UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

SARITA A. DIXON, ET AL. CIVIL ACTION

VERSUS

LIBERTY MUTUAL INSURANCE COMPANY, ET AL. NO. 23-00313-BAJ-RBJ

RULING AND ORDER

This is an insurance dispute. Now before the Court is Defendants Liberty Personal Insurance Company, Liberty Mutual Fire Insurance Company, and Liberty Mutual Insurance Company's **Motion For Summary Judgment (Doc. 41, the "Motion")**. The Motion is opposed. (Doc. 53). For the reasons that follow, the Motion will be granted.

I. BACKGROUND

a. Summary Judgment Evidence

The following facts are drawn from the parties' competing statements of material fact, (Docs. 41-1; 53-1, 2; 56-2), and the competent summary judgment evidence submitted in support of these pleadings.

This matter arises from a fire that occurred in December 2022 at Plaintiffs Sarita A. Dixon and Troy J. Dixon's house in Baton Rouge, Louisiana. (*See* Doc. 53-2 ¶ 11). At the time, the house was insured under a Policy issued by Defendant Liberty Personal. (*Id.*). The Policy had a $492,700.00 base limit. (*Id.* ¶ 13).

The Policy contained an Inflation Protection Endorsement, under which the base limit would be increased to account for inflation:

It is agreed that the limits of liability for:

Coverage A, Dwelling;
Coverage B, Structure;
Coverage C, Personal Property;
and Coverage D, Loss of Use,

shall be raised by the rate of increase in the latest available information on residential building cost inflation.

METHOD

To find the limits of liability on a given date, the Index Level the Company assigns to that date will be divided by the Index Level for the effective date of this Endorsement. This Factor is then multiplied by the limit for Coverages A, B, C and D separately.

If during this policy's term the Coverage A limit is changed at the insured's request, the effective date of this Endorsement is amended to the effective date of such change.

This Endorsement shall not reduce the limits of liability to less than the amount shown on:

a. The policy; or
b. The most recent Homeowners Policy Renewal Declaration.

(Doc. 41-3 at 48).

The Policy also contained a provision called the Louisiana Homeprotector Plus Endorsement, which in relevant part provided the following:

3. Loss Settlement. Covered property losses are settled as follows:

a. The applicable limit of liability for Buildings under Coverage A or B is the replacement cost, after application of deductible and without deduction for depreciation, subject to the following:

(1) We will pay the cost of repair or replacement, but not exceeding:

(a) The replacement cost of that part of the building damaged using like kind and quality construction on the same

> premises and intended for the same occupancy and use;
>
> (b) With respect to Coverage A, an amount not exceeding 20% greater than the limit of liability stated in the declaration, as modified by the Inflation Protection Provision of the policy;
>
> (c) With respect to Coverage B, the limit of liability stated in the declaration, as modified by the Inflation Protection Provision of the policy;
>
> (d) The amount actually and necessarily spent to repair or replace the damage.
>
> (2) We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss according to the provisions of a.(1) above.

(Doc. 41-3 at 23).

In February 2023, Liberty Personal issued payment in the amount of $570,546.60, which represented the base limit for the house increased by the inflation protection provision. (*See* Doc. 53-2 ¶ 17).[1]

After learning that their insurance policy limits were not sufficient to rebuild or replace their home, Plaintiffs filed this lawsuit.

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[1] As required by Local Civil Rule 56, Defendants accompanied their summary judgment motion with a Statement of Undisputed Material Facts, specifically citing record evidence. (Doc. 41-1). In response, Plaintiffs were required to submit "a separate, short, and concise statement of material facts" expressly admitting, denying, or qualifying Defendants' proposed facts, and supporting "each denial or qualification *by a record citation*." M.D. La. LR 56(c) (emphasis added). Here, Plaintiffs attempt to deny the sum paid out, but write only, "Denied as written," with no record citation. (Doc. 53-2 ¶ 17). The Local Rules are clear: at summary judgment, well-supported "[f]acts contained in a supporting or opposing statement of material facts . . . shall be deemed admitted unless properly controverted." M.D. LR 56(f). Absent any proper opposition, the Court deems admitted those well-supported facts set forth in Defendants' Statement of Undisputed Material Facts that are improperly denied by Plaintiffs.

b. Procedural History

Plaintiffs filed suit in March 2023 in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana, naming as Defendants three insurance companies and Michelle A. Nash, the insurance agent who sold them their policy in 2014. (Doc. 1). Plaintiffs alleged that their "homeowner's insurance policy's limits failed to provide adequate coverage for the loss of [their] home," even though Defendants Nash and Liberty Mutual "represented to them that . . . [the] [P]olicy . . . would cover 100% of the cost to rebuild/replace the home." (*See id.* at 2).

