

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-60469-CIV-DIMITROULEAS

MARIA AROCHA,

Plaintiff,

v.

WRIGHT NATIONAL FLOOD
INSURANCE COMPANY,

Defendants.

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on Defendant Wright National Flood Insurance Company (“Defendant”)’s Motion for Summary Judgment [DE 19], filed on July 13, 2022. The Court has carefully considered the Motion, Plaintiff Maria Arocha (“Plaintiff”)’s Response [DE 24], Defendant’s Reply [DE 25], the statement of facts [DE’s 20, 23, 26], the evidence submitted in the record, and is otherwise fully advised in the premises.

I. BACKGROUND¹

Defendant is a Write-Your-Own (“WYO”) program insurance carrier participating in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to its arrangement with the Federal Emergency Management Agency (“FEMA”) in accordance with the National Flood Insurance Act of 1986 as amended, 42 U.S.C. § 4001, *et seq.* (“NFIA”). DSOF ¶ 1; PSOF ¶ 1.² Standard Flood Insurance Policies (“SFIP”), like the one issued by the Defendant in this

¹ All statements in the Background section are derived from uncontested portions of the parties’ respective Statements of Material Facts and supporting materials, unless otherwise noted.

² Defendant’s Statement of Material Facts [DE 20], Plaintiff’s Statement of Material Facts in Opposition and Plaintiff’s Additional Facts [DE 23], and Defendant’s Reply to Plaintiff’s Additional Facts [DE 26] include various citations to portions of the record. Defendant’s Statement of Material Facts [DE 20] is cited as “DSOF,” Plaintiff’s

case, are subject to federal rules and regulations governing the NFIP. DSOF ¶ 2; PSOF ¶ 2.

Defendant, while acting in its capacity as a WYO program carrier, issued Plaintiff a SFIP for Plaintiff's Property in Pembroke Pines, Florida. DSOF ¶ 3; PSOF ¶ 3.

On September 14, 2021, Plaintiff's property allegedly sustained flood damage. DSOF ¶ 5; PSOF ¶ 5. Under the SFIP, the insured is required to provide a signed and sworn proof of loss within 60-days of the flood loss. 44 C.F.R. pt. 61, app. A(1). Defendant was notified of the flood loss on September 23, 2021, and on September 25, 2021, an independent adjuster retained by Defendant inspected the property. DSOF ¶¶ 6–8; PSOF ¶¶ 6–8. The adjuster determined that general condition of flooding did not exist at the property on September 14, 2021. DSOF ¶ 9; PSOF ¶ 9.³ On November 10, 2021, Defendant issued a letter denying Plaintiff's flood claim. DSOF ¶ 10; PSOF ¶ 10.⁴ Plaintiff never provided a signed and sworn proof of loss before the expiration of the 60-day proof of loss deadline of November 13, 2021. DSOF ¶¶ 11–13, 15; PSOF ¶¶ 11–13, 15.⁵

On or about March 2, 2022, Plaintiff filed the instant action, alleging that Defendant breached the SFIP by denying Plaintiff's claim. *See* [DE 1]. Defendant now moves for summary judgment on grounds that Plaintiff failed to comply with the conditions precedent to bring suit

Statement of Material Facts in Opposition and Plaintiff's Additional Facts [DE 23] is cited as "PSOF," and Defendant's Reply to Plaintiff's Additional Facts [DE 26] is cited as "DRSOF." Any citations herein to the statements of facts should be construed as incorporating those citations to the record.

³ In PSOF ¶ 9, Plaintiff attempts to dispute this fact by stating "[a] general condition of flood did exist on the property on September 14, 2021." Whether a general condition of flood existed on the property does not create a factual dispute regarding whether the adjuster *determined* that a general condition of flooding did not exist at the property.

⁴ In PSOF ¶ 10, Plaintiff attempts to dispute this fact by stating "Wright repudiated the contract on November 10, 2021." This is legal argument and does not create a *factual* dispute regarding whether Defendant issued a letter denying Plaintiff's claim.

