UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

SCOTT A SAVERAID TRUST FOR
SCOTT A SAVERAID REVOCABLE TRUST,

Plaintiff/Counter-Defendant

Case No.: 2:25-cv-00394-SPC-KCD

v.

QBE SPECIALTY INSURANCE COMPANY,

Defendant/Counter-Plaintiff

_____/

PLAINTIFF/COUNTER-DEFENDANT'S AMENDED MOTION TO DISMISS COUNT I AND COUNT II OF DEFENDANT/COUNTER-PLAINTIFF'S COUNTERCLAIM

Plaintiff/Counter-Defendant, SCOTT A. SAVERAID TRUST FOR SCOTT A. SAVERAID REVOCABLE TRUST ("Counter-Defendant"), pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves to dismiss Count I and Count II of the Counterclaim filed by Defendant/Counter-Plaintiff QBE SPECIALTY INSURANCE COMPANY ("QBE"). In support, Counter-Defendant states as follows:

I. LEGAL STANDARD UNDER RULE 12(B)(6)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings. To survive dismissal, a counterclaim must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Where, as here, a counterclaim fails as a matter of law because the relief sought is not legally available, dismissal with prejudice is appropriate. The Declaratory Judgment Act is procedural only and does not create substantive rights; a declaratory judgment claim must present a justiciable case or controversy and add something material beyond issues already framed in other claims or defenses.

II. AS TO COUNTERCLAIM COUNT I – DECLARATORY JUDGMENT (Motion to Dismiss)

Count I (Declaratory Judgment) Should Be Dismissed as Duplicative and Legally Inappropriate

A. Declaratory Relief Is Discretionary and Cannot Be Used Where Other Claims Provide Adequate Relief.

The Declaratory Judgment Act, 28 U.S.C. § 2201, is procedural only and does not create substantive rights. Federal courts have "unique and substantial discretion" to refuse declaratory relief, particularly where it adds nothing to the litigation.

Declaratory claims that duplicate breach-of-contract claims or raise issues already addressed by other pleadings are routinely dismissed under Rule 12(b)(6).

Here, Plaintiff's Amended Complaint asserts a single substantive claim for breach of contract. Plaintiff has not pled the Florida Valued Policy Law ("VPL") as a cause of action. QBE nonetheless seeks a declaratory judgment that VPL does not apply to surplus lines insurers. This request adds nothing to the case: if VPL were relevant, QBE has already raised that issue in its Answer and Affirmative Defenses. The declaratory counterclaim is therefore unnecessary and fails as a matter of law.

B. Florida Courts Dismiss Declaratory Claims Where Pending Litigation Will Resolve the Same Issues

Florida precedent has long held that declaratory actions are improper when another pending lawsuit provides full relief on the same issues. In *Taylor v. Cooper*, 60 So. 2d 534, 536 (Fla. 1952), the Florida Supreme Court explained that if a pending action "involves the same issues and in which litigation the plaintiff may secure full, adequate and complete relief, such bill for the declaratory decree will not be permitted to stand." See also *Burns v. Hartford Accident & Indem. Co.*, 157 So. 2d 84, 85 (Fla. 3d DCA 1963) (dismissing declaratory count where issues could be resolved in contract claim); *Kies v. Fla. Ins. Guar. Ass'n*, 435 So. 2d 410, 411 (Fla. 5th DCA 1983) (same).

This principle has been consistently reaffirmed. In *McIntosh v. Harbour Club Villas Condo. Ass'n*, 468 So. 2d 1075, 1081 (Fla. 3d DCA 1985), the court stressed that

a trial court should not entertain an action for declaratory judgment on issues already before it in other counts of the pleadings. Similarly, in *Kelner v. Woody*, 399 So. 2d 35, 38 (Fla. 3d DCA 1981), the court held that the declaratory judgment act is not a tool to advise attorneys as to the proper path to pursue, nor to resolve purely factual disputes under an unambiguous contract.

That principle governs here. Plaintiff's breach-of-contract claim already squarely places at issue whether QBE owes benefits under the Policy for wind loss. QBE's declaratory counterclaim simply reframes its defense that VPL does not apply. Because those issues can and will be resolved in the breach-of-contract claim, declaratory relief is duplicative and legally inappropriate.

C. Florida and Federal Courts Reject Declaratory Relief That Seeks to Resolve Purely Factual Disputes

Declaratory judgment is intended to clarify uncertain legal rights, not to resolve factual disputes under a clear contract. Florida courts consistently dismiss declaratory claims where the contract is unambiguous and the dispute is factual in nature. In *Kelner v. Woody*, 399 So. 2d 35, 37–38 (Fla. 3d DCA 1981), the court dismissed a declaratory action where the movant alleged only conclusory "doubt" without any genuine ambiguity in the contract. Similarly, in *McIntosh v. Harbour Club Villas Condo. Ass'n*, 468 So. 2d 1075, 1076 (Fla. 3d DCA 1985), the court held declaratory relief improper where the plaintiff was not truly in doubt of rights but merely sought to preempt other litigation.

Federal courts applying Florida law have followed this same principle. In *Tobon v. Am. Sec. Ins. Co.*, 2007 U.S. Dist. LEXIS 44589, at *6–7 (S.D. Fla. 2007), the court dismissed a declaratory judgment claim because the "real dispute [was] a factual one concerning the existence of a loss and its valuation."

QBE's counterclaim does not identify any ambiguous policy language in need of construction. Instead, it recites that QBE paid for wind loss but now seeks to avoid further liability by obtaining a declaration that VPL is inapplicable. That is a factual allocation dispute (wind vs. flood, scope of coverage), not a legitimate declaratory action. As in *Tobon*, such issues must be resolved through the breach-of-contract claim, not through duplicative declaratory relief.

D. Count I Merely Duplicates QBE's Affirmative Defenses

Even if VPL had some theoretical relevance, QBE has already asserted its non-applicability as an affirmative defense. Declaratory judgment claims that simply repeat issues preserved as defenses are unnecessary and subject to dismissal. Here, Count I adds nothing beyond what QBE has already pled in its Answer and Affirmative Defenses, and therefore should be dismissed.

Conclusion

QBE's Count I counterclaim for declaratory judgment should be dismissed under Rule 12(b)(6). Plaintiff has not asserted a claim under the Florida Valued Policy Law, making the requested declaration advisory. The counterclaim merely duplicates

QBE's existing defenses, identifies no genuine ambiguity in the Policy, and seeks to resolve issues already encompassed within the breach-of-contract claim. Under both Florida Supreme Court authority (*Taylor*) and Florida federal precedent (*Tobon*), declaratory judgment in these circumstances is legally inappropriate and should be dismissed with prejudice.

III. AS TO COUNTERCLAIM COUNT II – UNJUST ENRICHMENT

(Motion to Dismiss)

Count II (Unjust Enrichment) Fails as a Matter of Law Because an Express Insurance Contract Governs the Subject Matter

A. Florida and Federal Law Bar Unjust Enrichment Where an Express Contract Exists

QBE's unjust-enrichment counterclaim should be dismissed with prejudice under Rule 12(b)(6) because the parties' rights and obligations are governed by an express insurance contract — the QBE surplus-lines policy — and QBE's own pleading admits as much. QBE alleges the policy existed during the relevant period and that it issued payments for dwelling and loss-of-use under that policy following a coverage reevaluation. It now seeks to claw those payments back in equity as "mistaken" benefits.

Controlling authority forecloses such claims. The Florida Supreme Court has long held that *"the law will not imply a contract where a valid express one exists." Hazen v.*

Cobb, 117 So. 853, 858 (Fla. 1928). Federal courts applying Florida law are in accord: *"When a contract addresses a certain topic, that topic cannot be the subject of a claim for a contract implied in law." Global Network Mgmt., Ltd. v. CenturyLink Latin Am. Sols., LLC*, 67 F.4th 1312, 1317–18 (11th Cir. 2023).

Most recently, the Eleventh Circuit squarely applied this rule in the insurance context. In *MONY Life Ins. Co. v. Perez*, No. 23-10770, slip op. at 15–17 (11th Cir. July 23, 2025), the court vacated a jury verdict awarding an insurer nearly $450,000 on an unjust enrichment theory. The Eleventh Circuit held that because an express insurance contract governed the benefits at issue, unjust enrichment was unavailable — even though the insurer argued the insured had misrepresented facts and the contract contained no clawback provision. The absence of a reimbursement clause did not open the door to equity; rather, it underscored that the insurer could not use unjust enrichment to rewrite the terms of its own contract.

Florida appellate courts are consistent with this principle. See *Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696, 697 (Fla. 1st DCA 2008) (reversing unjust enrichment judgment where express contract governed); *Ocean Commc'ns, Inc. v. Bubeck*, 956 So. 2d 1222, 1225 (Fla. 4th DCA 2007) (equitable theories unavailable where an express contract exists); *Kovtan v. Frederiksen*, 449 So. 2d 1, 1 (Fla. 2d DCA 1984) (affirming directed verdict because express agreement barred quasi-contract claim).

Recent federal authority is in accord. In *Reneg Corp. v. JPMorgan Chase Bank, N.A.*, 2025 U.S. Dist. LEXIS 151175, at *25–27 (S.D. Fla. Aug. 5, 2025), the court, citing *Diamond "S"*, dismissed an unjust enrichment claim where the plaintiff acknowledged the existence of a valid contract and did not allege that it was invalid. The court emphasized that unjust enrichment may be pled in the alternative only when a party challenges the validity of the contract; otherwise, the contract governs the dispute.

