

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-cv-61859-DIMITROULEAS

CLEAR SPRING PROPERTY AND
CASUALTY COMPANY, and CERTAIN
UNDERWRITERS AT LLOYD’S OF
LONDON SUBSCRIBING TO COVER
NOTE NO. B0507RN2100289,

Plaintiffs,

v.

SEYCHELLES LIMITED, LLC,

Defendant.

**ORDER GRANTING PLAINTIFFS’ PARTIAL MOTION TO DISMISS SECOND
AMENDED COUNTERCLAIM**

THIS CAUSE is before the Court upon Plaintiffs Clear Spring Property and Casualty Company (“Clear Spring”) and Certain Underwriters at Llyod’s of London Subscribing to Cover Note No. B0507RN2100289 (“Underwriters”) (collectively, “Plaintiffs”)’s Partial Motion to Dismiss Second Amended Counterclaim (the “Motion”), filed herein on April 17, 2024. [DE 33]. The Court has carefully considered the Motion [DE 33], Defendant Seychelles Limited, LLC (“Defendant”)’s Response in Opposition [DE 34], Plaintiffs’ Reply [DE 35], and is otherwise fully advised in the premises.

I. BACKGROUND

Defendant owned and operated two vessels, the M/Y TRIPLE NET (the “Monte Fino”) and the Triple Net T/T (the “Tender”). [DE 1] at ¶¶ 11-13. The vessels were insured by Plaintiffs under two separate policies. *Id.* at ¶¶ 14-15. This lawsuit arises out of two separate insurance claims and the existence of coverage for those claims based on those two insurance policies. *Id.*

at ¶ 16. The first claim arises out of an incident that occurred on January 31, 2022, in which the Tender struck a large wake that was thrown by an unknown vessel, injuring two passengers aboard the Tender (the “Injury Claim”). *Id.* at ¶¶ 17-18. The second claim arises out of an incident that took place on March 23, 2022, in which it was discovered that the Tender’s entire center console was missing while the Tender was being towed from behind the Monte Fino (the “Hull Claim”). *Id.* at ¶ 19. On September 28, 2023, Plaintiffs filed a four-count Complaint against Defendant, seeking a declaration that both policies are void from their inception, that there is no coverage for the Hull Claim or the Injury Claim, and that Plaintiffs have no duty to defend Defendant for any claims brought by the two passengers. *See* [DE 1], Counts I-IV.

On April 3, 2024, Defendant filed a three-count Second Amended Counterclaim against Plaintiffs, alleging claims for declaratory judgment (Count I), breach of the Tender policy insurance contract (Count II), and breach of the covenant of good faith and fair dealing (Count III). *See* [DE 30]. Plaintiffs thereafter filed the instant Motion, seeking dismissal of Count III for breach of the covenant of good faith and fair dealing on grounds that it is duplicative of Count II for breach of contract under New York law. *See* [DE 33].

II. STANDARD OF REVIEW

“[A] motion to dismiss a counterclaim is evaluated in the same manner as a motion to dismiss a complaint.” *Martin v. Partsbase, Inc.*, No. 20-80235-CIV, 2020 WL 7495536, at *2 (S.D. Fla. Dec. 4, 2020). Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to present “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating *Conley*, 355 U.S. at 41). “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include any theory on which the plaintiff may recover. *See Linder v. Portocarrero*, 963 F. 2d 332, 334-36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F. 2d 43 (5th Cir. 1967)). However, the court need not take allegations as true if they are merely “threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.” *Iqbal*, 129 S. Ct. at 1949. In sum, “a district court weighing a motion to dismiss asks ‘not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.’” *Twombly*, 550 U.S. at n. 8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984)).

III. DISCUSSION

As an initial matter, the Court will first address whether New York law governs. “Marine insurance contracts qualify as maritime contracts, which fall within the admiralty jurisdiction of federal courts and are governed by maritime law.” *Geico Marine Ins. Co. v. Shackleford*, 945 F.3d 1135, 1139 (11th Cir. 2019). A “choice of law provision in a maritime insurance contract will be upheld in the absence of evidence that its enforcement would be unreasonable or unjust.” *Great Lakes Reinsurance (UK), PLC v. Rosin*, 757 F. Supp. 2d 1244, 1251 (S.D. Fla. 2010) (quoting *Great Lakes Reinsurance (UK) PLC v. Durham Auctions, Inc.*, 585 F.3d 236, 242 (5th Cir. 2009)); *see also Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 70 (2024) (“Choice-of-law provisions in maritime contracts are presumptively enforceable.”). The subject Tender policy contains the following choice of law provision:

11. Service of Suit, Choice of Law and Forum

It is hereby agreed that any dispute arising hereunder shall be adjudicated according to well established, entrenched principles and precedents of substantive United

States Federal Admiralty Law and practice but where no such well established, entrenched precedent exists, this insuring agreement is subject to the substantive laws of the State of New York.

[DE 30-1] at p. 16.