⁵ In PSOF ¶ 12, Plaintiff attempts to dispute this fact by stating "Plaintiff was relieved of the duty to provide a Sworn Proof of Loss Statement when Wright repudiated the contract." This is legal argument and does not create a *factual* dispute regarding whether Plaintiff failed to provide a signed and sworn proof of loss within the 60-day period.

under the SFIP because Plaintiff never provided a timely signed and sworn proof of loss. *See* [DE 19].

II. STANDARD OF REVIEW

Under Rule 56(a), “[t]he 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). The movant bears “the stringent burden of establishing the absence of a genuine issue of material fact.” *Suave v. Lamberti*, 597 F. Supp. 2d 1312, 1315 (S.D. Fla. 2008) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

“A fact is material for the purposes of summary judgment only if it might affect the outcome of the suit under the governing law.” *Kerr v. McDonald’s Corp.*, 427 F.3d 947, 951 (11th Cir. 2005) (internal quotations omitted). Furthermore, “[a]n issue [of material fact] is not ‘genuine’ if it is unsupported by the evidence or is created by evidence that is ‘merely colorable’ or ‘not significantly probative.’” *Flamingo S. Beach I Condo. Ass’n, Inc. v. Selective Ins. Co. of Southeast*, 492 F. App’x 16, 26 (11th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986)). “A mere scintilla of evidence in support of the nonmoving party’s position is insufficient to defeat a motion for summary judgment; there must be evidence from which a jury could reasonably find for the non-moving party.” *Id.* at 26–27 (citing *Anderson*, 477 U.S. at 252). Accordingly, if the moving party shows “that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party” then “it is entitled to summary judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact.” *Rich v. Sec’y, Fla. Dept. of Corr.*, 716 F.3d 525, 530 (11th Cir. 2013) (citation omitted).

III. DISCUSSION

Under the SFIP, an insured may not file suit for coverage unless it has complied with all requirements of the policy, including the requirement to submit a sworn proof of loss. 44 C.F.R. pt. 61, app. A(1), art. VII(R), VII(J)(4). In adjudicating flood insurance claims, the Eleventh Circuit has held that strict adherence to the proof of loss requirement is a condition precedent to recovery under the SFIP. *See Sanz v. U.S. Sec. Ins. Co.*, 328 F.3d 1314, 1317–18 (11th Cir. 2003) (collecting cases); *Castro v. Fidelity Nat'l Ins. Co.*, 2007 WL 1173072, at *2–3 (S.D. Fla. Apr. 18, 2007). Substantial compliance is not sufficient because any payments to policyholders are drawn from the federal treasury. *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947).

The SFIP requires that the insured, in relevant part:

Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

- a. The date and time of loss;
- b. A brief explanation of how the loss happened;
- c. Your interest (for example, “owner”) and the interest, if any, of others in the damaged property;
- d. Details of any other insurance that may cover the loss;
- e. Changes in title or occupancy of the covered property during the term of the policy;
- f. Specifications of damaged buildings and detailed repair estimates;
- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
- h. Details about who occupied any insured building at the time of loss and for what purpose; and
- i. The inventory of damaged property described in J.3. above.

44 C.F.R. pt. 61, app. A(1), art. VII(J)(4).

Here, Plaintiff does not dispute that Plaintiff has failed to provide a timely sworn proof of loss. Instead, Plaintiff argues that Defendant repudiated the contract when it denied Plaintiff's loss on November 10, 2021, three days before the deadline for Plaintiff to submit a sworn proof of loss. Thus, Plaintiff argues, Defendant's alleged repudiation relieves Plaintiff of the requirement to submit a proof of loss statement or, at the very least, creates an issue of material fact precluding summary judgment. The Court disagrees.

