UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

SCOTT A SAVERAID TRUST FOR
SCOTT A SAVERAID REVOCABLE TRUST

CASE NO: 2:25-cv-00394

Plaintiff,

v.

QBE SPECIALTY INSURANCE COMPANY,

Defendant.
_____ /

RESPONSE IN OPPOSITION TO PLAINTIFF'S AMENDED MOTION TO DISMISS QBE'S COUNTERCLAIM

The Defendant, QBE Specialty Insurance Company ("QBE"), responds in opposition to Plaintiff's Amended Motion to Dismiss (Doc. 39) its Counterclaim:

INTRODUCTION AND FACTUAL BACKGROUND

This is a Hurricane Ian insurance case. Plaintiff sues for additional benefits, including the full replacement cost of the insured property under Florida's Valued Policy Law ("VPL").[1] QBE filed a two-count Counterclaim seeking a declaration that VPL does not apply to this loss (Count I) and restitution of alleged overpayments under the unjust enrichment doctrine (Count II). Plaintiff moves to dismiss both counts for failure to state a claim.

[1] Codified in Florida Statutes Chapter 627.702 and dictating that if a building or structure is deemed a total loss due to a covered peril, the insurer must pay the full face value of the insurance policy, regardless of the actual cash value of the property at the time of the loss. Fla. Stat. § 627.702(1)(a).

The Court should deny the motion in full. Count I presents a live, concrete controversy that is not duplicative of any affirmative defense and will clarify the parties' rights while streamlining the litigation. Count II is likewise viable because the return of insurance overpayments is precisely the type of relief unjust enrichment seeks to redress, especially where there is no contractual provision dispositive on the dispute, and return of such overpayment cannot be obtained by asserting it as an affirmative defense.

ARGUMENT AND MEMORANDUM OF LAW

I. QBE Properly Pleads a Claim for Declaratory Relief

Plaintiff argues that Count I of QBE's Counterclaim (Declaratory Relief) must be dismissed because the Plaintiff has not pled VPL as a cause of action (Doc. 39 at 3) and declaratory relief is duplicative of the breach of contract claim and QBE's affirmative defenses (Doc. 39 at 4-5). Neither argument has merit.

A. VPL is ripe for declaratory relief

Count I seeks a ruling on the application of Florida's VPL to this surplus lines insurance dispute. The Federal Declaratory Judgment Act authorizes such relief where an actual controversy over the applicability of a statute exists. *See* 28 U.S.C. § 2201(a); *GTE Directories Publ'g Corp. v. Trimen Am. Inc.*, 67 F.3d 1563, 1568

(11th Cir. 1995).[2] A claimant "must allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future." *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1346 (11th Cir. 1999).

Plaintiff misconstrues Count I as seeking a declaration as to the parties' rights under the Policy. (Doc. 39 at 5 ("QBE's counterclaim does not identify any ambiguous policy language in need of construction.")). But Count I does not challenge the Policy; it seeks a declaration on the VPL's application. QBE alleges that Plaintiff submitted a claim for Hurricane Ian damages seeking to recover the replacement costs of the insured property calculated under the VPL. (Doc. 28 at 10 ¶¶ 18-20, 11 ¶¶ 24-25). QBE further alleges that Plaintiff cannot rely on the VPL to value the loss. (Doc. 28 at 10 ¶¶ 21). Thus, Count I properly alleges that there is an actual controversy over the VPL's applicability. *See generally Ceballos v. Ironshore Speciality Ins. Co.*, 2022 U.S. Dist. LEXIS 5316, at *6-7, 9 (S.D. Fla. Jan. 11, 2022) (finding a justiciable controversy where a party to a property insurance dispute sought a declaration on the VPL's applicability).

[2] Courts must apply the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, in diversity cases because, like its federal counterpart, Florida's Declaratory Judgment statute is procedural. *See Clark v. Rockhill Ins. Co.*, 2018 U.S. Dist. LEXIS 175184, at *7-8 (M.D. Fla. Sept. 21, 2018) (report and recommendation) adopted by 2018 U.S. Dist. LEXIS 174169 (M.D. Fla. Oct. 9, 2018); *see generally Gasperini v. Ctr. For Humanities, Inc.*, 518 U.S. 415, 427 (1996) (noting that federal courts must apply federal procedural law in diversity cases).

