

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

CASE NO. 22-CV-62292-LEIBOWITZ/STRAUSS

ACCELERANT SPECIALTY INSURANCE CO.,

Plaintiff,

v.

RADFORD KLOTZ, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

THIS MATTER came before the Court upon Accelerant Specialty Insurance Company's Motion for Summary Judgment ("Motion") [DE 34], which has been referred to me pursuant to 28 U.S.C. § 636. I have reviewed the Motion, the response and reply thereto [DE 43, 51], all other summary judgment materials, and all other pertinent portions of the record. For the reasons discussed herein, I respectfully **RECOMMEND** that the Motion [DE 34] be **GRANTED**.

BACKGROUND

This case stems from an insurance dispute following a September 6, 2022 fire that caused substantial damage to Defendant's vessel, a Fountaine Pajot Antigua 37 catamaran named the *Lucey Blue* ("Vessel"). See Accelerant Specialty Insurance Company's Statement of Material Facts ("PL SMF") [DE 33] ¶¶ 1, 10 (undisputed). Plaintiff insured the Vessel's hull under Policy No. CSRYIP/216430, with effective dates of August 28, 2022, to August 28, 2023. *Id.* ¶ 2 (undisputed). After the Vessel was damaged, Defendant submitted an insurance claim to Plaintiff. Defendant Radford Klotz's Statement of Material Facts ("DEF SMF") [DE 44] ¶ 20 (undisputed).

Thereafter, Plaintiff filed its Complaint [DE 1] in this case, alleging that the insurance policy between the parties was void from inception because Defendant was in breach of two warranties under the policy at the time of the fire, a fire suppression warranty (Count I) and a survey compliance warranty (Count II).¹ In contending that a breach of warranty renders the policy void from inception, Plaintiff relies, in part, on the following provision of the policy:

xx. Where any term herein is referred to as a ‘warranty’ or where any reference is made herein to the word ‘warranted’, the term shall be deemed a warranty and regardless of whether the same expressly provides that any breach will void this Insuring Agreement from inception, it is hereby agreed that any such breach will void this Insuring Agreement from inception.

[DE 1-1] at 15. Defendant has filed a Counterclaim [DE 10], alleging that Plaintiff breached the policy by wrongfully denying coverage after the Vessel was damaged by the fire.

The fire suppression warranty at issue provides as follows:

xi. If the Scheduled Vessel is fitted with fire extinguishing equipment, then it is warranted that:

- a. All fire extinguishing equipment is properly installed and is maintained in good working order.
- b. All fire extinguishing equipment is tagged and certified annually or in accordance with the manufacturer’s recommendations, whichever is more frequent.
- c. The tanks of such equipment are weighed annually or in accordance with the manufacturer’s recommendations, whichever is more frequent.
- d. The tanks are recharged as necessary.

For purposes of complying with this warranty, all installation, maintenance, certification, tagging, weighing, and recharging must be conducted by a duly licensed and qualified individual whose principal business is the installation, maintenance, certification, tagging, weighing, and recharging of such systems. Such individual may not be the insured, a Covered Person or any named operator, unless expressly approved by us in writing.

[DE 1-1] at 14.

¹ Because I find (for the reasons discussed below) that Defendant breached the fire suppression warranty and that the breach renders the policy void from inception, I do not reach the issue of whether Defendant breached the survey compliance warranty.

There are 11 portable fire extinguishers on the Vessel. DEF SMF ¶ 11. At the time of the loss (on September 6, 2022), none of the fire extinguishers had been tagged, certified, or weighed during the preceding 1-year period. See PL SMF ¶¶ 15-17; DEF SMF ¶¶ 15-17. Defendant, however, argues that the policy did not require such tagging, certification, or weighing because, among other things, the Vessel was not “fitted with fire extinguishing equipment.” As discussed below, though, Defendant admitted in its Answer that the Vessel was “fitted with fire extinguishing equipment,” and Defendant is bound by that admission.

