IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER COCHRAN, WANSLEY COCHRAN, and JAMIE-ANN COCHRAN,

Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant.

CIVIL ACTION FILE
No. 1:17-cv-0984-SCJ

ORDER

This matter is before the Court for consideration of the cross motions for summary judgment filed by Plaintiffs Christopher Cochran, Wansley Cochran, and Jamie-Ann Cochran (collectively, "Plaintiffs" or "the Cochrans") and Defendant State Farm Fire and Casualty Company ("Defendant" or "State Farm"). Doc. Nos. [27]; [29]. For the reasons outlined below, Plaintiffs' motion is **DENIED**, and Defendant's motion is **GRANTED IN PART** and **DENIED IN PART**.

I. BACKGROUND[1]

Plaintiffs own a rental property located at 3500 Aldredge Road, Southwest in Atlanta, Georgia. Doc. No. [27-2], ¶1. In May of 2015, State Farm issued a Rental Dwelling Policy insuring the property. Id. at ¶4. Christopher Cochran is the named insured on the policy, which provides that his spouse Wansley Cochran, as a resident of his household, is also an insured. Doc. No. [29-1], ¶5. Plaintiff Jamie-Ann Cochran, however, is not listed as a named insured on the Policy and does not fit within the definition of additional insureds under the Policy.[2] Id. at ¶6.

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[1] Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, the Court derives and adopts these facts from the admitted portions of the parties' statements of fact (Doc. Nos. [27-2]; [29-1]; [42]) and the record. The parties raise several objections to material that they referred to as "inadmissible" or "unauthenticated." See, e.g., Doc. Nos. [39], p. 14, ¶29; [43], p. 3, ¶21. The Federal Rules allow a party to object if the "material cited to support or dispute a fact cannot be presented in a form that **would be** admissible in evidence." Fed. R. Civ. P. 56(c)(2) (emphasis added). The party raising the objection bears the burden of showing that the evidence could not be introduced in an admissible form. Neither party met, or attempted to meet, this burden. Therefore, the Court disregards these objections where it appears that the material cited could potentially be introduced in an admissible form.

[2] Although State Farm includes this fact in its Statement of Undisputed Material Facts, it does not seek summary judgment regarding the calculation of damages in relation to Jamie-Ann Cochran's ownership interest in the home. See Doc. No. [29]. For this reasons, and because the Court is denying Plaintiffs' motion for summary judgment, the Court does not address the impact of this fact on the calculation of damages.

The policy was in effect from May 3, 2015 to May 3, 2016. Doc. No. [27-2], ¶5. It provides $132,800 worth of coverage with a deductible of $1,000. Doc. No. [28-5], p. 3. The policy insures for "accidental direct physical loss" to Plaintiffs' rental home, "except as provided in Section I – Losses Not Insured." Doc. No. [29-1], ¶2; see also Doc. No. [28-5], p. 19. The "Losses Not Insured" section excludes coverage of "vandalism and malicious mischief . . . if the dwelling has been vacant for more than 30 consecutive days" and "contamination." Doc. No. [28-5], pp. 19–20. The policy does not define either "vandalism," "malicious mischief," or "contamination." See Doc. No. [28-5]; see also Doc. No. [27-2], ¶¶15, 19. The policy does state that it provides coverage "for any ensuing loss from [the excluded items] unless the loss is itself a Loss Not Insured by this Section." Doc. No. [28-5], p. 20.

On February 16, 2016, the Drug Enforcement Administration ("DEA") executed a search warrant at the Cochran's rental property. Doc. No. [27-2], ¶21. The DEA agents discovered and seized a clandestine methamphetamine laboratory with an estimated yield of 260 kilograms of crystal methamphetamine. Doc. No. [27-2], ¶22; see also Doc. No. [28-8], p. 2. The agents processed approximately 200 gallons of hazardous liquid methamphetamine solution located in a back bedroom in orange five-gallon

buckets and plastic storage containers; approximately seven pounds of finished crystal methamphetamine located in the dining area next to the kitchen; and approximately two additional gallons of liquid methamphetamine located in a pot on a propone stove next to the kitchen. Doc. No. [27-2], ¶23; see also Doc. No. [28-8], pp. 6–7. The DEA agents dismantled the conversion lab. Doc. No. [27-2], ¶23; see also Doc. No. [28-8], p. 7. During the execution of the search warrant, the DEA agents damaged the front door by breaking it down to gain access to the home. Doc. No. [29-1], ¶9. The agents also damaged several of the windows, which they broke out in order to ventilate the home. Id.