B. Count I is not Duplicative

Plaintiff contends that declaratory relief is not proper where Plaintiff "asserts a single substantive claim for breach of contract" and "has not plead the Florida Valued Policy Law ('VPL') as a cause of action." (Doc. 39 at 3). In support, Plaintiff claims that Count I "adds nothing to the case" because "if VPL were relevant, QBE has already raised that issue in its Answer and Affirmative Defenses."[3] (*Id.*) Plaintiff also asserts, inconsistently, that Count I should be dismissed as duplicative of Plaintiff's breach of contract claim. (Doc. 39 at 3-4).

Count I is not merely a restatement of QBE's Fourth Affirmative Defense. Rather, Count I is an independent claim designed to obtain a binding ruling that will clarify the parties' rights and streamline resolution of the case. Overlap between a declaratory judgment claim and an affirmative defense does not result in dismissal. *See, e.g., Clark v. Rockhill Ins. Co.*, 2018 U.S. Dist. LEXIS 175184 at *19-20 (M.D. Fla. Sept. 21, 2018) (report and recommendation), adopted by 2018 U.S. Dist. LEXIS 174169 (M.D. Fla. Oct. 9, 2018); *New Mkt. Realty 1L LLC v. Great Lakes Ins. SE*, 341 F.R.D. 322, 327 (M.D. Fla. 2022); *First Mercury Ins. Co. v. First Fla. Bldg. Corp.*, 2021 U.S. Dist. LEXIS 174111, at *8-9 (M.D. Fla. Sept. 14, 2021).

[3] "The Plaintiff is not entitled to relief under Florida's Valued Policy Law . . . because the statute does not apply to surplus lines insurers under Fla. Stat.§ 626.913-626.937." (Doc. 28 at 6).

In *Clark*, for example, an insured sued for breach of a property insurance policy and the insurer counterclaimed for a declaration of no coverage. *See* 2018 U.S. Dist. LEXIS 175184, at *2-4. The insured moved to dismiss arguing, *inter alia*, that the declaratory judgment counterclaim is duplicative of the insurer's affirmative defenses. *Id*. at *15-16. The Court rejected this argument reasoning that motions to dismiss under Rule 12(b)(6) only test validity, not redundancy, and "a redundant claim should not be dismissed as long as it is valid." *Id.* at *16.

The *Clark* Court distinguished the relief provided by an affirmative defense as opposed to a declaratory judgment counterclaim. *Id*. at *18 ("success on its affirmative defenses will merely relieve it of liability from the Clarks' breach of contract claim. Its counterclaim, however, asks for an affirmative declaration that its interpretation of the policy is correct."). As applied here, if QBE were to prevail on its affirmative defense that the VPL does not apply, it would not automatically obtain a binding declaration to that effect. Count I seeks precisely that independent, affirmative relief.

Clark further underscores that it is often "too soon to know for certain" whether a declaratory judgment will be rendered moot by resolution of the main claim, and that the "safer course" is to allow the claim to proceed absent certainty that it will serve "no useful purpose." *Id.* at *19-20. Here, the applicability of the VPL will impact the measure of damages and the scope of discovery and trial.

Allowing Count I to proceed ensures this Court can issue a definitive ruling on the issue, avoiding uncertainty, needless discovery loss valuation, and promoting judicial economy.

Additionally, Count I addresses a statutory valuation question that is distinct from Plaintiff's contract claim, as the Policy provides a clear method of loss valuation, including limits for property damages and ordinance and law (Doc. 26-1 at 27, 33 (describing coverages for ordinance and law and loss settlement)). In contrast, VPL provides for a blanket application of the insurance limits—regardless of the policy's valuation method—when the insured property is deemed a total loss. *See* Fla. Stat. § 627.702(1)(a) ("In the event of the total loss . . . the insurer's liability under the policy for such total loss, if caused by a covered peril, shall be in the amount of money for which such property was so insured").

