IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PANAMA CITY DIVISION

JOSEPH LAMONICA,

Plaintiff,

v.

CONSOLIDATED
CASE NO. 5:19cv78-RH-MJF

HARTFORD INSURANCE COMPANY OF THE MIDWEST,

Defendant.

_____/

ORDER DENYING SUMMARY JUDGMENT

This is a dispute over insurance coverage for damage to a single-family house caused by Hurricane Michael. The plaintiff owned the house. The defendant insured it. The defendant has moved for partial summary judgment based on the policy's "residence premises" clause. This order denies the motion.

On a summary-judgment motion, disputes in the evidence must be resolved, and all reasonable inferences from the evidence must be drawn, in favor of the nonmoving party. The moving party must show that, when the facts are so viewed, the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a);

see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A summary-judgment motion cannot be used to resolve in the moving party's favor a "genuine dispute as to any material fact." Fed. R. Civ. P. 56(a).

Because this is a diversity action arising from the issuance of an insurance policy covering Florida property, Florida law applies. *See, e.g., Travelers Indem. Co. v. PCR Inc.*, 326 F.3d 1190, 1193 (11th Cir. 2003); *Hyman v. Nationwide Mut. Fire Ins. Co.*, 304 F.3d 1179, 1186 (11th Cir. 2002). Interpreting an insurance policy begins with the plain meaning of the policy's language. From that point forward, the canons of construction favor the insured. Ambiguities are resolved in favor of coverage and against the application of an exclusion. *See, e.g.*, *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000).

The policy's declarations say "the residence premises covered by this policy is located at" the address of the house that was damaged. ECF No. 35-1 at 4 (capitalization altered). But the policy also defines "residence premises" to include "[t]he one family dwelling where you reside" or—not relevant here—a residence where the insured resides in a multiple-unit building meeting specified conditions. ECF No. 35-1 at 39. The policy says the insurer covers "the 'residence premises' shown in the declarations." *Id*. Under these provisions, the policy provided coverage for the damage to this house only if it qualified under the policy's

definition of "residence premises"—that is, only if the plaintiff resided there. *See, e.g.*, *Arguelles v. Citizens Property Insurance Corp.*, 278 So. 3d 108 (Fla. 3d DCA 2019). A ruling for the defendant on this basis would leave at issue only a claim for damage to personal property.

The residence-premises clause does not, however, mean the house was covered only if it was the plaintiff's sole or even primary residence. In the residence-premises definition, the "one" in "one family dwelling" refers to the size of the house, not to the number of houses the insured owns. Nothing in the policy limits coverage to a named insured's sole or primary residence. Any residence will do. *See, e.g.*, *Epstein v. Hartford Casualty Ins. Co.*, 566 So. 2d 331 (Fla. 1st DCA 1990) (concluding "residence" is ambiguous and does not necessarily refer to a person's sole or primary residence); *Huckaby v. Travelers Prop. Cas. Co. of Am.*, No. 5:10-cv-299, 2011 WL 6300569 (M.D. Ga. Dec. 16, 2011) (applying Georgia law); *Chavez v. Encompass Ins. Co.*, No. 1:08-cv-2965, 2010 WL 11468409 (N.D. Ga. Jan. 13, 2010) (same).

The defendant insured this property beginning in 1986. The plaintiff's mother owned the property and was the sole named insured until 1999, when she moved out and conveyed the property to the plaintiff. The plaintiff was added as a named insured. But this was not the plaintiff's primary residence. He lived in a

distant city. Even so, the record would support findings that he grew up in this house, it had been in the family for decades, he had succeeded to its ownership, he routinely though not frequently came back and stayed in the house, and he regarded and intended to keep the house as the family homestead—as a permanent residence. The plaintiff allowed his brother to live in the house, but the plaintiff did not rent the house to others or allow activity different in kind than would be expected for any fulltime, permanent resident of a single-family home.

The circumstances thus are much different than in *Arguelles*, on which the defendant places principal reliance. There the insured not only moved out; he maintained the premises solely as rental property. Here, in contrast, a reasonable jury could find this was a residence of the plaintiff within the meaning of the policy. The defendant is not entitled to summary judgment on this issue.

Moreover, the record would support a finding that the defendant knew the material facts—knew the plaintiff's primary residence was elsewhere and that his brother lived in this house—but insured the house anyway, thus causing the plaintiff to forgo other arrangements to insure the house. This would support a finding of estoppel and thus provides another basis for denying summary judgment. *See, e.g., Crown Life Ins. Co. v. McBride*, 517 So. 2d 660 (Fla. 1987).

That the defendant initially accepted coverage for the loss from Hurricane Michael is consistent with this view.

For these reasons,

IT IS ORDERED:

The defendant's motion for partial summary judgment, ECF No. 97, is denied.

SO ORDERED on June 15, 2021.

s/Robert L. Hinkle
United States District Judge