On February 18, 2016, the DEA contacted Mr. Cochran and informed him of the execution of the search warrant at the property. Doc. No. [27-2], ¶24. The DEA informed Mr. Cochran that the insured property was not safe to enter due to the presence of toxic and/or hazardous materials as a result of the clandestine methamphetamine laboratory activity. Id. at ¶26. Testing revealed methamphetamine levels well in excess of the allowable exposure limit mandated by the Environmental Protection Agency; thus, the insured property was uninhabitable following the loss. Id. at ¶¶27, 47. Estimates obtained by the Cochrans show the cost of remediating and repairing the damages from the

methamphetamine laboratory to be $86,077.34 (replacement cost value), with $8,596.86 depreciation, for an actual cash value of $77, 480.48. Id. at 48.

Mr. Cochran notified State Farm of the loss and damages on February 24, 2016. Id. at ¶28. State Farm hired an inspector to determine the extent of the damage to the Cochran's property. See Doc. No. [29-1], ¶¶20–22. The inspector reported physical damage to the door and three windows. Id. at ¶22. The inspector did not test for, or estimate the damage from, the presence of toxic or hazardous materials. Doc. No. [29-1], ¶23; see also Doc. No. [27-2], ¶¶32, 34.

On May 3, 2016, State Farm sent Mr. Cochran a letter informing him of its determination regarding coverage for his insurance claim. Doc. No. [29-1], ¶24. State Farm denied the claim based upon its contention that the hazardous methamphetamine residue constitutes "contamination" within the meaning of the policy and that, therefore, the loss was not covered. Doc. No. [27-2], ¶36. However, State Farm noted that the policy did cover the damage to the door and windows, and it included a check for the estimated cost of repair of those items. Doc. No. [29-1], ¶26.

The Cochrans declined the payment and filed suit in the Superior Court of Fulton County on February 10, 2017. Doc. No. [27-2], ¶¶35, 43. State Farm removed the case to federal court on March 17, 2017. See Doc. No. [1], pp. 1–4.

The Cochrans' complaint asserts claims for breach of contract and diminution of value. Id. at 11, 12. Both parties seek summary judgment. See Doc. Nos. [27]; [29]. The Cochrans seek summary judgment on the breach of contract claim, contending that the loss at issue is a result of vandalism and, therefore, covered under the policy.[3] See Doc. No. [27-1], pp. 9–17. They do not address their claim for diminution of value. See id. State Farm also seeks summary judgment on the breach claim, arguing that the loss at issue is "contamination" and excluded under the policy. Doc. No. [29], pp. 11–18. State Farm additionally seeks summary judgment on the diminution of value claim, both because there is no evidentiary basis for the claim and because such a claim is expressly excluded by the policy. Id. at 18–19.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) provides "[t]he 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). A factual dispute is genuine if the evidence would allow

[3] The policy only excludes damage from vandalism if the dwelling was vacant for more than thirty days prior to the occurrence of the loss. See Doc. No. [28-5], p. 19.

a reasonable jury to find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if it is "a legal element of the claim under the applicable substantive law which might affect the outcome of the case." Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. Hickson Corp. v. N. Crossarm Co., 357 F.3d 1256, 1260 (11th Cir. 2004) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving party's burden can be discharged either by showing an absence of evidence to support an essential element of the nonmoving party's case or by showing the nonmoving party will be unable to prove their case at trial. Celotex, 477 U.S. at 325; Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115 (11th Cir. 1993). In determining whether the moving party has met this burden, the court must consider the facts in the light most favorable to the nonmoving party. See Robinson v. Arrugueta, 415 F.3d 1252, 1257 (11th Cir.2005).

