UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-62306-CIV-ALTONAGA/Strauss

CLEAR SPRING PROPERTY
AND CASUALTY COMPANY, *et al.*,

Plaintiffs,

v.

VIKING POWER LLC,

Defendant.

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ORDER

THIS CAUSE is before the Court on competing Motions for Summary Judgment, one [ECF No. 56] filed on August 12, 2022 by Plaintiffs Clear Spring Property and Casualty Company and Certain Underwriters at Lloyd's of London Subscribing to Cover Note No. B0507RN2100289 ("Underwriters"); and the other [ECF No. 58] by Defendant Viking Power LLC on August 23, 2022. Defendant filed a Response to Plaintiffs' Motion [ECF No. 60], Plaintiffs filed a Response to Defendant's Motion [ECF No. 64], and the parties filed Replies in support of their respective Motions [ECF Nos. 62, 66].

After thorough review of the parties' written submissions, the record, and applicable law, Plaintiffs' Motion is granted, and Defendant's Motion is denied.

I. BACKGROUND

This insurance coverage dispute concerns the M/Y Miss Dunia, an 82-foot vessel owned by Defendant that was destroyed by a fire in August 2021. (*See* Pls.' Statement of Material Facts [ECF No. 55] ¶ 1 [hereinafter Pls.' SMF]). Plaintiffs are insurers. They issued a Policy insuring

the Miss Dunia's hull for up to $1,925,000; and its tender for up to $2,000; and against third-party and pollution-related liability for up to $2,000,000. (*See id.* ¶¶ 2–4).

The Policy conditioned coverage on the "payment . . . of premium due and compliance by covered persons with the [Policy's] provisions, conditions[,] and warranties[.]" (*Id.* ¶ 5 (alterations added; citation and quotation marks omitted)). The parties agreed that a breach of any of the Policy's warranties would "void th[e] [P]olicy from inception." (*Id.* ¶ 7 (alterations added; citation and quotation marks omitted)). The Policy also defined the phrase "warranty." It noted: "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 [P]olicy from inception[.]" (*Id.* (alterations added; citation and quotation marks omitted)).

One warranty related to the Miss Dunia's fire-extinguishing system. The Policy provided: "If the [Miss Dunia] is fitted with fire[-]extinguishing equipment, then it is warranted that such equipment is properly installed and is maintained in good working order. This includes the weighing of tanks once a year, certification/tagging and recharging as necessary." (*Id.* ¶ 6 (alterations added; citation and quotation marks omitted)). Defendant was aware of this fire-suppression warranty. (*See id.* ¶ 9).

The Miss Dunia had 12 handheld fire extinguishers and two fixed fire extinguishers. (*See id.* ¶ 11). The last time the fire extinguishers were professionally inspected, weighed, and certified was December 2018. (*See id.* ¶ 25). Between that inspection and the day of the fire, two individuals, Charles Violissi and Sam Solberg, regularly checked the fire extinguishers' pressure gauges but never weighed the tanks. (*See id.* ¶¶ 12–27). Neither they nor anyone else performed maintenance of any kind on the fire extinguishers in that nearly three-year period. (*See id.* ¶ 26).

Plaintiffs' fire expert, Adam Goodman, opines in a sworn declaration and attached expert report that Defendant's maintenance of the fire extinguishers fell short of the manufacturers' requirements and industry standards. (*See id.* ¶¶ 32–40; *see also id.*, Ex. 5, Goodman Decl. & Report [ECF No. 55-5]). Defendant disputes none of these facts but asserts that the fire-suppression system functioned correctly on the day of the fire. (*See* Def.'s Statement of Material Facts [ECF No. 61] ¶ 41 [hereinafter Def.'s SMF]).

Contemplating future disputes, the Policy contained a choice-of-law clause. (*See* Pls.' SMF ¶ 8). The clause provided that "any dispute arising hereunder shall be adjudicated according to well established, entrenched principles and precedents of substantive United States Federal Admiralty law and practice but where no such well established, entrenched precedent exists, this insuring agreement is subject to the substantive laws of the State of New York." (*Id.* (citation and quotation marks omitted)).

