed policy are the same as those of the original contract." *Marchesano v. Nationwide Prop. & Cas. Ins. Co.*, 506 So. 2d 410, 413 (Fla. 1987); *cf. Dulong v. Merrimack Mut. Fire Ins. Co.*, ___ A.3d ___, 2022 WL 1088333, at *7 (R.I. Apr. 12, 2022) (endorsement carries over to renewed policies even absent "facial indication" on endorsement that it will "carry over to subsequent policies"); *Maatki v. Moore*, 760 F. Supp. 1180, 1183 (E.D. La. 1991) ("Aetna proved and State Farm concedes that the executed May 28, 1986 rejection [of coverage] form is valid and operative as to the initial

policy. This rejection clearly applies to the subsequent renewal in effect at the time of this accident.").

In addition, each of the quotes for the 2016-2017 and 2017-2018 Policies clearly indicated that Defendant would *not* cover damage resulting from a named windstorm. (Doc. Nos. 25-6, 25-13). Plaintiff's receipt of those renewal quotes and subsequent agreement to the renewals as part of the application process is alone likely indisputable evidence that all parties to the agreements understood them to exclude named windstorm coverage. *See* Fla. Stat. § 627.419(1); *Peak Prop. & Cas. Ins.*, 2014 WL 2124270, at *13; *cf. Boomer's, Inc. v. Whitney*, 226 Ga. App. 195, 195 (1997) ("[Insured's] actions in instructing her agent to procure the renewal with knowledge of the proposed exclusion manifested her acceptance of the terms of the renewal policy on [insured's] behalf.").

Given the above evidence—*e.g.*, the explicit bargaining to remove named windstorm coverage, the reduced premiums that resulted from that bargaining, and the explicit language in the subsequent policy quotes indicating named windstorm coverage would not be included—there can be no reasonable dispute that the parties intended the policies at issue to *exclude* named windstorm coverage, and no reasonable jury could find otherwise. Because the parties' intent is the "touchstone" of the Court's analysis, *Kroma Makeup*, 264 F. Supp. 3d at 1300, and because

Plaintiff requires named windstorm coverage to succeed on its claims, summary judgment for Defendant is appropriate.[5]

IV. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion Summary Judgment (Doc. 25) is **GRANTED**.
2. Plaintiff's Motion for Summary Judgment (Doc. 24) is **DENIED**.
3. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff, providing that Plaintiff shall take nothing. Thereafter the Clerk is directed to close this case.
4. The July 7, 2022 Status Conference and the August 8, 2022 Trial are **CANCELLED**.

DONE and **ORDERED** in Orlando, Florida on May 6, 2022.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

[5] Because the Court concludes that 2015-2016 Policy included the named windstorm exclusion, and that the renewals of that policy carried forward that exclusion in conformance with the clear intent of the parties, it is unnecessary to address Defendant's alternative argument that the subsequent policies should be reformed due to "mutual mistake." (Doc. 25 at 13).

Copies furnished to:

Counsel of Record