SUMMARY JUDGMENT STANDARD

A “court shall grant summary judgment 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.” Fed. R. Civ. P. 56(a). “An issue is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Allen v. Bd. of Pub. Educ. for Bibb Cnty.*, 495 F.3d 1306, 1313 (11th Cir. 2007) (citing *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996)). “Where 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.” *Hornsby-Culpepper v. Ware*, 906 F.3d 1302, 1311 (11th Cir. 2018) (internal quotation marks omitted) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

Initially, it is the moving party’s “burden to demonstrate the basis for its motion, and [it] must identify the portions of the record ‘which it believes demonstrates the absence of a genuine issue of material fact.’” *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). “The movant may meet this burden by demonstrating that the nonmoving party has failed to present sufficient evidence to support an essential element of the case.” *Id.* (citing *Celotex*, 477 U.S. at 322-23); see also *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593 (11th Cir. 1995) (The

movant may satisfy its burden “by ‘showing’ or ‘pointing out’ to the Court that there is an absence of evidence to support the non-moving party’s case.” (citing *Celotex*, 477 U.S. at 325)). Provided that the moving party meets its burden, the burden then shifts to the non-moving party to show that a genuine issue of material fact exists. *Hornsby-Culpepper*, 906 F.3d at 1311-12.

To establish a dispute of fact sufficient to avoid the entry of summary judgment, the non-moving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *A.L. ex rel. D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270, 1289 (11th Cir. 2018) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “However, a mere scintilla of evidence in support of the non-moving party’s position is insufficient to defeat a motion for summary judgment.” *Kesinger ex rel. Estate of Kesinger v. Herrington*, 381 F.3d 1243, 1247 (11th Cir. 2004) (citing *Anderson*, 477 U.S. 242). Nevertheless, courts “must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party.” *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997) (citation omitted). Moreover, all reasonable doubts regarding the facts must be resolved in favor of the non-moving party. *Rioux v. City of Atlanta, Ga.*, 520 F.3d 1269, 1274 (11th Cir. 2008) (citation omitted).

ANALYSIS

A. BREACH OF FIRE SUPPRESSION WARRANTY

The undisputed facts establish that Defendant breached the fire suppression warranty. As indicated above, the fire suppression warranty applies if the Vessel “is fitted with fire extinguishing equipment.” On the other hand, if the Vessel was not “fitted” with fire extinguishing equipment, the fire suppression warranty would not apply.

Here, the parties dispute whether the Vessel was “fitted” with fire extinguishing equipment. In the Motion, Plaintiff contends that the Vessel was fitted with fire extinguishing equipment. In its response, Defendant contends otherwise. Unfortunately for Defendant, he previously admitted in his Answer that “the Vessel was fitted with fire extinguishing equipment” at the time of the loss. *See* Complaint [DE 1] ¶ 24; Answer [DE 10] ¶ 24. Defendant is bound by that admission. “The general rule is that a party is bound by the admissions in his pleadings.” *Cooper v. Meridian Yachts, Ltd.*, 575 F.3d 1151, 1177 (11th Cir. 2009) (quoting *Best Canvas Prods. & Supplies, Inc. v. Ploof Truck Lines, Inc.*, 713 F.2d 618, 621 (11th Cir. 1983)) (alterations adopted); *see also White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir. 1983) (“Normally, factual assertions in pleadings and pretrial orders are considered to be judicial admissions conclusively binding on the party who made them.” (citations omitted)). “Indeed, facts judicially admitted are facts established not only beyond the need of evidence to prove them, but beyond the power of evidence to controvert them.” *Cooper*, 575 F.3d at 1178 (quoting *Hill v. Federal Trade Comm’n*, 124 F.2d 104, 106 (5th Cir. 1941)); *see also Best Canvas*, 713 F.2d at 621. Thus, in light of Defendant’s admission in his Answer that the Vessel was fitted with fire extinguishing equipment, he may not now argue to the contrary.

