UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEREMY SATTERLEE,

Plaintiff,

v.

GREAT LAKES INSURANCE SE, et al.,

Defendants.

Case No. 21-cv-01774-JST

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Re: ECF No. 47

Before the Court is Defendant Great Lakes Insurance SE's motion for summary judgment, or in the alternative, partial summary judgment. ECF No. 47. The Court will grant the motion.

I. BACKGROUND

A. Factual Background

From October 2017 to October 2020, Plaintiff Jeremy Satterlee was insured under policies issued by Great Lakes for his 1992 31' Formula (the "Vessel"), which is a type of powerboat. ECF Nos. 43-12 ¶ 2, 47-13, 47-14, 47-16. A policy numbered CSRYP/178272 (the "Policy") covered the Vessel from October 4, 2019 until October 4, 2020. ECF No. 47-16.

The Policy "provide[s] coverage for accidental physical loss of or damage to" the Vessel "within the limits set out in the insuring agreement declaration page, subject to the insuring agreement provisions, conditions, warranties, deductibles[,] and exclusions." *Id.* at 6. The Policy excludes coverage for theft of the Vessel while it was on a trailer "unless the . . . Vessel is situate in a locked and fenced enclosure or marina and there is visible evidence of forcible entry and/or removal made by tools, explosives, electricity or chemicals" ("Locked and Fenced Enclosure Exclusion"). *Id.* at 6-7. It also includes provisions that state: (1) The Policy "is null and void in the event of non-disclosure or misrepresentation of a fact or circumstance material to our

acceptance or continuance of this insurance" ("Non-Disclosure/Misrepresentation Provision"); and (2) "Within 30 days of a loss giving rise to any claim" Satterlee must "give [Great Lakes] written notification of the loss and its circumstances[.] [T]his term is a condition precedent to [Great Lakes's] liability" ("Notice Provision"). *Id.* at 14, 17.

On December 9, 2019, Satterlee filed a claim with Great Lakes for theft of the Vessel, stating that the Vessel was "stolen from [Satterlee's] home then recovered stripped . . . a few cities over." ECF No. 47-18 at 3. In March 2020, after an investigation, Great Lakes notified Satterlee it was denying the claim because it had concluded that (1) the Vessel was stolen from Satterlee's property "while on its trailer," and not in a "secure locked enclosure," as required by the Policy; (2) Satterlee made misrepresentations of fact regarding the location of the Vessel; and (3) Satterlee "failed to disclose the material facts pertaining to [his] history of [c]onvictions and [v]iolations/[s]uspensions." ECF No. 47-21 at 2-3. In September 2020, Satterlee contested the denial, after which Great Lakes conducted a further investigation. ECF Nos. 47-23 at 2-3, 47-24 at 2-3. In February 2021, Great Lakes sent an additional letter to Satterlee confirming it was denying his claim. ECF No. 47-25 at 3-14.

B. Procedural History

Satterlee filed suit against Great Lakes and Concept Special Risks, Limited on March 12, 2021. ECF No. 1. Satterlee brought the following causes of action: (1) breach of contract (against Great Lakes); (2) breach of the implied covenant of good faith and fair dealing (against Great Lakes and Concept Special Risks); (3) interference with contractual relations (against Concept Special Risks); and (4) conspiracy to defraud (against Concept Special Risks). As of September 14, 2021, Satterlee had personally served Great Lakes with the complaint, but had not yet served Concept Special Risks. ECF No. 13 ¶¶ 5, 13. On November 15, 2021, after an intervening extension of the service deadline, the Court provided Satterlee an additional six months to serve Concept Special Risks. ECF No. 30. Satterlee failed to do so, and the Court subsequently dismissed Concept as a defendant. ECF No. 58. Accordingly, the only causes of action still at issue in this action are Satterlee's breach of contract and bad faith claims against Great Lakes.

On October 5, 2021, Great Lakes moved to dismiss the bad faith claim.[1] ECF No. 16. The Court denied that motion on January 18, 2022. ECF No. 34. On December 15, 2022, Great Lakes filed a motion for summary judgment, or in the alternative, partial summary judgment, ECF No. 47, and a request for judicial notice, ECF No. 47-1.[2] Satterlee filed an opposition, ECF No. 48, and Great Lakes replied, ECF No. 51.

II. JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1332.

III. LEGAL STANDARD

Summary judgment is proper when a "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 dispute is genuine only if there is sufficient evidence for a reasonable trier of fact to resolve the issue in the nonmovant's favor, and a fact is material only if it might affect the case's outcome. *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). The court must draw all reasonable inferences in the light most favorable to the nonmoving party. *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1018 (9th Cir. 2010).

When the party moving for summary judgment would bear the burden of proof at trial, that party "has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000). When the party moving for summary judgment would not bear the burden of proof at trial, that party "must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins.*

[1] Courts often refer to claims for breach of the implied covenant of good faith and fair dealing in the insurance context as "bad faith" claims, *see, e.g.*, *Kransco v. Am. Empire Surplus Lines Ins. Co.*, 23 Cal. 4th 390, 401 (2000); *Hovsepyan v. GEICO Gen. Ins. Co.*, No. 2:19-cv-00899-MCE-CKD, 2022 WL 2873059, at *5 (E.D. Cal. July 21, 2022); *Nat'l Fire Ins. Co. v. OMP, Inc.*, No. CV 11-04209-MWF (PJWx), 2012 WL 13009137, at *7 (C.D. Cal. May 14, 2012), and this Court does so as well.

[2] Because the Court need not consider the materials in the request for judicial notice to resolve the motion, it does not consider the request.

Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000). "If a moving party fails to carry its initial burden of production, the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial." *Id.* at 1102-03. But if the moving party satisfies its initial burden of production, the nonmoving party must then produce admissible evidence to show that a genuine issue of material fact exists. *Id.* If the nonmoving party fails to make that showing, the moving party is entitled to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

IV. DISCUSSION

Great Lakes argues that summary judgment should be granted because Satterlee has failed to meet his burden of demonstrating a breach of contract, bad faith, or the "intent to vex, injure[,] or annoy Plaintiff," or "conscious disregard of Plaintiff's rights" necessary to support a claim for punitive damages. ECF No. 47 at 22-32. With respect to Satterlee's breach of contract claim, Great Lakes does not dispute that a theft of the Vessel is within the basic scope of the Policy's coverage. *See id.* at 22-28. Instead, Great Lakes argues that it properly denied coverage because the Policy's Locked and Fenced Enclosure Exclusion, Non-Disclosure/Misrepresentation Provision, and Notice Provision preclude such coverage.[3] *Id.*

The Court first addresses whether coverage of Satterlee's claim is precluded by the Locked and Fence Enclosure Exclusion. The parties disagree as to whether the terms "fenced" and "enclosure" are ambiguous, as well as whether the phrase "locked and fenced enclosure" could include the property where the Vessel was stored because it contained a locked gate on its left side and a "narrow walkway" without a fence or gate on its right side. ECF Nos. 47 at 22-25, 48 at 15-17, 51 at 9-10.

[3] Great Lakes also objects to various paragraphs of David Frangiamore's expert declaration, ECF No. 49, submitted in support of Satterlee's opposition. ECF No. 51 at 15-20. The Court need only resolve Great Lakes's objection to paragraph nine of this declaration because it is the only paragraph relevant to the Court's resolution of the motion. The Court sustains Great Lakes's objection because this paragraph improperly interprets the terms of the policy and contains a legal conclusion. *See* ECF No. 49 ¶ 9 ("Satterlee complied with the policy terms by placing the boat behind a locked an[d] enclosed fenced in the backyard[.]"); *see also McHugh v. United Serv. Auto. Ass'n*, 164 F.3d 451, 454 (9th Cir. 1999) ("[Expert] testimony cannot be used to provide legal meaning or interpret the policies as written.").