Defendants removed Plaintiffs' lawsuit to this Court, asserting the Court's diversity jurisdiction under 28 U.S.C. § 1332(a). (*Id.* at 3). Although Nash was a Louisiana resident, and therefore her presence as a Defendant would compromise the diversity of citizenship required under § 1332(a), Defendants alleged that Nash was improperly joined because the claims against her were prescribed under Louisiana law. (*Id.* at 6).

Plaintiffs moved to remand the case back to state court, disputing the prescription of their claims against Nash. (Doc. 8). However, the Court denied Plaintiffs' attempt to remand, finding that the claims against Nash were indeed prescribed. (Doc. 36).

Now, Defendants move for summary judgment, seeking dismissal of Plaintiffs' claim for additional payments under the Policy, and seeking dismissal of Plaintiffs' claims against Defendants Liberty Mutual and Liberty Fire because these companies did not issue the Policy to Plaintiffs. (Doc. 41). Plaintiffs oppose the Motion. (Doc. 53).

II. ANALYSIS

a. Standard

Federal Rule of Civil Procedure 56(a) provides that the Court may grant summary judgment only "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). If the movant bears its burden, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Id.* at 587. Stated differently, "[i]f the party with the burden of proof cannot produce any summary judgment evidence on an essential element of [her] claim, summary judgment is required." *Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990).

b. Discussion

i. Claim for Additional Payments Under the Policy

Defendants move for summary judgment on Plaintiffs' claim for additional payments under the Policy, arguing that the Policy limit has been paid.

Plaintiffs respond that the Policy was "ambiguous as to its limits," such that Plaintiffs could not know the full extent of the policy limits simply by looking at the policy. (*See* Doc. 53 at 6). In particular, Plaintiffs argue that because the Inflation Protection Endorsement contemplated Liberty Personal's choice of an Index Level after a claim was made, the actual Policy limit was indeterminate until an Index

Level was chosen. (*Id.*). Plaintiffs also complain that the Policy did not include the formula necessary to determine the Index Level. (*Id.*). For these reasons, Plaintiffs argue, the Policy was ambiguous, and therefore summary judgment is inappropriate.

"Under Louisiana law, '[a]n insurance policy is a contract between the parties and should be construed by using the general rules of interpretation of contracts set forth in the Louisiana Civil Code.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 206 (5th Cir. 2007) (quoting *Cadwallader v. Allstate Ins. Co.*, 848 So. 2d 577, 580 (La. 2003)).[2] "The Louisiana Civil Code provides that '[i]nterpretation of a contract is the determination of the common intent of the parties.'" *Id.* (quoting La. Civ. Code art. 2045). "The words of a contract must be given their generally prevailing meaning." *Id.* at 207 (quoting La. Civ. Code art. 2047); *see also Cadwallader*, 848 So. 2d at 580 ("Words and phrases used in an insurance policy are to be construed using their plain, ordinary and generally prevailing meaning, unless the words have acquired a technical meaning.") (citations omitted)).

"When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." *In re Katrina Canal Breaches Litig.*, 495 F.3d at 207 (quoting La. Civ. Code art. 2046). In other words, when "the policy wording at issue is clear and unambiguously expresses the parties' intent, the insurance contract must be enforced as written." *Id.* (quoting *Cadwallader*, 848 So. 2d at 580).

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[2] When a federal court is sitting in diversity, as the Court is here, it is "obligated to apply the substantive law of the forum state." *Chevron Oronite Co., L.L.C. v. Jacobs Field Servs. N. Am., Inc.*, 951 F.3d 219, 225 (5th Cir. 2020) (quotations omitted).

Where a policy is ambiguous, it is "generally construed against the insurer and in favor of coverage." *Cadwallader*, 848 So. 2d at 580 (citing La. Civ. Code art. 2056 (2021)). A policy provision is ambiguous only if it "is susceptible to two or more *reasonable* interpretations." *Id.* (emphasis in original). Courts may not "authorize a perversion of the words or the exercise of inventive powers to create an ambiguity where none exists . . . when the terms express with sufficient clearness the parties' intent." *Whitehead v. Curole*, 277 So. 3d 409, 414–15 (La. App. 1 Cir. 2019).