None of Plaintiff's cited authorities present a factual analog. *See, e.g.*, *Taylor v. Cooper*, 60 So. 2d 534, 535-36 (Fla. 1952) (declining declaratory relief where the same issues were already pending in criminal court and could afford full, adequate relief; the declaratory-judgment statute does not displace the rule against piecemeal adjudication in parallel proceedings); *Burns v. Hartford Accident & Indem. Co.*, 157 So. 2d 84, 85 (Fla. 3d DCA 1963) (reversing and directing dismissal of insurer's declaratory action that sought predetermination of factual issues already joined in a pending tort suit; declaratory judgment is not a vehicle to

remove issues from the underlying action or to resolve factual questions under a clear, unambiguous policy) (abrogated by *Higgins v. State Farm Fire & Cas. Co.*, 894 So. 2d 5, 9, 15-16 (Fla. 2004)); *Kies v. Fla. Ins. Guar. Ass'n*, 435 So. 2d 410, 411 (Fla. 5th DCA 1983) (reversing insurer's separate declaratory action on coverage tried nonjury where it duplicated the same coverage issue already raised in the main action and was used to deprive plaintiffs of their jury right); *McIntosh v. Harbour Club Villas Condo. Ass'n*, 468 So. 2d 1075, 1081 (Fla. 3d DCA 1985) (declining declaratory relief where the same controversy was already joined in other counts which could provide "full, adequate and complete relief"); *Kelner v. Woody*, 399 So. 2d 35, 38 (Fla. 3d DCA 1981) (affirming dismissal of declaratory judgment where the leases were clear and plaintiffs had already declared default and sought possession).

In any event, those cases apply Florida law whereas QBE's claim arises under the federal Declaratory Judgment Act, 28 U.S.C. § 2201 (Doc. 28 at 11 ¶ 27). As Plaintiff acknowledges, the federal Declaratory Judgment Act is procedural (Doc. 39 at 2), so the Court must look for precedent in the federal courts. *See generally Clark*, 2018 U.S. Dist. LEXIS 175184, at *7-8.

The only federal case cited by Plaintiff, *Tobon v. Am. Sec. Ins. Co.*, is not applicable either. 2007 U.S. Dist. LEXIS 44589 (S.D. Fla. Jun. 20, 2007). To begin, *Tobon* evaluates relief under Florida's declaratory judgment act. *Id*. at *5-6. Second,

Tobon concerned a routine first-party property claim alleging breach-of-contract and declaratory-relief counts that the insurer undervalued wind/rain damage under a concededly valid, unambiguous policy. *Id*. at *2-3, 6-7. In contrast, QBE's declaratory judgment counterclaim seeks a declaration about the applicability of a statute that Plaintiff has invoked as a method of valuing damages. (Doc. 28 at 11 ¶¶ 26-32). QBE does not seek to bolster a breach claim with a declaratory judgment action, or clarify unambiguous Policy language.

II. Unjust Enrichment is a Viable Claim to Recover Insurance Overpayments

Plaintiff further argues that Count II of QBE's Counterclaim (Unjust Enrichment) must be dismissed because the Policy governs and therefore QBE has an adequate remedy at law (Doc. 39 at 6-10). This argument fails because it oversimplifies the contractual relationship between the parties.

Under Florida law, the existence of an express contract bars unjust enrichment **only** when the contract addresses the same subject matter. *See Glob. Network Mgmt. Ltd. v. CenturyLink Latin Am. Sols., LLC*, 67 F.4th 1312, 1317–18 (11th Cir. 2023). But QBE does not seek to recover sums owed under the Policy. QBE seeks the return of insurance overpayments, which is precisely the kind of relief unjust enrichment remedies. *See Pinewood Condo. Apartments, Inc. v. Scottsdale Ins. Co.*, 2022 U.S. Dist. LEXIS 125681, at *18 (S.D. Fla. July 15, 2022) (report and recommendation), adopted by 2022 U.S. Dist. LEXIS 138159 (S.D. Fla. Aug. 2,

2022); *Paschen v. Archer W. Constr., LLC*, 311 So. 3d 39, 49–50 (Fla. 4th DCA 2021) (holding that unjust enrichment is not barred where an express contract exists unless it directly addresses the subject matter at issue, and allowing recovery because the subcontract did not govern the disputed payments).

