

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY**

CASE NO. 20-61185-CIV-SMITH

CERTAIN UNDERWRITERS AT LLOYD’S
OF LONDON SUBSCRIBING TO POLICY
NO. 188708,

Plaintiff,

v.

GUILLERMO COQUELET, *et al.*,

Defendants.

**ORDER GRANTING
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Plaintiff’s Motion for Summary Judgment [DE 37], Defendants’ Response in Opposition [DE 41], and Plaintiff’s Reply [DE 47]. For the reasons that follow, Plaintiff’s Motion for Summary Judgment is granted.

I. BACKGROUND¹

This case arises from an insurance dispute involving damage to a vessel. Plaintiff, Certain Underwriters at Lloyd’s of London, has brought this suit against Defendants, Guillermo Coquelet and Centennial Bank, N.A., seeking declaratory judgement pursuant to the Federal Declaratory Judgement Act, 28 U.S.C. § 2201, to determine the rights of the parties under a maritime insurance policy issued by Plaintiff.

¹ The Court omits record citations to facts the parties have not disputed.

On March 5, 2019, Coquelet, purchased the M/Y *Isabella*, a 2002 seventy-foot Johnson (the “Vessel”), from Joe Moretti, a yacht broker who also owned the Vessel. On March 6, 2019, Coquelet’s agent contacted Plaintiff to obtain a hull insurance policy for the Vessel. In connection with the request for insurance coverage, Coquelet submitted an application [DE 35-6] (the “Application”), a survey [DE 35-4], and other related documents. Coquelet filed out the Application, signed it, and provided it to his agent and insurance broker. In the Application, under the subheading “Other Information,” Coquelet indicated that (1) the Vessel would not be chartered to others with a captain, (2) the Vessel would not be chartered to others without a captain, and (3) the Vessel would not be used commercially or for business purposes.

Plaintiff issued a SeaWave Yacht Insurance Policy, certificate number 188708, with an effective date of March 7, 2019 through March 7, 2020 for the Vessel [DE 35-8] (the “Policy”). John Hewlett served as the lead underwriter of the Policy, and he relied on Coquelet’s representations contained in the Application when issuing the Policy. The Policy provides hull coverage for the Vessel in the amount of \$425,000, subject to an \$8,500 deductible. The Policy includes a loss payee, identified as Defendant, Centennial Bank. Coquelet listed Centennial Bank as the lienholder for the purchase of the Vessel. Coquelet admits that he received the Policy but never read it. The Policy includes a “Non-Disclosure or Misrepresentation” provision, which states: “This Contract is rendered null and void from its inception on the event of non-disclosure or misrepresentation of facts or circumstances material to [Plaintiff’s] acceptance of this insurance. No action or inaction by [Plaintiff] shall be deemed a waiver of this provision.” (Policy at 18.) The Policy also includes a general exclusion provision that states: “This Contract does not cover: . . . 2) Any claims arising when Your Boat or any substitute Boat is: a) Unless stated herein to the

contrary being used for other than *private pleasure purposes or is let out on hire or chartered or used for reward of any kind.*” (Policy at 21 (emphasis added).)

Notwithstanding the representations made in the Application, Coquelet chartered the Vessel for hiring during the period when insurance coverage was in place. Coquelet chartered the Vessel, including bareboat charters without a captain, on more than one occasion. Coquelet admits that the Application was not accurate when he filled it out, because, although the Application stated that Coquelet would use the Vessel for private pleasure, Coquelet chartered the Vessel for commercial purposes. Coquelet admits that chartering the Vessel is not private pleasure.

On July 7, 2019, while under a bareboat charter, the United States Coast Guard boarded the Vessel in Key Largo after receiving a report of an illegal fishing charter. The U.S. Coast Guard discovered that the captain of the Vessel had an expired license and was intoxicated. The Vessel had seven passengers on board. The passengers represented to the U.S. Coast Guard that they had rented the Vessel on AirBnB for \$1,760 and that the owner of the Vessel offered to provide a captain to take them around the Florida Keys for an additional \$6,000. After completing the investigation, the U.S. Coast Guard cited the Vessel for four separate violations: (i) no certification of inspection; (ii) no merchant mariners credentials; (iii) the captain was not enrolled in drug and alcohol testing; and (iv) not stability credentials. (*See* DE 35-9.)

