UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CV-60214-RAR

GREAT AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

BLUE SEAS FRESH FISH, LLC, *et al.*,

Defendants.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on Plaintiff Great American Insurance Company's ("Great American") Motion for Judgment on the Pleadings, [ECF No. 37], which the Court converted, [ECF No. 41], into a Motion for Summary Judgment ("Motion") pursuant to Federal Rule of Civil Procedure 56(f). In response to the Court's conversion, Great American submitted a Supplemental Brief in Support of Its Motion for Summary Judgment ("Brief"), which attached two declarations and two exhibits. [ECF No. 42]. Defendant Blue Seas Fresh Fish, LLC ("Blue Seas")—the only Defendant to have appeared in this matter[1]—did not respond to either the Motion for Judgment on the Pleadings[2] or the Court's Order converting the Motion for Judgment on the Pleadings into a Motion for Summary Judgment and requesting evidence in support of the same.[3]

[1] The Clerk has entered default as to Defendants Justin Konrad, Jessica Cianaglini Settembrino, and Joseph Settembrino. [ECF No. 13]. As such, these Defendants are deemed to have admitted the well-pleaded allegations of the Complaint. *See Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009).

[2] On October 20, 2023, the Court entered an Order acknowledging Defendant's failure to respond to the Motion and provided Defendant with additional time to do so. [ECF No. 38]. The Order further warned Defendant that failure to respond to the Motion "may result in the entry of an order granting the Motion by default under Local Rule 7.1(c)(1), provided such relief is warranted." *Id.* Defendant has failed to file any form of response.

[3] On December 13, 2023, the Court entered an Order denying the Motion for Judgment on the Pleadings and converting it into a Motion for Summary Judgment. [ECF No. 41]. The Order required the parties to submit any evidence or briefing in support by December 29, 2023, but Defendant failed to file any form of response.

However, the Court is not permitted to grant the Motion solely because it is unopposed. *United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004) ("[T]he district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion."). "[T]he district court need not *sua sponte* review all of the evidentiary materials on file at the time the motion is granted, but must ensure that the motion itself is supported by evidentiary materials. At the least, the district court must review all of the evidentiary materials submitted in support of the motion for summary judgment." *Reese v. Herbert*, 527 F.3d 1253, 1269 (11th Cir. 2008) (quoting *id.*). Nevertheless, after reviewing the entire record and viewing the evidence in the light most favorable to Defendant as the non-movant, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Judgment is **GRANTED** as set forth herein.

BACKGROUND

This case involves an insurance dispute over a commercial watercraft owners policy, policy number GCV0000920 (the "Policy"), which affords coverage for certain accidental, direct, physical loss, or damage to Defendants' 1982 34' Crusader named Captain Easy, Hull ID #GFYHS1140681 (the "Vessel"). Defendant Joseph Settembrino, the owner of Blue Seas, purchased the Vessel in March 2020 for Blue Seas for $45,000.00 without obtaining a pre-purchase survey. Compl. ¶¶ 7, 18; Mot. Ex A., Dep. of Joseph Settembrino ("Settembrino Examination Under Oath" or "EUO") 7:20-23, 11:3-6, 17:19-24, 51:4-8, 63:11-15, 63:21-25. The Vessel's engine was "very old," and the Vessel needed "patchwork," for which a "repair job" was completed at some point by Blue Seas itself, who then listed the Vessel for resale for $44,000, and "lowered the price a couple thousand bucks every month for three or four months." EUO 25:25-26:2, 75:24-76:7, 77:10-17, 81:17-21, 86:25-87:8.

While the boat "was still up on the dock" undergoing repairs, Defendant sought to "get some quotes" to obtain insurance on the Vessel and submitted an application for marine insurance (the "Application"), [ECF No. 1-2], to Great American on March 17, 2022. EUO 12:24-13:1, 14:19-15:1, 17:1-18, 41:4-14, 62:5-16. In the Application, Defendant claimed that the new replacement cost and current market value of the Vessel was $80,000.00, Application at 1, even though Defendant had listed the Vessel for sale for $44,000 or less, Compl. ¶ 19; EUO 76:3-7, 77:10-17, 81:17-21. Blue Seas' owner "came up with" $80,000 as a "cushion." EUO 43:12-44:19. In the Application, Defendant claimed that Blue Seas had gross annual receipts of $250,000, Application at 1, even though Blue Seas "never brought in $250,000 in gross annual receipts" and its gross annual receipts were "somewhere in the vicinity of $100,000 to $120,000 in gross revenues over the past and average over the past." EUO 47:2-48:21, 67:13-68:6.