Plaintiffs brought this action for declaratory relief asserting four claims for relief against Defendant: breach of the Policy's fire-suppression warranty (*see* Am. Compl. [ECF No. 33] ¶¶ 58–66) (Count I); breach of the Policy's survey-compliance warranty (*see id.* ¶¶ 67–77) (Count II); breach of the duty of *uberrimae fidei* (*see id.* ¶¶ 78–88) (Count III); and breach of the Policy's General Condition M (*see id.* ¶¶ 89–96) (Count IV). As to each count, Plaintiffs seek a judicial declaration that (1) the Policy was void from its inception, (2) Defendant is not entitled to coverage, and (3) Plaintiffs are not obligated to defend or indemnify against third-party claims. (*See id.* 10–14).

Plaintiffs seek summary judgment on Count I only. (*See generally* Pls.' Mot.). Defendant moves for summary judgment on Counts I, II, III, and IV.[1] (*See generally* Def.'s Mot.).

[1] In its Counterclaim [ECF No. 43], Defendant asserted causes of action for breach of the Policy and violation of Florida's Deceptive and Unfair Trade Practices Act (FDUTPA). (*See* Countercl. 12–14). The

II. LEGAL STANDARDS

"Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (citations omitted). A federal court must grant summary judgment if the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a), (c).

An issue of fact is "material" if it might affect the outcome of the case under the governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of fact is "genuine" if the evidence could lead a reasonable jury to find for the non-moving party. *See id.*; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). "The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient[.]" *Anderson*, 477 U.S. at 252 (alterations added). "A party opposing summary judgment may not rest upon the mere allegations or denials in its pleadings." *Walker v. Darby*, 911 F.2d 1573, 1576–77 (11th Cir. 1990).

If the moving party discharges its initial burden of showing the absence of a genuine dispute of material fact, the non-moving party "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250 (quotation marks and footnote call number omitted). To make that showing, the non-moving party "must cite to . . . materials in the record or show that the materials cited do not establish the absence or presence of a genuine dispute." *Blackhawk Yachting, LLC v. Tognum Am., Inc.*, No. 12-14208-Civ, 2015 WL 11176299, at *2

Court dismissed the FDUTPA claim (*see* May 20, 2022 Order [ECF No. 53] 11), and no party has moved for summary judgment on the breach-of-contract claim.

(S.D. Fla. June 30, 2015) (alteration added; quotation marks omitted; citing Fed. R. Civ. P. 56(c)(1)).

If the moving party would bear the burden of proof on the relevant issue at trial, it can meet its summary judgment burden only "by presenting *affirmative* evidence showing the absence of a genuine issue of material fact — that is, facts that would entitle it to a directed verdict if not controverted at trial." *Emery v. Talladega Coll.*, 169 F. Supp. 3d 1271, 1280–81 (N.D. Ala. 2016) (citing *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993)). With that showing made, the moving party "is entitled to summary judgment unless the non-moving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact." *Fitzpatrick*, 2 F.3d at 1115 (alterations adopted; quoting *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1438 (11th Cir. 1991) (en banc)).

Courts may consider only evidence reducible to an admissible form at trial, *see Rowell v. BellSouth Corp.*, 433 F.3d 794, 800 (11th Cir. 2005) (citation omitted), and must draw all reasonable inferences in favor of the non-moving party, *see Chapman v. AI Transp.*, 229 F.3d 1012, 1023 (11th Cir. 2000) (citation omitted). "Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts." *Whelan v. Royal Caribbean Cruises Ltd.*, No. 1:12-cv-22481, 2013 WL 5583970, at *2 (S.D. Fla. Aug. 14, 2013) (citation omitted). Indeed, "[i]f reasonable minds might differ on the inferences arising from undisputed facts, then the Court should deny summary judgment" and proceed to trial. *Id.* (alteration added; citations omitted).

Courts apply these same principles to cross-motions for summary judgment. *See, e.g.*, *Ramji v. Hosp. Housekeeping Sys., LLC*, 992 F.3d 1233, 1241 (11th Cir. 2021). So, when considering such motions, they must view the record "in the light most favorable to the non-

moving party on each motion." *Greater Birmingham Ministries v. Sec'y of State of Ala.*, 992 F.3d 1299, 1317 (11th Cir. 2021) (citation and quotation marks omitted).