On July 24, 2019, while under a bareboat charter, the U.S. Coast Guard boarded the Vessel in Fort Lauderdale to investigate whether the Vessel was operating a charter. Coquelet was not onboard the Vessel. During the investigation, the captain was unsure and confused about how many individuals were onboard, what the required documentation for a bareboat charter were, and what limitations applied to a bareboat charter. The U.S. Coast Guard obtained a written statement from one of the passengers confirming Coquelet chartered the Vessel and indicating that the

passengers selected their own captain, who would provide them with dive locations. The passengers indicated that they paid for their own fuel and groceries. The U.S. Coast Guard cited the Vessel for seven deficiencies: (i) the Vessel's fixed firefighting system was out of date and not filled; (ii) a marine sanitation device valve was open and discharging overboard in Port Everglades, an EPA-designated no discharge zone; (iii) the engine room was covered in oil and fuel including deck plates and passageways through the engine room that made it unsafe to occupy the space; (iv) excessive fuel and oil in the engine room bilge, oil actively running down and dripping on a generator, and a refrigerant stored in the engine room; (v) the Vessel was in violation of a district order; (vi) the captain was not licensed; and (vii) the captain did not have a drug and alcohol program. (*See* DE 35-10.) The U.S. Coast Guard concluded that the Vessel was operating an illegal bareboat charter, having six passengers for hire, without appropriate licenses or documentation. Coquelet knew of but never informed his insurance agent or his insurance carrier about the illegal charter boardings by the U.S. Coast Guard or the findings issued by the same.

In September 2019, en route to the Bahamas, a rogue wave struck and damaged the Vessel. The Vessel eventually sank at its berth in the Bahamas, resulting in additional damage. The damage resulting from this voyage to the Bahamas served as the basis for the insurance claim on the Vessel.

According to John Hewlett, the lead underwriter for the Policy, he approved underwriting the risk to the Vessel based upon the representations made in the Application by Coquelet. (Hewlett Aff. [DE 35-7] ¶ 6.) Hewlett claims that, had Coquelet disclosed in his Application that the Vessel was going to be used for chartering with a captain, Coquelet would have been required to pay higher premiums to secure insurance coverage on the Vessel. (*Id.* ¶ 7.) Hewlett estimates that, at minimum, Coquelet's premiums would have increased by ten percent. (*Id.* ¶ 8.) Further,

SeaWave only considers covering vessels that are used for chartering if the vessels are operated by a licensed captain. (*Id.* ¶ 9.) According to Hewlett, chartering activities require higher premiums for several reasons, including: (i) greater personal injury liability for crew and guests; (ii) increased risk associated with the greater frequency of use of the boat (more wear and tear/likelihood of something breaking); and (iii) change in risk associated with the chartering activities. (*Id.* ¶ 12.) SeaWave would never, under any circumstances, consider or approve an insurance policy for a vessel being used as a bareboat or non-captain charter or vessels being used for diving charters. (*Id.* ¶¶ 10-11.) Defendant disputes the statements made by Hewlett in his Affidavit; however, Defendant has not provided evidence that would contest Hewlett's statements.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when “the pleadings . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 247 (1986); *HCA Health Servs. of GA., Inc. v. Employers Health Ins. Co.*, 240 F.3d 982, 991 (11th Cir. 2001). Once the moving party demonstrates the absence of a genuine issue of material fact, the non-moving party must “come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). The Court must view the record and all factual inferences therefrom in the light most favorable to the non-moving party and decide whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) (quoting *Anderson*, 477 U.S. at 251-52)). In opposing a motion for summary judgment, the non-moving party may not rely solely on the pleadings, but must show by affidavits, depositions, answers to interrogatories, and

admissions that specific facts exist demonstrating a genuine issue for trial. *See* Fed. R. Civ. P. 56(c), (e); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A mere “scintilla” of evidence supporting the opposing party’s position will not suffice; instead, there must be a sufficient showing that the jury could reasonably find for that party. *Anderson*, 477 U.S. at 252; *see also Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990).

III. DISCUSSION

Plaintiff argues, in relevant part, that Coquelet made material misrepresentations and omissions on his Application for insurance coverage on the Vessel, and therefore, pursuant to the maritime doctrine of *uberrimae fidei* and the “Non-Disclosure or Misrepresentation” provision contained within the Policy, the Policy issued to Defendant is void from its inception. Plaintiff, therefore, claims that it is entitled to final summary judgment against Defendants. The Court agrees. As such, the Court does not address the remaining arguments advanced by Plaintiff.

Marine insurance contracts are governed by federal maritime law. *Quintero v. Geico Marine Ins. Co.*, 983 F.3d 1264, 1270 (11th Cir. 2020) (citing *Geico Marine Ins. Co. v. Shackelford*, 945 F.3d 1135, 1139 (11th Cir. 2019)); *see also AIG Centennial Ins. Co. v. O’Neill*, 782 F.3d 1296, 1302 n.6 (11th Cir. 2015) (citing *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 24 (2004)). In the Eleventh Circuit, the doctrine of *uberrimae fidei* is controlling law. *HIH Marine Servs. v. Fraser*, 211 F.3d 1359, 1362 (11th Cir. 2000); *see Steelmet, Inc. v. Caribe Towing Corp.*, 747 F.2d 689, 695 (11th Cir. 1984). “[T]he *uberrimae fidei* doctrine requires an insured to ‘fully and voluntarily disclose to the insurer all facts material to a calculation of the insurance risk,’ and ‘the duty to disclose extends to those material facts not directly inquired into by the insurer.’” *Quintero*, 983 F.3d at 1271 (quoting *HIH Marine*, 211 F.3d at 1362)). The required disclosure “includes all material facts that are ‘within or ought to be within, the knowledge of one party, and