The "interpretation of insurance policy is a question of state law, governed by the normal rules of contract interpretation." *Kingray Inc. v. Farmers Grp. Inc.*, 523 F. Supp. 3d 1163, 1171 (C.D. Cal. 2021).[4] "The goal of contract interpretation under both New York and California law is to 'give effect to the mutual intention of the parties,' and if 'contractual language is clear and explicit, it governs.'" *Id.* (quoting *Bank of the W. v. Superior Ct.*, 2 Cal. 4th 1254, 1264 (1992) and citing *Newman Myers Kreines Gross Harris P.C. v. Great N. Ins. Co.*, 17 F. Supp. 3d 323, 327 (S.D.N.Y. 2014)). Contractual language is unambiguous when it "has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion." *Selective Ins. Co. of Am. v. Cnty. of Rensselaer*, 26 N.Y.3d 649, 655 (2016) (alteration in original) (quotation marks and citation omitted)); *accord Palmer v. Truck Ins. Exch.*, 21 Cal. 4th 1109, 1115 (1999) ("A policy provision is ambiguous *only* if it is susceptible to two or more reasonable constructions despite the plain meaning of its terms within the context of the policy as a whole." (emphasis in original)). "Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity." *Greenfield v. Philles Recs., Inc.*, 98 N.Y.2d 562, 569-70 (2002); *accord Scheenstra v. Cal. Dairies, Inc.*, 213 Cal. App. 4th 370, 390 (2013) ("If the court determines there is no ambiguity—that is, the language is reasonably susceptible to only one interpretation—then the judicial inquiry into meaning is finished and the clear and explicit meaning governs.").

Additionally, "policy exclusions are strictly construed, while exceptions to exclusions are broadly construed in favor of the insured." *E.M.M.I. Inc. v. Zurich Am. Ins. Co.*, 32 Cal. 4th 465, 471 (2004) (internal citations omitted); *accord Belt Painting Corp. v. TIG Ins. Co.*, 100 N.Y.2d 377, 383 (2003) ("[P]olicy exclusions are given a strict and narrow construction, with any ambiguity resolved against the insurer."). In other words, "[t]he exclusionary clause 'must be

[4] The parties dispute whether California or New York law applies to Satterlee's breach of contract claim. ECF Nos. 47 at 21-22, 48 at 5-8. Because the Court's analysis as to the material points in this order is the same under both New York and California law, it need not determine which law applies. *See also* ECF No. 47 at 13 n.5 (noting that "California and New York's policy interpretation principles do not significantly differ")

conspicuous, plain and clear.'" *MacKinnon v. Truck Ins. Exch.*, 31 Cal. 4th 635, 648 (2003), *as modified on denial of reh'g* (Sept. 17, 2003) (quoting *State Farm Mut. Auto. Ins. Co. v. Jacober*, 10 Cal. 3d 193, 201-02 (1973) (emphasis in original)); *accord Cont'l Cas. Co. v. Rapid-Am. Corp.*, 80 N.Y.2d 640 (1993) ("[To] negate coverage by virtue of an exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case."). "[T]he burden is on the insurer to prove the claim is specifically excluded." *Aydin Corp. v. First State Ins. Co.*, 18 Cal. 4th 1183, 1188 (1998), *as modified on denial of reh'g* (Oct. 14, 1998); *accord Belt Painting Corp.*, 100 N.Y.2d at 383.

Here, the Locked and Fenced Enclosure Exclusion states that the Policy does not cover theft of the Vessel while it was on a trailer "unless the . . . Vessel is situate in a locked and fenced enclosure." ECF No. 47-16 at 6-7. Satterlee's argument that this language is ambiguous and should be construed against Great Lakes fails for numerous reasons.

The Court first rejects Satterlee's argument that the Exclusion is ambiguous because "[t]he term[s] 'fence' and 'enclosure' are not defined in the Policy." ECF No. 48 at 16. It is well-established that "[t]he absence from the policy of a definition of the term[s] . . . does not *by itself* render the term[s] ambiguous." *Bay Cities Paving & Grading, Inc. v. Lawyers' Mut. Ins. Co.*, 5 Cal. 4th 854, 866 (1993) (emphasis in the original).

Second, the argument is unsupported by the common law. Numerous other courts have found that exclusions with similar language are not ambiguous, and the Court agrees with their reasoning. *See, e.g.*, *Great Lakes Reinsurance (UK) PLC v. Vasquez*, 341 F. App'x 515, 518 (11th Cir. 2009) (holding that a similar exclusion in an insurance policy "excludes from coverage unambiguously [theft of] a vessel 'whilst on a trailer/boatlift/hoist/dry storage rack unless the scheduled vessel is situate in a locked and fenced enclosure'"); *Great Lakes Reinsurance (UK) PLC v. Morales*, 760 F. Supp. 2d 1315, 1326-27 (S.D. Fla. 2010) (same); *see also Sirius Ins. Co. (UK) v. Collins*, 16 F.3d 34, 38 (2d Cir. 1994) (holding that there was no "ambiguity that would require construing the contract against the insurer" in a "theft warranty" that required "storage in a locked fenced enclosure").