Pinewood Condo. is on point. There, the insurer counterclaimed against the insured to recover insurance overpayments under an unjust enrichment theory in a breach of a property insurance case. 2022 U.S. Dist. LEXIS 125681, at *16-17. The court entered summary judgment for the insurer on its unjust enrichment counterclaim, holding that "the subject matter of [the insurer's] unjust enrichment claim—an alleged overpayment by [the insurer]—[was] not a subject matter covered by the [p]olicy." *Id*. at *17-18. The court emphasized that such claims are proper where the policy is silent on restitution or overpayment, because in those situations "an equitable claim such as unjust enrichment presents [the insurer's] only avenue to recover[] its overpayment." *Id*. at *18. The same is true here.

Plaintiff's supporting authorities are distinguishable. *Mony Life Ins. Co. v. Perez* involved benefits otherwise owed under the policy but procured by misrepresentation (sounding in tort). 2025 U.S. App. LEXIS 18294, at *19–21 (11th Cir. 2025). The *Mony* court emphasized that such payment procured through false pretenses could be recovered under a fraud claim. *Id*. at *20. Here, QBE seeks to recover funds that Plaintiff was never entitled to under the Policy. (Doc. 28 at 13

¶¶ 34, 39). Unlike in *Mony*, QBE alleges that the Policy itself provides no basis for Plaintiff to have been paid these funds, making unjust enrichment the proper and only available remedy. (Doc. 28 at 13 ¶ 34). Likewise, *Ocean Communications, Inc. v. Bubeck* recognized restitution as a remedy even where a contract exists, particularly when one party retains benefits in excess of what the contract allows. 956 So. 2d 1222, 1225-26 (Fla. 4th DCA 2007).

The other cases cited by Plaintiff are equally unpersuasive. In *Blaikie v. Rsight, Inc.*, the plaintiff sought compensatory damages for medical expenses owed under an ERISA plan. 2011 U.S. Dist. LEXIS 134094, at *15–16 (M.D. Fla. Nov. 21, 2011). That scenario involved contractually due payments, unlike here, where QBE challenges payments never covered by the Policy. *Ready2Go Aviation LLC v. Galistair Trading Ltd.*, is irrelevant, as it merely dismissed a complaint as a shotgun pleading and did not address unjust enrichment in the insurance context. 2023 U.S. Dist. LEXIS 229936, at *4 (S.D. Fla. Dec. 27, 2023). Finally, *Kovtan v. Frederiksen*, involved testimony proving the existence of an express contract covering the services at issue. 449 So. 2d 1 (Fla. 2d DCA 1984). Whereas here, QBE properly alleges that the overpayment was not contractually owed for want of coverage. (Doc. 28 at 13 ¶¶ 33-40).

Finally, Plaintiff's reliance on QBE's presuit communications is misplaced. (Doc. 39 at 8-11). The question is entitlement, not labels: that QBE initially characterized payments as policy benefits does not transform mistaken overpayments into contractual obligations or bring them into coverage. *See Pinewood Condo.*, 2022 U.S. Dist. LEXIS 125681, at *17–18 (holding that overpayment recovery was not governed by the policy and that unjust enrichment was the insurer's "only avenue" of recovery). To the extent the Policy does not authorize coverage for excluded flood and storm surge damages, QBE's communications cannot bar a restitutionary claim. To hold otherwise would allow an insured to retain windfall payments solely because they were mistakenly denominated as "policy benefits," which is exactly the type of inequitable result unjust enrichment is designed to prevent.

CONCLUSION

WHEREFORE, the Defendant, QBE Specialty Insurance Company, respectfully requests that this Honorable Court deny Plaintiff's Amended Motion to Dismiss (Doc. 39) and grant any further relief it deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and will be sent by electronic mail to counsel for the Plaintiff.

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