IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Vinayaka Hospitality LLC and Vinayaka Hospitality Schaumburg LLC,	)	
Plaintiffs,	)	No. 24 C 12301
v.	)	Judge Jorge L. Alonso
Owners Insurance Company,	)	
Defendant.	)	

ORDER

Defendant Owners Insurance Company issued a commercial property insurance policy to Plaintiff Vinayaka Hospitality LLC. After an insured building suffered water damage, Plaintiffs filed this lawsuit seeking to recover on the insurance policy. The parties bring cross motions for summary judgment. For the reasons stated below, Plaintiffs' motion is granted, and Defendant's motion is denied.

Legal Standard

Summary judgment is appropriate 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. *Horton v. Pobjecky*, 883 F.3d 941, 948 (7th Cir. 2018). A genuine dispute as to any material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). "[S]peculation is not enough to create a genuine issue of fact for the purposes of summary judgment." *Tousis v. Billiot*, 84 F.4th 692, 696 (7th Cir. 2023) (citations omitted). Rather, the parties must support their arguments by citing particular parts of the record. *Horton*, 883 F.3d at 948. The Court views the facts and draws all reasonable inferences in the light most favorable to the nonmovant. *Id.*

Background

Defendant issued commercial property insurance policy number 184604-07655622-22 ("Policy") to Plaintiff Vinayaka Hospitality LLC for the period April 1, 2022 to April 1, 2023.[1] R. 37 ¶¶ 1–2. The Policy covered a building located at 1725 E. Algonquin Road in Schaumburg, Illinois ("Building"). *Id.* ¶ 3. On January 30, 2023, the Building sustained water damage. R. 40 ¶ 25. A fire hydrant was located toward the rear of the Building, and a water pipe ran underneath the Building for the purpose of supplying water to the fire hydrant. *Id.* ¶ 26. Due to corrosion of the pipe, a hole had developed, which allowed water to discharge from the broken pipe and enter the building. *Id.* ¶¶ 27–28. Following the water damage sustained on January 30, Plaintiffs submitted a claim to Defendant and Defendant refused to pay, contending that the damage was excluded under the Policy. R. 37 ¶ 7.

In relevant part, the Policy states that Defendant "will pay for direct physical loss of or damage" to the Building unless the loss is otherwise excluded. R. 1-1 at 126. As further relevant, the Policy excludes certain water damages and states that Defendant "will not pay for loss or damage caused by "water under the ground surface pressing on, or flowing or seeping through . . . foundations, walls, floors or paved surfaces." *Id.* at 153. Finally, the Policy also states that the exclusion applies "regardless of whether [the damage] is caused by an act of nature or is otherwise caused." *Id.*

[1] The Policy was issued to Plaintiff Vinayaka Hospitality LLC but not to Plaintiff Vinayaka Hospitality Schaumburg LLC. *See* R. 37 ¶¶ 1–2. Because Vinayaka Hospitality Schaumburg is "not a party to the policy," it thus "lacks standing to bring a breach of contract claim against [Defendant]." *See Carolina Casualty Ins. Co. v. Merge Healthcare Inc.*, 2011 WL 3921412, at *2 (N.D. Ill. Sept. 6, 2011). In their briefs, Plaintiffs fail to raise other arguments under which Vinayaka Hospitality Schaumburg could bring a claim, for example, that it was an intended third-party beneficiary of the Policy. *See* R. 36. As such, Plaintiff Vinayaka Hospitality Schaumburg LLC is dismissed from this case.

Discussion

The parties agree that this case is governed by Illinois law. *See* R. 32 at 3; R. 36 at 3. Under Illinois law, the "rules applicable to contract interpretation govern the interpretation of an insurance policy." *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446, ¶ 19. As such, a court's "primary objective when construing an insurance policy is to ascertain and give effect to the intention of the parties, as expressed in the policy language." *Id.* "Undefined terms [are] given their plain, ordinary, and popular meaning [and] construed with reference to the average, ordinary, normal, reasonable person." *Id.* "If the policy language is susceptible to more than one reasonable meaning, it is considered ambiguous and will be construed strictly against the insurer." *Id.*

The Court finds that the phrase "water under the ground surface" is ambiguous. First, a reasonable person reading the phrase "water under the ground surface" could understand the phrase to mean naturally existing water below the ground. Based on the first reading, water coming from a pipe would not constitute "water under the ground surface" and thus, the water coming from the pipe in this case would not be excluded from the Policy, and Defendant would be required to pay. Numerous other courts have concluded that this first reading is the correct understanding. *See Comley v. Auto-Owners Ins. Co.*, 563 S.W.3d 9, 12 (Ky. 2018) (finding that "water below the surface of the ground" means "subsurface water" which means "subterranean water" which did not include water from a pipe); *West v. Umialik Ins. Co.*, 8 P.3d 1135, 1143 (Alaska 2000) ("With respect to [the phrase 'water below the surface of the ground'], we note that numerous authorities discussing [similar language] have limited the water damage exclusion to natural phenomena. *Couch on Insurance* notes that '[t]he exclusion of water below the surface has been held to apply only to natural flooding, as opposed to flooding by water emanating from artificial means.'"); *Adrian Assocs., Gen. Contractors v. Nat'l Sur. Corp.*, 638 S.W.2d 138, 141 (Tex. App. 1982)

("[T]he majority of the states [] construe the underground water exclusion as water of natural origin . . . and [a]ccordingly, we do not agree with the Insurance Company's contention that 'water below the surface of the ground' includes water from an artificial source."); *Hatley v. Truck Ins. Exch.*, 495 P.2d 1196, 1197 (Or. 1972) ("[T]he exclusion of 'water below the surface of the ground' was intended to have the general meaning of 'subterranean waters,' whether percolating waters or underground streams.").

But second, a reasonable person reading the phrase "water under the ground surface" could also understand the phrase to mean *any* water coming from under the ground. Based on the second reading, water coming from a pipe would constitute "water from under the ground surface" and thus, the water coming from the pipe in this case would be excluded from the Policy, and Defendant would not be required to pay. Numerous other courts have followed this second reading. *Auto-Owners Ins. Co. v. Excelsior Westbrook III, LLC*, 2025 WL 2157456, at *6 (10th Cir. July 30, 2025) (citations omitted) (explaining that under Kansas law, a "leak from the underground water supply line was 'water below the surface of the ground' within the meaning of the exclusion"); *Wisteria Props. LLC v. Ohio Sec. Ins. Co.*, 2021 WL 6882154, at *4 (C.D. Cal. Nov. 17, 2021) ("The Court agrees with [Defendant] that a plain reading of the Water Exclusion Endorsement shows that *any* water under the ground surface, rather than only natural water or ground water or subterranean water, seeping through the foundations is precluded from coverage."); *Bull v. Nationwide Mut. Fire Ins. Co.*, 824 F.3d 722, 725 (8th Cir. 2016) ("The relevant language states simply 'water or water-borne material below the surface of the ground.' The phrase cannot be limited to naturally occurring water, as contrasted with water from a pipe, without grafting onto the phrase an unwritten, implicit limitation.").

The fact that courts remain divided on this issue supports the Court's finding that the phrase is ambiguous. The Court notes that an Illinois Appellate Court analyzed a similar insurance policy and found that a "discharge of water" from a "water service line" constituted a discharge of "water below the surface of the ground." *Central Illinois Compounding, Inc. v. Pharmacists Mut. Ins. Co.*, 2018 IL App (3d) 170809, ¶¶ 3, 18–22. Critically, however, the Illinois Supreme Court has not weighed in on the issue, and one decision from an Illinois Appellate Court is not sufficient for the Court to find either that the issue is settled under Illinois law or that that issue is unambiguous.

Rather, under Illinois law, if the policy language is ambiguous—as is the case here—then the language must be "construed strictly against the insurer." *Sproull*, 2021 IL 126446, ¶ 19. As such, construing the language against Defendant, the Court finds that the water coming from the pipe in this case is not excluded from the Policy, and thus that Defendant is required to pay.

Conclusion

For the reasons stated above, Plaintiff Vinayaka Hospitality Schaumburg LLC is dismissed from this case. Additionally, Plaintiffs' motion [36] for summary judgment is granted, and Defendant's motion [31] for summary judgment is denied. The next step in this litigation is to set a trial to determine damages owed to Plaintiff. As such, the parties shall file a joint status report by 4/7/26 setting forth the following: A) whether, in light of the Court's ruling, the parties wish to engage in settlement discussions prior to trial; and B) the anticipated length of the trial.

SO ORDERED. **ENTERED: March 31, 2025**

HON. JORGE L. ALONSO
United States District Judge