Once the moving party has adequately supported its motion, the non-movant then has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). There is no

"genuine [dispute] for trial" when the record as a whole could not lead a rational trier of fact to find for the nonmoving party. Id.; see also Nebula Glass Int'l, Inc. v. Reichhold, Inc., 454 F.3d 1203, 1210 (11th Cir. 2006). All reasonable doubts, however, are resolved in the favor of the nonmoving party. Fitzpatrick, 2 F.3d at 1115.

III. DISCUSSION

A. Contract Interpretation

Jurisdiction in this insurance contract dispute is based upon diversity of citizenship. See Doc. No. [1]. Therefore, the Court applies the substantive law of Georgia in this case. See Erie R.R. v. Tompkins, 304 U.S. 64 (1938). Generally, the interpretation of a contract is a matter for the Court to resolve. O.C.G.A. § 13-2-1.

> The construction of contracts involves three steps. . . . First, the trial court must decide whether the language is clear and unambiguous. If it is, the court simply enforces the contract according to its clear terms; the contract alone is looked to for its meaning. Next, if the contract is ambiguous in some respect, the court must apply the rules of contract construction to resolve the ambiguity. Finally, if the ambiguity remains after applying the rules of construction, the issue of what the ambiguous language means and what the parties intended must be resolved by a jury.

CareAmerica, Inc. v. S. Care Corp., 229 Ga. App. 878, 880, 494 S.E.2d 720 (1997).

"Under Georgia law, an insurance company is free to fix the terms of its policies as it sees fit, so long as such terms are not contrary to law, and it is equally free to insure against certain risks while excluding others." Cont'l Cas. Co. v. H.S.I. Fin. Servs., Inc., 266 Ga. 260, 262, 466 S.E.2d 4, 6 (1996). "Where an insurer grants coverage to an insured, any exclusions from that coverage must be defined clearly and distinctly." Hurst v. Grange Mut. Cas. Co., 266 Ga. 712, 716, 470 S.E.2d 659, 663 (1996). "[W]hen a provision in a policy is susceptible to more than one meaning, even if each meaning is logical and reasonable, that provision is ambiguous." Michna v. Blue Cross & Blue Shield of Ga., Inc., 288 Ga. App. 112, 114, 653 S.E.2d 377, 379 (2007). An ambiguity exists where the language "leave[s] the intent of the parties in question—i.e., that intent is uncertain, unclear, or is open to various interpretations." Citrus Tower Blvd. Imaging Ctr., LLC v. Owens, 325 Ga. App. 1, 8, 752 S.E.2d 74, 81 (2013).

In the case of ambiguous language, "[t]he cardinal rule of construction is to ascertain the intention of the parties." O.C.G.A. § 13-2-3. For insurance contracts,

> there are three well-known rules of contract construction that apply: (1) ambiguities are strictly construed against the insurer as the drafter; (2) exclusions from coverage the insurer seeks to invoke are strictly construed; and (3) the contract is to be read in accordance with the reasonable expectations of the insured when possible.

Auto-Owners Ins. Co. v. Neisler, 334 Ga. App. 284, 287, 779 S.E.2d 55, 59 (2015).

B. Breach of Contract Claim

Both parties seek summary judgment on the breach of contract claim. Plaintiffs contend the operation of a methamphetamine lab is an act of vandalism, the policy covers losses caused by acts of vandalism, and State Farm breached the contract when it refused to pay for remediation of the methamphetamine residue in the home. Doc. No. [27-1], pp. 9–17. State Farm contends that the methamphetamine residue constitutes contamination and, therefore, is expressly excluded from coverage by the policy. Doc. No. [29], pp. 12–18. Thus, resolution of this dispute depends upon whether the Cochrans' loss resulted from "vandalism" or "contamination."

The Court finds the language of the policy with respect to coverage for the Cochrans' loss to be ambiguous. Neither "vandalism" nor "contamination" are defined within the policy, leaving the classification of damages from the

operation of a meth lab open to multiple interpretations. Thus, the Court must apply the canons of construction in an effort to resolve the ambiguity.

