

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-22781-CIV-SMITH

MUSASHI AZ LLC,

Plaintiff,

vs.

ACCELERANT SPECIALTY INSURANCE
COMPANY,

Defendant.

**ORDER GRANTING IN PART PLAINTIFF'S
MOTION TO DISMISS COUNTERCLAIMS**

This matter is before the Court on Plaintiff's Motion to Dismiss Counterclaims [DE 19], Counterclaims Plaintiffs' Response to Plaintiff/Counterclaim-Defendant's Motion to Dismiss Counterclaims [DE 23], and Plaintiff's Reply to Response in Opposition to Motion to Dismiss Counterclaims [DE 29]. Plaintiff filed this action after Defendant, Accelerant Specialty Insurance Company ("Accelerant"), failed to pay Plaintiff's claim on a Premier Private and Pleasure Yacht Insuring Agreement (the "Policy") issued by Accelerant to Plaintiff. For the reasons that follow, the Motion to Dismiss is granted in part and denied in part.

I. BACKGROUND

Plaintiff's Amended Complaint [DE 7] alleges that Accelerant issued the Policy to Plaintiff. The Policy provides coverage for Plaintiff's yacht (the "Vessel"), which the Policy insured with an agreed value of \$1,850,000. On February 18, 2023, a fire broke out on the Vessel. As a result, the Vessel was a constructive total loss. Plaintiff notified Accelerant of the loss on February 27, 2023.

Although fire is a covered loss under the Policy, Accelerant has failed to pay for the loss, breaching the Policy terms. Plaintiff's Amended Complaint alleges a single count for breach of the Policy.

In response to the Amended Complaint, Accelerant filed an Answer, Affirmative Defenses and Counterclaims [DE 14]. The Counterclaims were also brought by Counterclaim-Plaintiff Certain Underwriters at Lloyd's of London Subscribing to Cover Note No. B0507RN2200289 ("Lloyd's"). Accelerant raises two affirmative defenses: (1) Plaintiff breached the duty of *uberrimae fidei* and, therefore, the Policy is void from inception and (2) Plaintiff breached general condition xiii of the Policy and, therefore, the Policy is void from its inception. The Counterclaims allege that the Policy was issued by Accelerant and Lloyd's. The Counterclaims allege two causes of action against Plaintiff for declaratory judgment: (1) a claim seeking a declaration that Plaintiff violated the doctrine of *uberrimae fidei* resulting in the Policy being void from its inception and (2) a claim seeking a declaration that Plaintiff breached the Policy's general condition xiii resulting in no coverage and the Policy being void.

The Affirmative Defenses and the Counterclaims are based on the following facts. During the application and renewal process, Plaintiff represented that the Vessel was purchased for \$2,000,000. This was not true. Accelerant and Lloyd's would not have issued the Policy or would have not issued it at the same premium or with the same terms and conditions had they known the truth. Plaintiff's false representation of the purchase price violated the federal maritime doctrine of *uberrimae fidei*, which requires that an insured fully and voluntarily disclose to the insurer all facts material to a calculation of insurance risk. The Policy essentially incorporates this doctrine through general condition xiii, which states: "This contract is null and void in the event of non-disclosure or misrepresentation of a fact or circumstances material to Our acceptance or continuance of this insurance. No action or inaction by Us shall be deemed a waiver of this

provision.” (Policy [DE 7-1] at 14.) Thus, Plaintiff’s misrepresentation about the purchase price violates the Policy and voids it.

Plaintiff seeks to dismiss both counts of the Counterclaims because they are duplicative of the Affirmative Defenses and, therefore, serve no purpose. Plaintiff also alleges that the Counterclaims fail to state a cause of action upon which relief can be granted.

II. MOTION TO DISMISS STANDARD

The purpose of a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the facial sufficiency of a complaint. *See* Fed. R. Civ. P. 12(b)(6). The rule permits dismissal of a complaint that fails to state a claim upon which relief can be granted. *Id.* It should be read alongside Federal Rule of Civil Procedure 8(a)(2), which requires a “short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint challenged by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff is still obligated to provide the “grounds” for his entitlement to relief, and a “formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted).

When a complaint is challenged under Rule 12(b)(6), a court will presume that all well-pleaded allegations are true and view the pleadings in the light most favorable to the plaintiff. *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1066 (11th Cir. 2007). However, once a court “identif[ies] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth,” it must determine whether the well-pled facts “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). A complaint can only survive a 12(b)(6) motion to dismiss if it contains factual allegations that are “enough to raise a right to relief above the speculative level, on the assumption that all the [factual] allegations in the

complaint are true.” *Twombly*, 550 U.S. at 555 (citation omitted). However, a well-pled complaint survives a motion to dismiss “even if it strikes a savvy judge that actual proof of these facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Id.*

III. DISCUSSION

Plaintiff seeks to dismiss the Counterclaims for two reasons: (1) resolution of Plaintiff’s claim and the affirmative defenses will resolve the issues presented by the declaratory judgment claims and (2) the Counterclaims fail to state a cause of action. The Court will address each of these arguments in turn.