Similarly, Defendant claimed in the Application that there was no pre-existing damage to the Vessel, even though the Vessel had undergone and was undergoing numerous repairs at and around the time of the Application. Application at 1; EUO 25:25-26:2, 75:24-76:7, 77:10-17, 81:17-21, 86:25-87:8. Defendant's owner knew that the boat had "damage" in the form of a "one-blown head on the engine." EOU 73:4-10.

Based on these representations from Defendant in the Application, Plaintiff issued the Policy, which specifically provides that Plaintiff may void coverage if "[Blue Seas] intentionally conceal[s] or misrepresent[s] any material fact or circumstance relating to this contract of insurance, or the application for such insurance, whether before or after a loss." [ECF No. 1-1]. Within two weeks of the Policy being issued, the Vessel partially sank while docked overnight. Compl. ¶ 29; EUO 17:25-18:4. Plaintiff now argues that it is entitled to summary judgment in its favor because Defendant's material misrepresentations voided the policy. Brief at 2.

LEGAL 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). In making this assessment, the court "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), and "must resolve all reasonable doubts about the facts in favor of the non-movant." *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1558 (11th Cir. 1990) (citation omitted).

ANALYSIS

"It is well-settled that the marine insurance doctrine of *uberrimae fidei* is the controlling law of this circuit." *HIH Marine Servs. v. Fraser*, 211 F.3d 1359, 1362 (11th Cir. 2000). "*Uberrimae fidei* requires that an insured fully and voluntarily disclose to the insurer all facts material to a calculation of the insurance risk." *Id.* Further, under this doctrine, "a material misrepresentation on an application for marine insurance is grounds for voiding the policy," even if the misrepresentation is a result of "'mistake, accident, or forgetfulness.'" *Id.* at 1363 (*citing Steelmet v. Caribe Towing Corp.,* 747 F.2d 689, 695 (11th Cir. 1984)); *see also Certain Underwriters at Lloyd's, London v. Giroire*, 27 F. Supp. 2d 1306, 1312 (S.D. Fla. 1998) ("Under *uberrimae fidei* a material misrepresentation on a marine insurance policy, even if innocently made, is grounds for rescission"). "The doctrine of *uberrimae fidei* places a strict burden on the insured to volunteer all information which might have a bearing on the scope or the risk assumed." *Giroire,* 27 F. Supp. 2d at 1312. Thus, a misrepresentation is material under the doctrine if "it might have a bearing on the risk to be assumed by the insurer." *Fraser*, 211 F.3d at 1363.

Here, Great American argues that Blue Seas "made material misrepresentations in its application for the Policy relating to Blue Seas' operations and the value, condition and use of the Vessel, thus entitling Great American to summary judgment in this proceeding." Brief at 2. Upon review of the evidence submitted by Great American—and given Blue Seas' failure to respond to said evidence or identify any genuine issue of material fact—the Court agrees.

Blue Seas represented that the new replacement cost and current market value of the Vessel was $80,000, even though Blue Seas' owner admitted that the $80,000 valuation was a "cushion" to protect Blue Seas' business investments and that Blue Seas had in fact listed the Vessel for resale for less than $44,000 after purchasing it for only $45,000. Application at 1; EUO 43:12-44:19; 76:3-7, 77:10-17, 81:17-21. Blue Seas also falsely claimed that it had been in business for twelve years with gross annual receipts of $250,000, but its owner later admitted that Blue Seas "never brought in $250,000 in gross annual receipts" and that its gross annual receipts were "somewhere in the vicinity of $100,000 to $120,000 in gross revenues over the past and average over the past." Application at 1; EUO at 47:2-48:21, 67:10-68:6.

Similarly, Blue Seas falsely claimed that the Vessel was used commercially for 120-150 trips per year, even though its owner later admitted the Vessel was not even operational for half of 2021 and "had zero trips in 2022. Prior to filling out this application, the boat didn't have a trip." Application at 1; EUO at 68:11-20, 69:3-9. Finally, Blue Seas falsely claimed there was no preexisting damage to the Vessel, even though the Vessel had undergone and was undergoing a number of repairs at and around the time of the Application. Indeed, it was in very poor condition, was not seaworthy, had a leaking shaft log, lacked working bilge pumps, had a rotted-out keel, did not have proper wiring, did not have functioning plumbing, and did not have appropriate means of dewatering its bilge space, among other deficiencies. Application at 1; EUO at 73:4-10; Declaration of Scott Kramer ("Kramer Decl.") ¶ 4, [ECF 42-1].

Any one of these misrepresentations would be sufficient to void the Policy. *See, e.g., Markel Am. Ins. Co. v. Nordarse*, 297 F. App'x 852, 853 (11th Cir. 2008) (affirming grant of summary judgment finding marine policy void where insured represented value of vessel was $180,000 when it was purchased for only $107,000 and worth no more than $126,000); *Giroire*, 27 F. Supp. 2d at 1314 (granting summary judgment in favor of insurer finding policy void when insured misrepresented the extent to which it used the vessel); *St. Paul Fire & Marine Ins. Co. v. Hailfax Trawlers, Inc.*, 495 F. Supp. 2d 232, 237 (D. Mass. 2007) (granting summary judgment in favor of insurer finding policy subject to rescission when insured materially misrepresented to the carrier that the vessel had not suffered previous damage). As there is no genuine dispute of material fact that Blue Seas made material misrepresentations in the Application, Plaintiff is entitled to summary judgment as to Count IV, which seeks a declaratory judgment that Great American had no obligations under the Policy because Blue Seas made material misrepresentations in the Application that voided the Policy. Compl. ¶¶ 48–51.

Further, this entry of summary judgment necessarily moots Counts I, II, II, and V, as well as Counts I and II in Blue Seas' Counterclaim, which are all based upon warranties, exclusions, or obligations created by the voided Policy. *See Fraser*, 211 F.3d at 1362 n.2 ("'If the policy is voided, the question of whether an insurable interest existed is moot. Additionally, . . . principles of waiver and estoppel [cannot] provide coverage where there has been a material misrepresentation in the application.'") (quoting *Giroire*, 27 F. Supp. 2d at 1310) (cleaned up); *see also* Compl. ¶¶ 34–37, 39–41, 43–46, 53–56; Countercl. ¶¶ 36–39, 41–46, [ECF No. 18]. Similarly, granting summary judgment on Count IV moots Count III of the Counterclaim, which relies on Great American's alleged "breach of its implied contractual obligations" under the voided Policy, as well as the existence of an insurer-insured relationship. Countercl. at ¶¶ 48–50.

Additionally, Count III of the Counterclaim relies on the existence of an agency relationship with a towing company that Blue Seas has failed to support with anything but threadbare allegations. *See id.*[4] And Great American has provided evidence that the alleged agents took possession of the boat prior to Great American receiving notice of the claim and were not agents of Great American. *See* Kramer Decl. ¶ 6; Kramer Composite Ex. 1, [ECF No. 42-1]. Accordingly, the Court finds that there is no genuine dispute of material fact that would prevent the entry of summary judgment in favor of Great American on Count III of the Counterclaim as well.

CONCLUSION

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Great American's Motion for Summary Judgment, [ECF No. 37], is **GRANTED**.
2. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, a final judgment in favor of Plaintiff Great American and against Defendant Blue Seas will be entered by separate order.

DONE AND ORDERED in Miami, Florida, this 22nd day of January, 2024.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

[4] Further, Blue Seas is deemed to have admitted the fact that no agency relationship existed because it has failed to respond to Great American's duly served Requests for Admissions requesting an admission regarding the absence of an agency relationship. Declaration of Daniel Shatz ¶ 2, [ECF No. 42-3]; Shatz Composite Ex. 1, [ECF No. 42-4].