

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

ACCELERANT SPECIALTY  
INSURANCE COMPANY,

Plaintiff,

v.

Case No: 8:25-cv-2024-JSM-SPF

DAVID LEE STEWART and KEVIN  
GREENSTEIN,

Defendants.

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**ORDER**

THIS CAUSE is before the Court on Plaintiff's Motion for Judgment on the Pleadings (Dkt. 21). The Court, having reviewed the motion, response, reply, and being otherwise advised in the premises, concludes that the motion should be granted because the pleadings show that Defendant David Lee Stewart breached the subject policy's express multiple operator warranty. Accordingly, Plaintiff does not have a duty to defend or indemnify Stewart.

**FACTS**

This matter arises out of an alleged incident occurring on or about July 1, 2023. On that date, Defendant Kevin Greenstein, a mate aboard David Lee Stewart's vessel, allegedly injured his shoulder while securing the vessel in the Bahamas. Greenstein sued Stewart in state court for the usual trio of seaman's injury claims—maintenance and cure, unseaworthiness, and Jones Act negligence.

Plaintiff Accelerant Specialty Insurance Company moves for judgment on the pleadings related to its claim that Stewart violated the Policy's multiple operator warranty. Plaintiff argues that, because Stewart admits in his Answer all the material facts necessary to prove the legal consequence of that claim (i.e., voiding the Policy from its inception), it is ripe for judgment on the pleadings. Specifically, Stewart admits the existence and authenticity of the Policy, which Accelerant attached to the Complaint. In relevant part, the Policy warrants that "a minimum of two Named Operators must be on board whenever the Scheduled Vessel is navigating," a fact that Stewart also admits.

General Condition xx. of the Policy provides that: "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, any breach of warranty operates to void the Policy from its inception." (Dkt. 1, ¶ 35]; Dkt. 10, ¶ 35]; Dkt. 1-1, p. 15).

Stewart admits that the Vessel traveled from Stuart, Florida, to the Abacos on June 14, and 15, 2023, and there were five individuals aboard. He admits that one of those individuals was Kevin Kates, an approved named operator of the Vessel. He admits that the only other two named operators under the Policy were Antonio Hernandez and Rex Witkamp. He further admits that neither Hernandez nor Witkamp were aboard the Vessel during that trip. Plaintiff argues that these undisputed facts warrant judgment in its favor. The Court agrees.

### **JUDGMENT ON THE PLEADINGS STANDARD**

“Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law.” *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1335 (11th Cir. 2014) (citing *Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001)). To determine whether a party is entitled to judgment on the pleadings, courts accept as true all material facts alleged in the non-moving party’s pleading and view those facts in the light most favorable to the non-moving party. *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998). As with a motion to dismiss, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007) (abrogating *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)). “If a comparison of the averments in the competing pleadings reveals a material dispute of fact, judgment on the pleadings must be denied.” *Perez*, 774 F.3d at 1335.

### **DISCUSSION**

In his response to Plaintiff’s motion, Stewart does not dispute that an authentic copy of the Policy is attached to Accelerant’s Complaint and New York law governs construction of the Policy. Stewart also does not dispute the fact that he breached the multiple operator warranty. The Court agrees with Plaintiff that, because the provision in question is a promissory warranty, and because under New York law, such warranties “must be literally complied with, and...noncompliance forbids recovery, regardless of

whether the omission had causal relation to the loss,” *Jarvis Towing & Transp. Corp. v. Aetna Ins. Co.*, 82 N.E.2d 577, 577 (N.Y. 1948), Stewart’s Policy is void.

Specifically, under New York law, an insurance policy is principally construed in accordance with its plain language. *See, e.g., Fieldston Prop. Owners Ass’n, Inc. v. Hermitage Ins. Co., Inc.*, 945 N.E.2d 1013, 1017 (N.Y. 2011). The Policy says the subject provision is a warranty. Therefore, under New York law, it is. *Triple Diamond Cafe, Inc. v. Those Certain Underwriters at Lloyd’s London*, 3 N.Y.S.3d 46, 49 (N.Y. App. Div. 2015) (“[T]here is no requirement that the warranty be set forth in any particular manner, as long as its effect is to create a condition precedent to the insurer’s liability. Indeed, the use of the term ‘warranted’ at the beginning of the subject provision establishes that the provision was a warranty as defined by the Insurance Law.”); *see also Hearn v. Equitable Safety Ins. Co.*, 11 F. Cas. 965, 968 (C.C.D. Mass. 1872) (No. 6,300) (“All statements in the policy itself are prima facie warranties[.]”).