As a side note, State Farm asserts that the distinction between "vandalism" and "contamination" is irrelevant because any loss listed on the "Losses Not Insured" list is excluded. Therefore, even if the contamination results from an act of vandalism, it would not be covered. Doc. No. [41], p. 5. However, State Farm's own Operating Guidelines contradict this position.[4] See Doc. No. [28-7]. The guidelines provide insight on the application of the introductory language to the "Losses Not Insured" section, which states, "We do not insure for loss to the property described in Coverage A and Coverage B either **consisting of, or directly and immediately caused by**, one or more of the following: . . . ." Doc. No. [28-5], p. 19 (emphasis added).

According to the guidelines, the key is to identify the proximate cause of the loss. Doc. No. [28-7], p. 2. If one of the listed items is the proximate cause

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[4] State Farm objects to consideration of the Operating Guidelines because they "are internal guidance documents and are not part of the parties' insurance policy." Doc. No. [43], p. 3, ¶16 (internal quotations omitted). While normally outside evidence is not admissible to vary the terms of a contract, when there is an ambiguity, "all the attendant and surrounding circumstances" may be considered to explain the intended meaning. O.C.G.A. § 13-2-2(1); see also CareAmerica, 229 Ga. App. at 881.

of the loss, the policy does not cover the loss. Id. However, "[i]f the most important, or proximate cause is covered, the loss is covered even if the loss 'consists of' the excluded event."[5] Id. at 3. An illustrative example provides that if a fire (a covered peril) causes cracking in a concrete floor, the damage is covered even though it "consists of" a non-covered item. Id. Following this example, if vandalism is a covered peril and the proximate cause of contamination (a non-covered item), then the contamination would still be covered by the policy. Therefore, whether damages from the operation of a meth lab qualify as "vandalism" or as "contamination" is relevant to determining policy coverage.

In attempting to resolve ambiguity, the Court construes the contract strictly against State Farm (the drafter). If State Farm meant to exclude damage from the operation of a meth lab from its coverage, it could have clearly defined "vandalism" and/or "contamination" in such a way as to include or exclude

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[5] The Court rejects Plaintiffs' assertion that the efficient proximate cause doctrine apples in this case. See Doc. No. [27-1], p. 15. That doctrine is applicable when there are two or more independent causes contributing to one type of damage. Burgess v. Allstate Ins. Co., 334 F. Supp. 2d 1351, 1360 (N.D. Ga. 2003). Here, there are not two different contributing causes for the damage; the only cause for the damage is the operation of the meth lab. Rather, the question is how to classify the cause of the damage under the terms of the policy.

that damage, or it could have explicitly listed such damage as an excluded peril. In the absence of such definitions, Plaintiffs make a strong argument that the operation of a methamphetamine lab meets the definition of vandalism employed previously under Georgia law. See Doc. No. [27-1], pp. 10–15. Plaintiffs cite Livaditis v. American Casualty Co. of Reading, Pa., which dealt with damage to a home caused from the smoke, fumes, and vapor produced by an unauthorized moonshine still. 117 Ga. App. 297, 160 S.E.2d 449 (1968). The court described "vandalism" as follows:

> Vandalism means the destruction of property generally. It must also, of course, be willful and malicious, meaning that the act must have been intentional or in such reckless and wanton disregard of the rights of others as to the be [sic] equivalent of intent. As to malice, this may be inferred from the act of destruction. Legal malice need not amount to ill will, hatred, or vindictiveness of purpose; it being sufficient if the defendant was guilty of wanton or even a conscious or intentional disregard of the rights of another.

Id. at 299 (internal quotations and citations omitted). Under that definition, the court found that "damage . . . done intentionally and wantonly by persons using the house" constituted vandalism. Id. at 300.