Because the Court must find, based on Defendant’s admission in his Answer, that the Vessel was “fitted with fire extinguishing equipment,” the fire suppression warranty applies. As such, Defendant warranted, *inter alia*, that “[a]ll fire extinguishing equipment is tagged and certified annually” (if not more frequently) and that “[t]he tanks of such equipment are weighed annually” (if not more frequently). [DE 1-1] at 14. As noted above though, it is undisputed that the fire extinguishers on the Vessel – which was the only fire extinguishing equipment on the

Vessel² – were not tagged, certified, or weighed in the year preceding the loss here. *See* PL SMF ¶¶ 15-17; DEF SMF ¶¶ 15-17. Therefore, the undisputed facts show that Defendant breached two portions of the fire suppression warranty (sections xi.b and xi.c).³

B. EFFECT OF BREACH

Having determined that Defendant breached the fire suppression warranty, the Court must next determine the effect of that breach. The parties agree (correctly) that New York law applies here. But they disagree on the result under New York law. According to Plaintiff, because the policy provides that the breach of any warranty in the policy will void the policy from inception, the Court must find that the policy is void under New York law. Defendant, on the other hand,

² *See* Declaration of Gary Golden [DE 44-2] ¶ 13 (“Lucey Blue only has portable fire extinguishers.”).

³ While Defendant primarily argues that the fire suppression warranty did not apply because the Vessel was not fitted with fire extinguishing equipment (an argument he is foreclosed from making for the reasons discussed above), he also seems to make a few other arguments related to the fire suppression warranty. But those arguments easily fail given that the undisputed (and judicially admitted) facts discussed above plainly establish that Defendant breached the express terms of the fire suppression warranty. For instance, Defendant claims that he and his insurance agent reasonably believed the fire suppression warranty did not apply, and Defendant contends that he complied with Coast Guard fire extinguisher regulations. However, what Defendant and his insurance agent believed is irrelevant to whether Defendant breached the plain terms of the fire suppression warranty. Likewise, whether Defendant was in compliance with Coast Guard regulations is irrelevant to the fire suppression warranty given that the plain language of the warranty says absolutely nothing about Coast Guard regulations. Rather, what is relevant is the language of the contract, which Defendant violated.

Also, Defendant contends that he did not violate the fire suppression warranty based on an argument he makes regarding having additional time to satisfy the survey compliance warranty, a warranty that required Defendant to, among other things, satisfy certain survey recommendations, including recommendations related to fire extinguishers. However, even assuming Defendant is correct that he had additional time to satisfy survey recommendations (which Plaintiff disputes), that does not impact whether Defendant breached the fire suppression warranty, which is a completely separate, independent warranty with its own express requirements.

contends that even if he breached a warranty, the policy is not void under New York law unless Defendant's breach was material.⁴

Plaintiff is correct that Defendant's breach of the fire suppression warranty voids the policy from inception. "Under New York state law, an insured forfeits coverage by violating a marine insurance warranty, regardless of whether the violation had any effect on the accident." *Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters LLC*, 71 F.4th 894, 897 (11th Cir. 2023). New York law requires that "warranties in maritime insurance contracts [] be strictly complied with, even if they are collateral to the primary risk that is the subject of the contract, if the insured is to recover." *Id.* at 901 (quoting *Com. Union Ins. Co. v. Flagship Marine Servs., Inc.*, 190 F.3d 26, 31-32 (2d Cir. 1999)). "The rule of strict compliance with warranties in marine insurance contracts stems from the recognition that it is peculiarly difficult for marine insurers to assess their risk, such that insurers must rely on the representations and warranties made by insureds regarding their vessels' condition and usage." *Flagship Marine*, 190 F.3d at 31-32 (citation omitted).

For the foregoing reasons, contrary to Defendant's contention, "recovery is precluded under New York [law] if the warranty was breached, regardless of its materiality to the insurer's risk." *Flagship Marine*, 190 F.3d at 32.⁵ Here, because the fire suppression warranty was

⁴ Plaintiff does not contend that Defendant's breach was material.