Third, the Court is not persuaded by Satterlee's argument that a "fenced enclosure" has multiple meanings, including one where one side of the enclosure is "the side of a house – a structure that, in fact, prevents access by intruders better than a traditional wire or wood 'fence.'" ECF No. 48 at 16. While the definition of "fence" is broader than a traditional wood or wire fence, *see* Merriam Webster's Collegiate Dictionary 461 (11th ed. 2003) (defining "fence," as, among other things, "a barrier intended to prevent escape or intrusion or to mark a boundary" and "an immaterial barrier or boundary line"), the word "fenced" is preceded by the term "locked." A "lock" is a "a fastening (as for a door) operated by a key or a combination," Merriam Webster's Collegiate Dictionary 730 (11th ed. 2003), which cannot be placed on the side of a house. Accordingly, the Court finds that the Locked and Fenced Enclosure Exclusion is unambiguous because it is stated in "plain and clear" terms, *MacKinnon v. Truck Ins. Exch.*, 31 Cal. 4th at 648, and "has a definite and precise meaning," *Selective Ins. Co.*, 26 N.Y.3d at 655.

In any event, there is no dispute that the area was not actually "enclosed," regardless of how it was bounded. Satterlee acknowledges that there was a walkway or passageway by which the boat storage area was accessible to pedestrians. *See* ECF No. 47-23 at 2 (noting that the "[r]ight side of the property was accessible to pedestrians"); *see also* ECF No. 47-11 at 51-52 (stating that "there's a side fence on both sides of the property, and then there's the left double gate, there's just not the small gate on the other side. The post's in, but I just never got around yet to putting the small little 5-foot gate on the right side of the property"). And he makes no effort to fit this gap into the meaning of "enclosed." *See* Merriam Webster's Collegiate Dictionary 410 (11th ed. 2003) (defining "enclose" as "to close in : surround," "to fence off (common land) for individual use," "to hold in : confine," and "to include along with something else in a parcel or envelope"). Instead, he argues that "there is no evidence that the boat could be removed from the 'enclosure' other than through the locked gate." ECF No. 48 at 17. But this is not an exception to the Exclusion. Thus, even were the Court to accept his argument about the role of the "side of the house," his argument about policy language would still fail.

Finally, to the extent Satterlee is, in fact, arguing that the area was "enclosed" even though it was accessible to pedestrians, the Court rejects his policy interpretation as unreasonable. "An

insurance policy provision is ambiguous when it is capable of two or more constructions both of which are *reasonable*." *Bay Cities Paving & Grading, Inc.*, 5 Cal. 4th at 867 (emphasis in original) (quotation marks and citation omitted). "Courts will not adopt a strained or absurd interpretation in order to create an ambiguity where none exists." *Id.* (citation and quotation omitted). An area that is accessible to pedestrians is not "enclosed" within the meaning of the Policy.

Accordingly, the Court finds that Great Lakes has met its burden of demonstrating conclusively that there is no potential coverage under the Policy.[5] First, the Exclusion applies if the Vessel was stolen while on a trailer, and it is undisputed that the Vessel was stolen while on a trailer at Satterlee's property. ECF Nos. 47-4 at 10, 47-16 at 6-7. Second, the Vessel was not in a "locked and fenced enclosure" because it is undisputed that neither the right side nor back of the property had a gate or fence. ECF Nos. 47-4 at 12-13, 47-20 at 28; *see also* ECF No. 47-23 at 2. Satterlee's bad faith claim fails because "where there is no breach of the contract, there can be no breach of the covenant implied in that contract." *Caldera Pharms., Inc. v. Regents of Univ. of Cal.*, 205 Cal. App. 4th 338, 359 (2012). And his punitive damages claim fails because the Court has granted summary judgment on the underlying tort. *See Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.*, 47 Cal. App. 4th 464, 492 (1996).

CONCLUSION

Great Lakes motion for summary judgment is granted. The clerk shall enter judgment and close the case.

IT IS SO ORDERED.

Dated: March 23, 2023

JON S. TIGAR
United States District Judge

[5] In light of this conclusion, the Court need not address whether the denial of Satterlee's claims was permissible under either the Policy's Non-Disclosure/Misrepresentation Provision or its Notice Provision.