Here, the parties do not dispute that New York law governs Count III of the Second Amended Counterclaim. *See* [DE 33] at pp. 2-4; [DE 34] at ¶ 7. Based on the above authority, the Court agrees and finds that New York law applies.

Plaintiffs contend that the Court should dismiss Count III of the Second Amended Counterclaim for breach of the covenant of good faith and fair dealing because it is duplicative of Count II for breach of contract. Under New York Law, all contracts contain an implied covenant of good faith and fair dealing. *See AEA Middle Mkt. Debt Funding LLC v. Marblegate Asset Mgmt., LLC*, 214 A.D.3d 111, 131 (N.Y. App. Div. 2023). “The implied covenant of good faith and fair dealing is a pledge that neither party to the contract shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruit of the contract, even if the terms of the contract do not explicitly prohibit such conduct.” *Gutierrez v. Gov’t Empls. Ins. Co.*, 25 N.Y.S.3d 625, 626 (N.Y. App. Div. 2016). In the insurance context, the insurer has a duty to investigate claims in good faith, must not fabricate factually incorrect reasons for denying insurance coverage, must not depart from its own practices or those of the insurance industry, and must not act with gross disregard for the insurer’s interests. *See E. Ramapo Cent. Sch. Dist. v. New York Sch. Ins. Reciprocal*, 158 N.Y.S.3d 173, 177-78 (N.Y. App. Div. 2021). “New York law ... does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based upon the same facts, is also pled.” *Harris v. Provident Life & Accident Ins. Co.*, 310 F.3d 73, 81 (2d Cir. 2002). Therefore, a claim for a breach of the covenant of good faith and fair dealing survives

a motion to dismiss “only if it is based on allegations different from those underlying the breach of contract claim, and the relief sought is not intrinsically tied to the damages that flow from the breach of contract.” *JN Contemp. Art LLC v. Phillips Auctioneers LLC*, 29 F. 4th 118, 128 (2d Cir. 2022)

Plaintiffs argue that Count III is duplicative of Count II because both claims plead the same facts and are based on the same conduct—failing to properly investigate the claim and failing to pay for a covered loss. Defendant, however, contends that the facts alleged in Count III pertain exclusively to the bad faith ways in which Plaintiffs handled the Hull Claim while the facts alleged in Count II stem from Plaintiffs failure to pay for Defendant’s covered loss. *See* [DE 30] at ¶ 58 (“The facts alleged herein pertain separately and specifically to Plaintiffs’ *handling* of Defendant’s Tender hull claim under the Tender Policy.”) (emphasis added).

Upon review of the Second Amended Counterclaim, the Court agrees with Defendant that while Count II and Count III share many overlapping factual allegations, Count III pleads conduct by Plaintiffs different than alleged in the breach of contract claim. Specifically, Count III relies on separate facts related to Plaintiffs’ handling of the Hull Claim. *See New York Botanical Garden v. Allied World Assurance Co. (U.S.) Inc.*, 206 A.D.3d 474, 476 (N.Y. App. Div. 2022) (“The complaint states a cause of action for breach of the implied covenant of good faith and fair dealing by alleging that defendant did not conduct a complete or fair investigation of its claim.”). Nevertheless, dismissal of Count III as duplicative is still appropriate because the relief sought for both claims is the same. *Compare* [DE 30] at ¶ 56 *with id.* at ¶ 68; *see also id.* at p. 14 (“wherefore” clause requesting the same relief for the breach of contract claim).

Accordingly, the Court grants Plaintiffs’ Partial Motion to Dismiss and dismisses Count III for breach of the covenant of good faith and fair dealing as duplicative. *See JN Contemp. Art.*, 29 F.

4th at 128 (finding that the district court correctly dismissed a breach of implied covenant claim as duplicative because “[e]ven accepting [the plaintiff]’s arguments that it set out a different factual basis for this than the factual basis set out in its breach of contract claim, the damages sought for both claims would be the same”). The dismissal is without prejudice to allowing Defendant one opportunity to replead its good faith and fair dealing claim, if it chooses to do so.

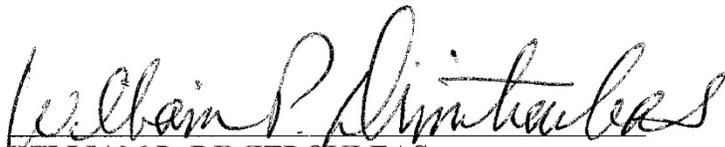
IV. CONCLUSION

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Plaintiffs’ Partial Motion to Dismiss Second Amended Counterclaim [DE 33] is **GRANTED**.
2. Count III breach of implied covenant of good faith and fair dealing is **DISMISSED** without prejudice to Defendant filing a Third Amended Counterclaim on or before **June 27, 2024**. If Defendant does not file a Third Amended Counterclaim on or before that date, the Court will presume Defendant is only proceeding on its remaining counts.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this

13th day of June 2024.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnishes to:
Counsel of Record