⁵ Notably, Defendant does not point to a single case to support his argument that Plaintiff is required to establish materiality under New York law, and I have not located such a case. Rather, all of the authority I have reviewed makes clear that materiality is not required under New York law in this context (concerning breach of warranties in marine insurance contracts). *See, e.g., Ocean Reef Charters LLC*, 71 F.4th at 897 & n.2, 901; *Flagship Marine*, 190 F.3d at 31-32; *Great Lakes Ins. SE v. Lassiter*, No. 21-21452-CIV, 2022 WL 1288741, at *9 (S.D. Fla. Apr. 29, 2022) ("New York law requires strict construction of warranties irrespective of a causal connection to the alleged loss." (citations omitted)); *Transpac Marine, LLC v. Yachtinsure Servs., Inc.*, 655 F. Supp. 3d 18, 35-36 (D. Mass. 2023); *Higginbotham v. S. Cent. Towing Co.*, No. CIV.A. 6:09-0390, 2010 WL 2921637, at *3-4 & n.1 (W.D. La. July 16, 2010); *see also* 69 N.Y. Jur. 2d Insurance § 1246 ("[C]ompliance with a warranty in a marine insurance policy is a condition of the insurer's liability thereunder, regardless of materiality and irrespective of any question of causation. In other

breached, Plaintiff is entitled to judgment as a matter of law on Count I of the Complaint, which requests the Court find there is no coverage for the subject loss and that the Temporary Binder (the insurance policy) is void from inception.⁶ [DE 1] at 6. Likewise, Plaintiff is entitled to judgment as a matter of law on Defendant's Counterclaim, which alleges that Plaintiff breached the insurance policy by denying coverage. Given that the policy is void from inception due to Defendant's breach of the fire suppression warranty, Plaintiff did not breach the policy by denying coverage.

CONCLUSION

For the reasons discussed above, I respectfully **RECOMMEND** that the District Court **GRANT** the Motion [DE 34].

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable David S. Leibowitz, United States District Judge. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and

words, there must be literal compliance with a warranty in order for an insured to recover under a marine insurance policy.” (footnotes and citations omitted)). That includes cases addressing fire suppression warranties under New York law, which have found that a breach of a fire suppression warranty in a marine insurance contract voids coverage regardless of whether the breach was material. *See, e.g., Lloyd’s of London v. Pagan-Sanchez*, 539 F.3d 19, 21-26 (1st Cir. 2008) (noting that “under New York law the insured’s breach excuses the insurer from performance,” and finding for insurer even though there was no indication “that the condition of the fire extinguishing equipment had any relation whatsoever to the sinking of the boat”); *Clear Spring Prop. & Casualty Co. v. Viking Power LLC*, 608 F. Supp. 3d 1220, 1228 (S.D. Fla. 2022) (“New York law requires that express promissory warranties be ‘literally complied with.’ In fact, ‘noncompliance forbids recovery, regardless of whether the omission had causal relation to the loss.’ Therefore, it does not matter whether the fire-extinguishing system’s alleged defects causally contributed to the fire or the damage caused by the fire. All that matters is whether the fire-suppression warranty was breached.” (internal citations omitted)); *see also Clear Spring Prop. & Cas. Co. v. Viking Power LLC*, No. 21-62306-CIV, 2022 WL 17987116, at *4 (S.D. Fla. Sept. 8, 2022); *Clear Spring Prop. & Cas. Co. v. Big Toys LLC*, 683 F. Supp. 3d 1297, 1302-09 (S.D. Fla. 2023).

⁶ Count II, which alleges a breach of the survey compliance warranty, is moot given that it seeks the same relief sought in Count I – a finding that the insurance policy is void from inception.

shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1.

DONE AND SUBMITTED in Fort Lauderdale, Florida this 26th day of July 2024.


Jared M. Strauss
United States Magistrate Judge