Here, the Court finds that the Policy is not ambiguous because it is not susceptible to more than one reasonable interpretation. Under the Inflation Protection Endorsement, "[t]o find the limits of liability on a given date, the Index Level the Company assigns to that date will be divided by the Index Level for the effective date of this Endorsement" and "then multiplied by the limit for Coverages A, B, C and D separately." (Doc. 41-3 at 48). There is nothing ambiguous about this language: Liberty Personal will assign an Index Level to a certain date, divide that Index Level by the Index Level for the date the Policy was renewed, and then multiply it by the relevant coverage, in this case Coverage A—the dwelling. Here, that equation spat out the sum of $570,546.60, which is what Plaintiffs were paid.

Put another way, the Policy—a contract between the parties—imposed upon each party certain obligations. Liberty Personal's obligation was to provide an Index Level and then plug that Index Level into the equation described above. This is exactly what Liberty Personal did. There is no ambiguity regarding its obligations. Without doubt there is, from Plaintiffs' perspective, *uncertainty* with respect to what

the Index Level will be on a given date. But uncertainty as to what the Index Level will be is not uncertainty as to the Policy's meaning. The Policy is unambiguous that Liberty Personal will select an Index Level.

To illustrate, consider the following example. It is not uncommon for a contract to make repayment of an amount subject to interest. Sometimes, that interest rate is not defined in the contract, but is pegged to some external rate, like the national average prime interest rate for some agreed upon date. Under those circumstances, no party knows exactly what the interest rate will be when they enter the contract, or even when performing the contract. But this does not make the contract ambiguous. Instead, it is unambiguous that the interest rate will be whatever the national average prime interest rate is at a certain date. Similarly, here, no party to the Policy knew exactly what the Index Level would be when a claim was made, but it was unambiguous that Liberty Personal would get to select it.

Would an insured want to know exactly what their policy limit will be on any given day? Yes. Would an insured want to know exactly how the Index Level was calculated? Also, yes. But these hypotheticals represent additional terms or definitions that could have been in the Policy but are not. Instead, the Policy unambiguously provides for a procedure by which the Policy limit is calculated. And under the Policy, Liberty Personal gets to decide, unilaterally, what the Index Level will be, and, by extension, what the Policy limit will be.[3]

[3] Liberty Personal is, of course, limited in its selection of the Index Level by its "duty of good faith and fair dealing" and its "affirmative duty to adjust claims fairly and promptly." La. Stat. Ann. § 22:1892(I)(1)(a).

Plaintiffs also appear to argue that the Louisiana Home Protector Plus Endorsement should apply in their case. (*See* Doc. 53 at 6). That Endorsement, however, provides that Liberty Personal "will pay no more than the actual cash value of the damage *until actual repair or replacement is complete*." (Doc. 41-3 at 23 (emphasis added)). As Defendants note, however, Plaintiffs have offered no evidence that repair or replacement of their house is complete, and so the Home Protector Plus Endorsement does not apply, at least for now. (Doc. 56 at 5 n.3).

For the reasons stated above, the Court deems that Liberty Personal paid out the full policy limit to Plaintiffs and no further payments are currently required. Summary judgment is therefore appropriate, and Plaintiffs' claims will be dismissed with prejudice.

ii. Claims Against Liberty Mutual and Liberty Fire

Defendants also move for summary judgment on Plaintiffs' claims against Defendants Liberty Mutual and Liberty Fire, arguing that neither entity issued the Policy. (*See* Doc. 41-2 at 8). Plaintiffs do not dispute this but argue, without citing to authority, that discovery is necessary to confirm Liberty Mutual and Liberty Fire's involvement or non-involvement. The undisputed evidence establishes that Liberty Mutual and Liberty Fire did not issue a Policy to Defendants. (*See* Doc. 53-2 ¶¶ 11 ("[P]olicy of insurance issued by Liberty Personal . . . ."), 13 ("The Policy issued by Liberty Personal . . . ."), 17 ("Liberty Personal approved and issued payment . . . .")). Moreover, the Court has found that under the sole Policy at issue here, Plaintiffs claims fail. For these reasons, summary judgment is appropriate and Plaintiffs'

claims against Liberty Mutual and Liberty Fire will be dismissed with prejudice.

III. CONCLUSION

Accordingly,

IT IS ORDERED that Defendants Liberty Personal Insurance Company, Liberty Mutual Fire Insurance Company, and Liberty Mutual Insurance Company's **Motion For Summary Judgment (Doc. 41)** be and is hereby **GRANTED**. Plaintiffs' claims against all Defendants will be dismissed with prejudice.

Judgment will issue separately.

Baton Rouge, Louisiana, this 19th day of November, 2024

JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA