UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 4:23-cv-10083-KMM

ROCKWELL PROPERTY INC.,

Plaintiff,

v.

CENTURY SURETY COMPANY,

Defendant.
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ORDER

THIS CAUSE came before the Court upon Defendant Century Surety Company's ("Defendant" or "Century") Motion for Summary Judgment and Incorporated Memorandum of Law. ("Mot.") (ECF No. 44). Plaintiff Rockwell Property Inc. ("Plaintiff") filed a response in opposition. ("Resp.") (ECF No. 50). Defendant filed a Reply. (ECF No. 54). The Motion is now ripe for review. As discussed below, the Motion for Summary Judgment is GRANTED.

I. BACKGROUND[1]

This case stems from a property damage claim presented by Plaintiff under a commercial lines insurance policy issued by Defendant. *See generally* ("Compl.") (ECF No. 1-2). Plaintiff owns and operates a hotel resort in Key West, Florida, consisting of at least five buildings. DSMF ¶ 3. Defendant issued a commercial surplus lines insurance policy, Policy No. CCP 953824 (the "Policy"), to Plaintiff relating to five scheduled buildings in the resort with effective dates of

[1] The following facts are taken from Defendant's Statement of Material Facts ("DSMF") (ECF No. 45), Plaintiff's Statement of Disputed and Undisputed Material Facts ("PSMF") (ECF No. 51), and a review of the corresponding record citations and exhibits, exclusive of any legal argument or conclusions.

February 8, 2022 to February 8, 2023. *Id.* ¶ 1. The Policy is a surplus lines policy, issued pursuant to Florida Surplus Lines Law (Fla. Stat. §§ 626.913-626.937), separately listing five buildings by address and providing separate limits of coverage for each building. *Id.* ¶¶ 2, 4.

On February 26, 2022, there was a fire in the laundry/pool bar building[2] of the resort. *Id.* ¶ 5. That evening, the City of Key West Fire Department shut down electricity to the hotel property. *Id.* ¶ 19. The electricity was ultimately restored and the resort was deemed safe to reopen on March 2, 2022. *Id.* On February 28, 2022, Plaintiff presented a claim under the Policy for damage to the laundry/pool bar building due to the fire (the "Claim"). *Id.* ¶ 5. Defendant investigated the Claim and determined that the fire originated in the laundry room, the fire was contained to the laundry/pool bar building, and no other buildings at the resort sustained damage from the fire. *Id.* ¶¶ 7–9. As a result, Defendant acknowledged coverage for the Claim and issued three payments to Plaintiff in the amounts of $207,803; $20,000; and $25,000, representing policy limits for the Building, Business Personal Property, and Business Income/Extra Expense coverages applicable to the laundry/pool bar building, respectively. *Id.* ¶ 11. Defendant also issued payment in the amount of $8,619.19 for debris removal based on a fire restoration estimate submitted in support of the Claim. *Id.* ¶ 13.

On July 28, 2022 and August 1, 2022, Plaintiff presented demands for loss of business income in the amount of $295,153.93 and $431,017.45, respectively. *Id.* ¶ 15. On August 24, 2022, Defendant wrote to Plaintiff and explained the basis for the coverage decision that included a partial denial of coverage for business income losses claimed in excess of the applicable limit of coverage. *Id.* ¶ 16.

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[2] The laundry/pool bar is identified as 2 Schippens Lane, Key West, FL 33040, which is Premises 4, Building 1 on the Declarations Page of the Policy. ("Bost Affidavit") (ECF No. 43-1) ¶ 11.

Plaintiff subsequently filed this action in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida and Defendant filed a Notice of Removal asserting diversity jurisdiction. *See generally* ("Notice of Removal") (ECF No. 1). In its Complaint, Plaintiff asserts a single claim for breach of contract ("Count I"). *Id.* ¶ 6. Defendant now moves for summary judgment on Count I. *See generally* Mot.

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992) (citation omitted). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

III. DISCUSSION

Plaintiff brings a single claim for breach of contract, alleging that Defendant breached the Policy by failing to fully compensate Plaintiff for the full scope of the loss from the fire. *See* Compl. ¶¶ 14–17. Plaintiff argues that there is coverage for the other four buildings insured under the Policy and claims a global loss of business income and extra expenses incurred in the amount of $295,154.93. DSMF ¶ 18. Under Florida law, the interpretation of an insurance contract is a matter of law to be decided by the court. *Adelberg v. Berkshire Life Ins. Co.*, 97 F.3d 470, 472 (11th Cir. 1996). Florida courts look at the insurance policy as a whole and give every provision its full meaning. *State Farm Fire & Cas. Co. v. Steinberg*, 393 F.3d 1226, 1230 (11th Cir. 2004).

Defendant argues that it is entitled to summary judgment because the undisputed record evidence shows that Defendant has fully complied with its obligations under the Policy and there is no legal basis for Plaintiff's claim that it is entitled to any more payment. Mot. at 10–14. First, Defendant argues that the Policy is a scheduled policy, not a blanket policy. *Id.* at 10–11. Generally, a scheduled policy separately schedules each piece of covered property into distinct insurance contracts, whereas a blanket policy provides an overall limit of insurance on all property owned by the insured. *Bahama Bay II Condo. Ass'n, Inc v. United Nat'l Ins. Co.*, 374 F. Supp. 3d 1274, 1279 (M.D. Fla. 2019). Here, the Policy separately lists five buildings by address, providing separate limits of coverage for each building and providing separate limits of coverage as to each building for Building, Business Personal Property and Business Income/Extra Expense coverages. Mot. at 10–11; Bost Affidavit ¶ 9. Plaintiff does not challenge Defendant on this point. *See generally* Resp. Thus, the Court is satisfied that the Policy is a scheduled policy, meaning that each building must separately meet the Policy requirements to qualify for coverage. *See Bahama Bay II Condo. Ass'n, Inc*, 374 F. Supp. 3d at 1279.

Setting aside the laundry/pool bar building, Defendant argues there is no basis for Plaintiff to prove a "Covered Cause of Loss" for any of the four other scheduled buildings because there was no direct physical loss or damage to those four buildings. Mot. at 11–14. Within each policy covering Plaintiff's buildings is a Building and Personal Property Coverage Form, which provides: "We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." *Id.* at 4; DSMF ¶ 31. Here, it is undisputed that the "Covered Cause of Loss" is fire. Because there is no evidence of fire damage to any of the other four scheduled buildings, Defendant argues that Plaintiff is not entitled to coverage for claims relating to those four buildings. Mot. at 12.

In response, Plaintiff concedes that if Defendant is correct in its interpretation of the Policy, then Defendant has satisfied its obligations by paying the Policy limits. Resp. at 4. However, Plaintiff argues that the Civil Authority clause of the Business Income (and Extra Expense) Coverage Form allows Plaintiff to recover for loss of business income with respect to the other four buildings scheduled under the Policy. *Id.* at 8. The Civil Authority clause provides, in relevant part: "When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and the necessary Extra Expense caused by the action of civil authority that prohibits access to the described premises . . . ." *Id.* at 3. According to Plaintiff, "described premises" refers specifically to the laundry/pool bar building and "property other than property at the described premises" refers to the other four buildings at the hotel resort. *Id.* at 8. Thus, Plaintiff interprets the Civil Authority clause to mean that it is entitled to coverage for the other four buildings, since the fire caused damage (i.e., loss of business income when the electricity was shut down) to the other buildings, not just the laundry/pool bar building. *Id.*[3] Plaintiff offers no legal authority to support its interpretation of the Civil Authority clause.

The Court is unpersuaded by Plaintiff's interpretation of the Civil Authority clause. Generally, civil authority coverage applies to situations where access to an insured's property is prohibited by an order of civil authority issued as a direct result of physical damage to other premises in the proximity of the insured's property. *See, e.g., SA Palm Beach LLC v. Certain Underwriters at Lloyd's, London*, No. 9:20-CV-80677-UU, 2020 WL 7251643 (S.D. Fla. Dec. 9, 2020), *aff'd*, 32 F.4th 1347 (11th Cir. 2022) (finding no coverage under the civil authority provision because plaintiff failed to allege any physical damage to any property in the immediate area); *see also Dickie Brennan & Co. v. Lexington Ins. Co.*, 636 F.3d 683, 686–87 (5th Cir. 2011). Plaintiff's entire argument relies on the fact that the Civil Authority clause "is the only clause . . . that does not require physical damage but only damage to property other than property at the

[3] Defendant argues that Plaintiff's civil authority theory should not even be considered by the Court because Plaintiff raises this theory of recovery for the first time in its Response. Reply at 3. Defendant explains that Plaintiff has never supplemented its Rule 26 disclosures, or its responses to discovery, to reflect the civil authority theory or the computation of damages for civil authority coverage. *Id.*; *see also* Fed. R. Civ. P. 26(e). Thus, Defendant is prejudiced by Plaintiff's failure to notify Defendant of its civil authority theory because Defendant did not have an opportunity to conduct discovery, question witnesses, retain potential experts, and fully develop a record on pertinent issues including the exact time of any action of civil authority and the scope of the alleged civil authority action. Reply at 4–5. Although the Court agrees that Defendant would be prejudiced if Plaintiff failed to reveal its civil authority theory until this stage of the proceedings, the Court will nevertheless address the instant Motion on the merits and need not reach the issue of Plaintiff's potential Rule 26 violations in this Order.

described premises." Resp. at 8. But the Policy is clear that "Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy." DSMF ¶ 32. As the Eleventh Circuit has explained, Florida courts construing the phrase "direct physical loss or damage" have concluded that words "direct" and "physical" both modify the term "loss;" thus, actual damage is required. *Mama Jo's Inc. v. Sparta Ins. Co.*, 823 F. App'x 868, 879 (11th Cir. 2020) (quoting *Homeowners Choice Prop. & Cas. v. Maspons*, 211 So. 3d 1067, 1069 (Fla. Dist. Ct. App. 2017)). The instant case presents a comparable situation in that there is no allegation of physical property damage with respect to the four other scheduled buildings. The Court concludes that the Policy is unambiguous: even if the Civil Authority clause merely says "damage" instead of "physical damage," the fact remains that "direct physical loss" is a prerequisite for coverage built into the definition of "Covered Cause of Loss." Because Plaintiff concedes that only the laundry/pool bar building sustained physical damage from the fire, it is not entitled to coverage for loss of business income or extra expenses with respect to the other four buildings scheduled under the Policy. Accordingly, Defendant is entitled to summary judgment as a matter of law.[4]

IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment (ECF No. 44) is GRANTED. Pursuant to Federal Rule of Civil Procedure 58, final judgment shall be entered by separate order.

[4] Defendant also argues that even if the Court were to give weight to Plaintiff's civil authority theory, the only evidence relating to damages for lost business income is the unsworn expert report by Bruce Smith (the "Smith Report"). Reply at 9. Perhaps in response to this argument, Plaintiff filed a Motion for Leave to File Sworn Affidavit of Bruce Smith. (ECF No. 57). Therein, Plaintiff concedes that the Smith Report is unsworn and moves for leave to file an affidavit from Bruce Smith to cure the deficiencies in the Smith Report. *Id.* at 4. Because the Court resolves the Motion for Summary Judgment as a matter of contract interpretation, the Court need not reach the issue of damages and does not rely on the Smith Report.

The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of August, 2024.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record