Plaintiff is also correct that Stewart’s breach of the multiple operator 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); *see also Accelerant Specialty Ins. Co. v. Ballard*, No. 23-61652-CIV, 2025 WL 2499760, at \*5 (S.D. Fla. Apr. 10, 2025) (noting same); *Clear Spring Prop. & Cas. Co. v. Viking Power LLC*, 2022 WL 17987116, at \*4 (S.D. Fla. Sept. 8, 2022) (“Under the Policy, Defendant’s violation of the warranty comes with great consequence. The Policy provided that it must be treated as void from its inception if Defendant breached a warranty. As the Court has twice explained (and Defendant has admitted in its pleadings), New York law permits marine insurers to deny coverage for breaches of promissory warranties regardless of whether the breach is causally connected to a later loss.”).

Stewart argues in his response that judgment on the pleadings is inappropriate because he has asserted an “unclean hands” defense, which cannot be decided without the benefit of discovery. The Court agrees with Plaintiff that this defense is inapplicable here. As Plaintiff points out, unclean hands is an equitable defense. *See Sui-Hsu Hsieh v. Yen-Tung Teng*, 68 N.Y.S.3d 256, 257 (N.Y. App. Div. 2017). Equitable defenses are not available for actions at law. *Manshion Joho Ctr. Co., Ltd. v. Manshion Joho Ctr., Inc.*, 806 N.Y.S.2d 480, 482 (N.Y. App. Div. 2005) (“The doctrine of unclean hands is an equitable defense that is unavailable in an action exclusively for damages.”).

While Plaintiff’s request in this case is for declaratory relief, not damages, the inquiry does not end there. This is because “[a]ctions for declaratory judgments are

neither legal nor equitable, and courts have therefore had to look to the kind of action that would have been brought had Congress not provided the declaratory judgment remedy.” *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988). Applying that analysis, it is undisputed that the relevant claim is a breach of contract claim, because Plaintiff alleges that, by operating the Vessel in violation of the warranty, Stewart breached the Policy. Breach of contract is “quintessentially” an action at law. *Park Union Condo. v. 910 Union Street, LLC*, 151 N.Y.S.3d 388, 390 (N.Y. App. Div. 2021). Accordingly, Plaintiff’s claim is one at law and asserting “unclean hands” is not a valid defense.

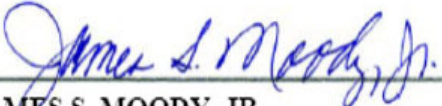
In sum, “Judgment on the pleadings...is appropriate when there are no material facts in dispute, and judgment may be rendered by considering the substance of the pleadings and any judicially noticed facts.” *Horsley v. Rivera*, 292 F.3d 695, 700 (11th Cir. 2002). The undisputed facts establish that the Policy is void from its inception because Stewart violated the multiple operator warranty. As a result, Accelerant has no duty to defend or indemnify Stewart with respect to Greenstein’s claims, nor does it have any duty to pay Greenstein under the medical payments portion of the Policy.

Accordingly, it is ORDERED AND ADJUDGED that:

1. Plaintiff’s Motion for Judgment on the Pleadings (Dkt. 21) is granted.
2. The Court adjudges and declares that Stewart breached the Policy’s multiple operator warranty. As a result, the Policy is void from its inception and does not provide coverage for any claims arising from or associated with the Incident, such that Accelerant has no duty to defend or indemnify Stewart with respect to Greenstein’s claims.

3. The Clerk of Court is directed to enter Final Judgment in favor of Plaintiff and against Defendant David Lee Stewart.
4. The Clerk of Court is directed to enter Final Judgment in favor of Plaintiff and against defaulted Defendant Kevin Greenstein for the same reasons stated in this Order.
5. The Clerk of Court is further directed to close this case and terminate any pending motions as moot.

**DONE** and **ORDERED** in Tampa, Florida, this 27th day of January, 2026.

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel/Parties of Record