That principle governs this case. On the face of the counterclaim, QBE pleads (i) the existence and terms of the policy and its exclusions (paragraph 6), (ii) a coverage decision and payments issued under that policy for Coverage A and Coverage D (paragraphs 14–16), and (iii) an equitable refund theory premised on QBE's later disagreement with its earlier contractual performance (paragraphs 33–43). Those admissions establish that an express contract governs the payments at issue — the precise circumstance in which unjust enrichment is barred.

B. QBE's Own Communications Confirm Its Payments Were Contractual, Not Gratuitous

QBE cannot avoid dismissal by labeling its policy payments "mistaken." Its own contemporaneous claim communications demonstrate that the payments were deliberate contractual determinations — not non-contractual benefits gratuitously conferred.

In its November 2023 coverage reevaluation letter, QBE's adjuster wrote: *"Enclosed is QBE's reevaluation for the wind related estimate of repair or replacement of your property. QBE has reviewed all documentation submitted and… is in agreement with all MKA's responses… QBE feels we have covered all wind related distress damages in the attached Revised estimate… I have requested the supplement checks to be sent…."* This language expressly ties QBE's payment to covered peril (wind) under the policy.

Other aspects of the correspondence confirm the same:

- QBE emphasized that flood was excluded while affirming coverage for wind, demonstrating an allocation decision within the contract, not an extra-contractual gift.
- QBE accepted and adopted its engineer MKA's scope determinations, even increasing overhead and profit from 20% to 23%, a classic adjustment judgment call, not a mistake.
- QBE initially included cabinet replacement in its scope, later removed it, and issued supplements. These are iterative scope adjustments, not the sort of mistaken payments that equity rescues.

These communications read as nothing other than contract administration under the policy. They also constitute party-opponent admissions (Fed. R. Evid. 801(d)(2)), undermining QBE's attempt to re-characterize its own coverage determinations as "mistakes."

As the Eleventh Circuit made clear in Perez, insurers cannot invoke equity to claw back payments they voluntarily made under their own coverage decisions simply because they later regret the allocation. That is precisely what QBE attempts here.

C. QBE Has an Adequate Legal Remedy Under the Policy

Unjust enrichment is an equitable remedy, unavailable where an adequate remedy at law exists. QBE has a complete legal remedy under the Policy itself: it may assert exclusions, causation defenses, or overpayment arguments in defending against Plaintiff's contract claim. Because QBE can litigate all such issues under the Policy, equity will not imply a quasi-contractual remedy, which constitutes an additional basis requiring dismissal of Count II.

Federal courts in this District have recognized the same principle in other contexts. In *Blaikie v. Rsight, Inc.*, 2011 U.S. Dist. LEXIS 134094 (M.D. Fla. Nov. 21, 2011), the court explained that equitable remedies do not extend to claims that are, in substance, an effort to recover compensatory damages under a contract. A "claim for money due and owing under a contract is quintessentially an action at law," not equity. Id. QBE's counterclaim seeks nothing more than repayment of policy benefits it voluntarily issued under the insurance contract. As such, the counterclaim is a legal claim that must be addressed, if at all, under the Policy itself—not through equity.

D. QBE's Unjust Enrichment Counterclaim Is Duplicative and Confusing

Federal courts in this Circuit have also dismissed or stricken unjust enrichment claims where the allegations themselves show that the dispute is contractual and the equitable theory is redundant. In *Ready2Go Aviation LLC v. Galistair Trading Ltd.*, 2023 U.S. Dist. LEXIS 229936, at 4 (S.D. Fla. Dec. 27, 2023), the court struck duplicative quasi-contract and unjust enrichment claims that were styled as equitable but in substance more resembled claims relating to an express contract, leaving defendants to guess what the Plaintiff actually means to claim. QBE's counterclaim suffers from the same defect. It re-packages issues already framed by the Policy—coverage, exclusions, and payments—as a redundant equitable theory. Just as in *Ready2Go*, such duplicative pleading is improper and provides an additional basis for dismissal.

WHEREFORE Plaintiff respectfully requests that this Court dismiss Count II of QBE's Counterclaims with prejudice.

IV. LOCAL RULE 3.01(G) CERTIFICATION

Pursuant to Local Rule 3.01(g), undersigned counsel certifies that he conferred with counsel for Defendant/Counter-Plaintiff regarding the relief requested in this Motion, and counsel for Defendant/Counter-Plaintiff advised that QBE opposes the relief sought. Please find attached as exhibit "1"

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic mail delivery on this 25th day of August, 2025 to:

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