A. The Declaratory Judgment Claims Are Not Duplicative of Plaintiff’s Claim.

As both parties concede, the Court’s jurisdiction over an action brought pursuant to the federal Declaratory Judgment Act, 28 U.S.C. § 2201, is discretionary. *See* 28 U.S.C. § 2201(a) (“any court of the United States, upon the filing of an appropriate pleading, *may* declare the rights and other legal relations of any interested party seeking such declaration” (emphasis added)); *A. L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961) (“Declaratory judgment is a remedy committed to judicial discretion.”). Plaintiff argues that the Court should exercise its discretion and dismiss the Counterclaims as redundant because the resolution of Plaintiff’s claim and Accelerant’s defenses will resolve the issues in the Counterclaims.

While resolution of the issues in Plaintiff’s claim and Accelerant’s defenses will resolve the same issues as those raised in the Counterclaims, a resolution of those issues in Counterclaim-Plaintiffs’ favor will not result in a judgment declaring the Policy void and save Counterclaim-Plaintiffs from any future claims on the Policy. *See Rodriguez v. Certain Underwriters at Lloyd’s London*, No. 1:19-CV-20171, 2019 WL 8017464, at *3 (S.D. Fla. Apr. 10, 2019) (“A judgment against Plaintiffs will merely demonstrate that Plaintiffs were not entitled to damages on breach of

contract claim; it will not settle whether Defendant has *any obligation* to pay Plaintiffs under the Policy.” (emphasis in original)). Additionally, the Court notes the Counterclaims include a party, Lloyd’s, not named in the Amended Complaint. Therefore, the Counterclaims are not entirely redundant of the claims in the Amended Complaint because resolution of the Counterclaims will address the rights of Plaintiff, Defendant, and Lloyd’s, not just Plaintiff and Defendant. Consequently, the Motion to Dismiss based on the redundancy of the Counterclaims is denied.

B. Failure to State a Claim

Next, Plaintiff asserts that Counterclaim-Plaintiffs declaratory judgment counts fail to state a cause of action because (1) the Counterclaims do not address a current controversy but instead seek adjudication as to past acts and (2) the Counterclaims do not allege that the Policy is ambiguous. As to the failure to raise a current controversy, Counterclaim-Plaintiffs respond that the declaration they seek—that the Policy is void from inception—would provide relief to them as to past, current, and future liability arising under the Policy. The Court agrees. Counterclaim-Plaintiffs’ claims seek a declaration as to a current controversy, not a past controversy, over the validity of the Policy. The Counterclaims would also resolve the issue of future liability under the Policy. Thus, the Counterclaims raise a current controversy.

As to the failure to allege an ambiguity in the Policy, Counterclaim-Plaintiffs respond that the decisions Plaintiff relies on for the proposition that the federal Declaratory Judgment Act requires an ambiguity in the contract in order to state a case or controversy are wrongly decided based on confusion between the Florida and federal Declaratory Judgment Acts. However, courts in this district, while recognizing the difference between the Florida and federal Acts, have found that a claim for a declaratory judgment requires an ambiguity in the contract. *See, e.g., Saltponds Homeowners Ass’n, Inc. v. Rockhill Ins. Co.*, No. 20-10063-CIV, 2021 WL 3284841, at *2 (S.D.


Fla. July 29, 2021) (recognizing that the Florida Act does not require a contractual ambiguity but that “the law in this District still requires plaintiffs to plead an uncertainty or ambiguity in the policy to obtain declaratory relief under the federal statute”). Based on the requirement that a declaratory action based on the terms of a contract requires an ambiguity, Count II of the Counterclaims, based on general condition xiii of the Policy, is dismissed. Count I of the Counterclaims, however, does not rest on the terms of the Policy. It arises out of a maritime doctrine, which is separate from the terms of the Policy. Thus, whether the Policy is ambiguous is irrelevant as to Count I.

Accordingly, it is

ORDERED that Plaintiff’s Motion to Dismiss Counterclaims [DE 19] is **GRANTED in part and DENIED in part:**

1. The Motion is **GRANTED** as to Count II of the Counterclaim. Count II of the Counterclaims is **DISMISSED**.
2. The Motion is **DENIED** as to Count I.
3. Plaintiff shall file an Answer to the remaining count of the Counterclaims by **May 16, 2024**.

DONE and ORDERED in Fort Lauderdale, Florida, this 9th day of May, 2024.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record