of which the other party has no actual or presumptive knowledge.” *Id.* (quoting *Steelmet*, 747 F.2d at 695). The *uberrimae fidei* doctrine “embodies the ‘highest degree of good faith,’ [and] applies to marine insurance contracts because the insurance underwriter often cannot ensure the accuracy or sufficiency of the facts supplied by an insured ‘before the risk is accepted and the premium and conditions set.’” *Id.* (quoting *Steelmet*, 747 F.2d at 695). The doctrine’s central principle “is that the insured bears the burden of full and voluntary disclosure of facts material to the decision to insure.” *HIH Marine*, 211 F.3d at 1363.

An insured’s material misrepresentation to an insurer renders a marine insurance policy void *ab initio*. *Quintero*, 983 F.3d at 1271 (citing *O’Neill*, 782 F.3d at 1303). “The policy is void even if the insured’s misrepresentation was the result of ‘mistake, accident, or forgetfulness,’ or the insurer did not inquire about the particular material fact the insured failed to disclose.” *Id.* (citing *HIH Marine*, 211 F.3d at 1362-63). The court must examine materiality from the perspective of a reasonable insurer, “asking whether a particular fact ‘could possibly influence the mind of a prudent and intelligent insurer in determining whether he would accept the risk.’” *Id.* (quoting *Kilpatrick Marine Piling v. Fireman’s Fund Ins. Co.*, 795 F.2d 940, 942-43 (11th Cir. 1986)).

In completing his Application, Coquelet misrepresented that: (i) the Vessel would not be chartered to others with a captain; (ii) the Vessel would not be chartered to others without a captain; and (iii) the Vessel would not be used for commercial purposes. The record is undisputed, in that, notwithstanding the representations made to secure insurance coverage for the Vessel, Coquelet chartered the Vessel, with and without a captain, for commercial purposes on more than one occasion. The only remaining question is whether the misrepresentations were material — whether, from the perspective of a reasonable insurer, the misrepresentations could possibly

influence the mind of a prudent and intelligent insurer in determining whether or not to accept the risk. *See Quintero*, 983 F.3d at 1271.

The un rebutted testimony from the lead underwriter, Hewlett, clearly demonstrates that the misrepresentations made by Coquelet influenced Hewlett's decision to accept the risk and issue the Policy. Hewlett stated that Plaintiff would not, under any circumstances, have issued an insurance policy for a vessel being used for bareboat charters. This un rebutted fact alone is sufficient to establish the materiality of Coquelet's misrepresentation. *See Certain Underwriters at Lloyd's, London v. Giroire*, 27 F. Supp. 2d. 1306, 1312-13 (S.D. Fla. 1998) (finding a misrepresentation material where Lloyd's submitted an un rebutted affidavit of an underwriter who testified that Lloyd's would not have issued coverage if the defendant had answered truthfully the question about whether the vessel would be used for racing). Moreover, Hewlett stated that Plaintiff may still have issued coverage for the Vessel's use for charters *with* a captain; however, the premiums required under such a policy would be, at a minimum, ten percent greater than those required under the issued Policy. Hewlett explained that the higher premiums are required for chartered vessels to offset the increased liability and risk. Thus, the Court finds that the misrepresentations made by Coquelet are material as a matter of law.


Notwithstanding the application of the doctrine of *uberrimae fidei*, the Policy itself dictates that "[t]his Contract is rendered null and void from its inception in the event of non-disclosure or misrepresentation of facts or circumstances material to [Plaintiff's] acceptance of this insurance." (Policy at 18.) *See Quintero v. Geico Marine Insurance Co.*, 389 F. Supp. 3d 1153, 1160 (S.D. Fla. 2019) (finding that a similar provision mirrors the principles of *uberrimae fidei*); *Northfield Ins. Co. v. Barlow*, 983 F. Supp. 1376, 1380 (M.D. Fla. 1997) (same).

Thus, the Court finds that Coquelet misrepresented the intended use of the Vessel in the Application and that the misrepresentations were material, because the statements influenced Plaintiff's acceptance of the Policy. Therefore, the doctrine of *uberrimae fidei* applies and the Policy is void from its inception. Accordingly, it is

ORDERED that:

1. Defendants' Motion for Summary Judgment [DE 37] is **GRANTED**.
2. All pending motions not otherwise ruled upon are **DENIED as moot**.
3. The Court will enter a separate judgment in accordance with Federal Rule of Civil Procedure 58.
4. This case is **CLOSED**.

DONE AND ORDERED in Fort Lauderdale, Florida on this 3rd day of December, 2021.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: Counsel of record