III. DISCUSSION

A. Choice of Law

The Court has previously explained that the Policy's choice-of-law clause requires the application of New York law to Plaintiffs' claim for breach of the fire-suppression warranty. (*See* Mar. 11, 2022 Order [ECF No. 40] 5–6). Buttressing that conclusion, the Eleventh Circuit recently enforced an identically worded choice-of-law clause in a marine insurance contract, noting in doing so that "neither party" had argued that enforcing the clause "would be unreasonable or unjust[.]" *Great Lakes Ins. SE v. Wave Cruiser LLC*, 36 F.4th 1346, 1353–54 (11th Cir. 2022) (alteration added). Similarly, here, Defendant offers no meaningful explanation for why New York law should not apply, even though its Response references both Florida and New York law. (*See* Def.'s Resp. 2). So, once again, the Court will apply New York law to Plaintiffs' fire-suppression warranty claim.

B. Plaintiffs' Motion

Plaintiffs argue that Defendant breached the fire-suppression warranty as a matter of law by failing to weigh the fire-extinguishing tanks once a year or otherwise maintain the Miss Dunia's fire-suppression equipment and that, as a result, the Policy is void from its inception. (*See* Pls.' Mot. 7–9). Defendant offers two responses to this argument. First, it contends that the fire-suppression warranty is ambiguous and should therefore be construed against Plaintiffs. (*See* Def.'s Resp. 1–2). Second, it argues that Plaintiffs cannot avoid coverage based on the fire-suppression warranty because the Miss Dunia's fire-suppression system functioned properly on the day of the fire. (*See id.* 2).

The Court has rejected these two arguments before, and it does so here again. (*See* Mar. 11, 2022 Order 7–9). The fire-suppression warranty is not ambiguous, especially as it pertains to the requirement that the Miss Dunia's fire-extinguishing tanks be weighed once annually. (*See id.* 7–8); *Lloyd's of London v. Pagan-Sanchez*, 539 F.3d 19, 22–23 (1st Cir. 2008). Defendant admits that it did not weigh the tanks once a year as the warranty plainly required. (*See* Pls.' SMF ¶¶ 14, 17, 21; Def.'s SMF ¶¶ 14, 17, 21). It therefore violated the warranty.

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. (*See* Pls.' SMF ¶ 7). 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. (*See* May 20, 2022 Order 6; Mar. 11, 2022 Order 9; Countercl. 13); *see also* N.Y. Ins. Law § 3106(c) (McKinney 2022); *Jarvis Towing & Transp. Corp. v. Aetna Ins. Co.*, 82 N.E.2d 577, 577–78 (N.Y. 1948); *Cunningham v. Ins. Co. of N. Am.*, 521 F. Supp. 2d 166, 170 (E.D.N.Y. 2006). And Defendant breached the warranty (thus voiding the Policy) before the fire, so it does not matter how the Miss Dunia's fire-suppression system operated when the vessel caught on fire. Summary judgment on Count I is thus due to Plaintiffs.[2]

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[2] For these same reasons, Defendant's Motion for Summary Judgment on Count I must be denied. Defendant argues in its Motion that it is entitled to summary judgment on Count I because the fire-suppression warranty is ambiguous. (Def.'s Mot. 5–6). But again, it is not, particularly as it relates to the requirement to weigh tanks once a year.

Additionally, granting summary judgment to Plaintiffs renders moot all remaining matters in the case. Defendant's only pending counterclaim asserts that Plaintiffs breached the Policy by failing to provide coverage (*see* Countercl. 12–14), which they were not obligated to provide in light of the Court's ruling that the Policy was void from its inception. Moreover, because the Amended Complaint demands the same relief in each count, Plaintiffs' entitlement to summary judgment on Count I means that they will obtain all the relief they seek, so Defendant's requests for summary judgment on the other counts are moot.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiffs' Motion for Summary Judgment **[ECF No. 56]** is **GRANTED**, and Defendant's Motion for Summary Judgment **[ECF No. 58]** is **DENIED**. Final judgment will issue by separate order.

DONE AND ORDERED in Miami, Florida, this 8th day of September, 2022.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record