The Eleventh Circuit has never addressed whether the doctrine of repudiation applies in the flood insurance context, and other circuits addressing the issue are split. *Compare Studio Frames Ltd. v. Standard Fire Ins. Co.*, 369 F.3d 376, 381 (4th Cir. 2004) (holding that the doctrine of repudiation might apply and remanding for consideration of the issue) *with Jacobson v. Metro. Prop. & Cas. Ins. Co.*, 672 F.3d 171, 177 (2d Cir. 2012) (stating that it is "at best questionable whether the doctrine of repudiation has any application in the context of policies issued under the NFIP"). But this Court need not decide the issue here because the doctrine of repudiation does not apply to the case at bar. Defendant did not renounce the policy or attempt to argue that it was not bound by its terms. Defendant merely denied coverage, and denial of coverage under an insurance policy does not constitute a repudiation. *See Jacobson*, 672 F. 3d at 177 ("Repudiating an insurance policy is not the same as denying that the claim presented is covered by the terms of that policy."); *Slater v. Hartford Ins. Co.*, 26 F. Supp. 3d 1239, 1256 ("Indeed, a denial of a claim for benefits under an insurance policy does not constitute repudiation.") (quoting *Richardson v. Am. Bankers Ins. Co.*, 279 F. App'x 295, 299 (5th Cir 2008)); *Gunter v. Farmers Ins. Co.*, 736 F.3d 768, 775 (8th Cir. 2013) (finding that insurer did not repudiate the SFIP where it "did not disavow the policy, contend that it was not bound by the

policy's terms, or attempt to return . . . the premiums paid under the policy"); *New York Life Ins. Co. v. Viglas*, 297 U.S. 672, 676 (holding that a denial of a claim for benefits under an insurance policy does not constitute a repudiation).

Plaintiff cites *Studio Frames* for the proposition that a plaintiff's failure to timely file a proof of loss can be excused when the defendant first repudiates the contract. But *Studio Frames* is distinguishable or inapplicable to the case at hand. In that case, the WYO insurance carrier informed an insured tenant attempting to make a flood insurance claim that a tenant cannot purchase SFIP coverage for a building he does not own. 369 F.3d at 383. The insurance carrier then attempted to return the premiums paid by the insured tenant. *Id.* On these facts, the Fourth Circuit held that "the policy at issue *may* be repudiated," and remanded the case to determine whether the insurer's conduct amounted to a repudiation. *Id.* (emphasis added).

Here, Defendant did not demonstrate an intent to not perform its obligations under the SFIP under any circumstances. Nor did Defendant attempt to return the premiums paid by Plaintiff. Instead, Defendant cited to the text of the policy in explaining that Plaintiff's claim was not covered. *See* [DE 23-2]. Put another way, Defendant "did not disclaim the intention or the duty to shape its conduct in accordance with the provisions of the contract . . . it appealed to their authority and endeavored to apply them." *Viglas*, 297 U.S. at 676. Indeed, Defendant's denial letter stated it determined that there was no general condition of flood on the property and invited Plaintiff to submit additional information that might support Plaintiff's claim, further evincing that Defendant did not intend to repudiate the policy. *See* [DE 23-2]. Plaintiff has failed to put forth any evidence to the contrary.⁶

⁶ The Court rejects Plaintiff's argument that Defendant cannot prevail because whether a condition of flooding existed on the property is a disputed issue not raised in Defendant's Motion. Whether a general condition of flooding existed on the property is not relevant to whether Plaintiff strictly complied with its obligations under the SFIP. *See Matthews*


Accordingly, because Plaintiff failed to strictly comply with the requirement to return a signed and sworn proof of loss to Defendant within the 60-day period, Defendant is entitled to summary judgment on Plaintiff's claim for breach of the SFIP. *See Sanz*, 328 F.3d at 1319 (“[Plaintiff’s] failure to file a proof of loss without obtaining a written waiver of the requirement eliminates the possibility of recovery.”).

IV. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant’s Motion for Summary Judgment [DE 19] is **GRANTED**;
2. Pursuant to Fed. R. Civ. P. 58(a), the Court will enter a separate final judgment.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 8th day of August, 2022.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of Record

v. Farmers Ins. Co. of Oregon, 2005 WL 1565261, at *10 (D. Or. June 27, 2005) (granting summary judgment on alternative grounds); *see also Castro*, 2007 WL 1173072 at *3.