Additionally, although no Georgia case applies this definition to meth labs or specifically discusses the contamination exclusion as it applies to meth labs, several courts outside this jurisdiction have done just that. See Graff v. Allstate Ins. Co., 113 Wash. App. 799, 54 P.3d 1266 (2002) (upholding grant of summary judgment that found damages from meth lab were covered by vandalism provision and not subject to contamination exclusion); Farmers Ins. Co. of Or. v. Trutanich, 123 Or. App. 6, 858 P.2d 1332 (1993) (upholding grant of summary judgment that found contamination exclusion did not apply to damages from meth lab); Shaffer v. State Farm Fire & Cas. Co., 120 Or. App. 70, 852 P.2d 245 (1993) (reversing directed verdict for insurer and finding that contamination exclusion did not apply to damages from a meth lab); Largent v. State Farm Fire & Cas. Co., 116 Or. App. 595, 842 P.2d 445 (1993) (upholding directed verdict that found contamination exclusion did not apply to damages from meth lab). Courts reach similar results when considering the damages caused from illegal marijuana operations, as well. See Kochendorfer v. Metro. Prop. & Cas. Ins. Co., No. C11-1162-MAT, 2012 WL 1204714, at *1, *6 (W.D. Wash. Apr. 11, 2012) (granting summary judgment to insured for damages because marijuana grow operation qualified as vandalism); Bowers v. Farmers Ins. Exch., 99 Wash. App. 41, 991 P.2d 734 (2000) (reversing grant of summary

judgment to insurer, finding mold damage caused by marijuana grow room qualified as vandalism and was not covered by mold exclusion). Defendant counters with a single case in which the court found that the damage resulting from the operation of a meth lab fell under the policy's contamination exclusion and granted summary judgment to the insurer on the issue of policy coverage.[6] State Farm Fire & Casualty Co. v. Groff, No. CIV-10-171-SPS, 2011 WL 3937317, at *1 (E.D. Okla. Sept. 7, 2011).

Even after applying the canons of contract construction, the Court is unable to resolve the ambiguity in the contract's coverage. Construing the facts most favorably to State Farm, the Court cannot say that Plaintiff has definitively established that damages from the operation of a meth lab are considered vandalism under Georgia law. Construing the facts most favorably to the Cochrans, the Court cannot say that Defendant definitively established that the contamination exclusion applies. Neither Plaintiffs' nor Defendant's position is supported well enough for this Court to declare as a matter of law that one party or the other is entitled to summary judgment. In fact, the contradictory

[6] The court did not discuss whether or not the policy covered vandalism or if the operation of the meth lab would fall under the definition of vandalism. See id.

case law and the lack of Georgia law specifically on point, indicates that coverage in this case is a question best left to a jury. Therefore, Plaintiff's motion for summary judgment on the issue of coverage and Defendant's motion for summary judgment on the issue of coverage are **DENIED**.

C. Diminution of Value Claim

State Farm seeks summary judgment on the Cochrans' claim for diminution of value of their rental property. It points to an absence of any evidence in the record to establish that the home suffered a diminution in value. Doc. No. [29], p. 18. Although Plaintiffs have the burden to come forward with specific facts to show a genuine dispute, they do not address this argument at all in their response and cite no evidence in support of their claim. See Doc. No. [38]. Therefore, summary judgment is appropriate on this ground alone. However, State Farm also cites an exclusion in the policy which states,

> When used in Section I of this policy, loss does not include diminution in value. . . . The following is added to the Section I loss settlement provisions of this policy:
>
> > The cost to repair or replace does not include any reduction in the value of any covered property prior to or following repair, rebuilding or replacement as compared to the value before the loss.

Doc. No. [28-5], p. 12. The Cochrans do not address this argument either. As it appears there is no genuine dispute of fact that the policy excludes a diminution of value claim, summary judgment is proper on this ground as well. Therefore, State Farm's motion for summary judgment on the diminution of value claim is **GRANTED**.

IV. CONCLUSION

Plaintiffs' motion for summary judgment is **DENIED**. Doc. No. [27]. Defendant's motion for summary judgment is **GRANTED IN PART** (on the diminution of value claim) and **DENIED IN PART** (on the breach of contract claim). Doc. No. [29]. The parties are **ORDERED** to participate in mediation of this case before an assigned United States Magistrate Judge for the Northern District of Georgia.

IT IS SO ORDERED this 22nd day of August, 2018.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE