UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:20-cv-21179-KMM

VERONICA YANES, *et al*.,

Plaintiffs,

v.

NATIONAL SPECIALTY
INSURANCE CO.,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant National Specialty Insurance Company's ("NSIC" or "Defendant") Motion for Summary Judgment. ("Mot.") (ECF No. 30). Plaintiffs Veronica Yanes and Daniel Yanes Alvarez ("Plaintiffs") responded in opposition to the Motion. ("Resp.") (ECF No. 42). Defendant filed a reply. ("Reply") (ECF No. 45). The Motion is now ripe for review.

I. BACKGROUND[1]

Plaintiffs are homeowners who purchased an insurance policy (the "Subject Policy") from NSIC. Def.'s 56.1 ¶ 2; Pls.' Resp. 56.1 ¶ 2. "The policy provided insurance coverage to the Insured's Property for all risks, subject to all definitions, conditions, exclusions, and requirements

[1] The undisputed facts are taken from Defendant's Statement of Material Facts In Support of Its Motion for Summary Judgment, ("Def.'s 56.1") (ECF No. 30-1), Plaintiffs' Amended Statement of Material Facts In Opposition to Defendant's Motion for Summary Judgment, ("Pls.' Resp. 56.1") (ECF No. 43), Defendant's Reply to Plaintiffs' Amended Statement of Material Facts In Opposition to Defendant's Motion for Summary Judgment, ("Def.'s Reply 56.1") (ECF No. 47), and a review of the corresponding record citations and exhibits.

contained therein." Def.'s 56.1 ¶ 3; Pls.' Resp. 56.1 ¶ 3. The Subject Policy contains a Limited Water Damage Coverage Endorsement ("LWDCE"), which "limits liability for all covered property damaged by the discharge or overflow of water or steam from within a plumbing system to a total of $10,000.00 per occurrence." Def.'s 56.1 ¶¶ 4–5; Pls.' Resp. 56.1 ¶¶ 4–5. In addition to the LWDCE, the Subject Policy contains (1) tear out and repair coverage ("Tear Out Coverage") and (2) Ordinance and Law Coverage. Pls.' Resp. 56.1 ¶¶ 13, 15; Def.'s Reply 56.1 ¶¶ 13, 15.

It is undisputed that on or about January 15, 2019, Plaintiffs' Property sustained a covered water loss as a result of sudden and accidental failure of the plumbing system in their home located at 1265 NW 118th Street (the "Property").[2] Def.'s 56.1 ¶ 1; Pls.' Resp. 56.1 ¶ 1. After investigating Plaintiffs' claim and determining it was a covered loss under the Subject Policy, Defendant tendered a $10,000.00 check to Plaintiffs on September 19, 2019, which was deposited or cashed on or about October 16, 2019. Def.'s 56.1 ¶¶ 6–8; Pls.' Resp. 56.1 ¶¶ 6–8;

[2] Defendant argues that Plaintiffs' responses to its Statement of Material Facts In Support of Its Motion for Summary Judgment containing additional language are improper insofar "[a]s the additional language is without citation to specific evidence demonstrating the assertion." *See* Def.'s Reply 56.1 ¶ 1. The Court agrees. Pursuant to Local Rule 56.1(d), to the extent Plaintiffs' Amended Statement of Material Facts In Opposition to Defendant's Motion for Summary Judgment includes statements not supported by citations to the record—or otherwise fails to comply with Local Rule 56.1—the Court will disregard such additional language. *See* S.D. Fla. L.R. 56.1(c), (d); *see also Smith v. Forest River, Inc.*, No. 2:19-CV-14174, 2020 WL 2105073, at *2 (S.D. Fla. Apr. 16, 2020), *report and recommendation adopted*, No. 19-CV-14174, 2020 WL 2099435 (S.D. Fla. May 1, 2020), *appeal dismissed*, No. 20-12009-JJ, 2020 WL 7017843 (11th Cir. Oct. 2, 2020) ("The Court has discretion to disregard a factual assertion or dispute that is not properly supported.") (citing Fed. R. Civ. P. 56(e); S.D. Fla. L.R. 56.1(c), (d)); *Campbell v. Allstate Ins. Co.*, No. 2:19-CV-14270-RLR, 2021 WL 148735, at *3 (S.D. Fla. Jan. 15, 2021) ("[I]f a party fails to file a statement of facts that complies with Local Rule 56.1, then consistent with Federal Rule of Civil Procedure 56, the Court may strike the statement, grant relief to the opposing party, or enter other sanctions that the Court deems appropriate."). However, the Court notes that Defendant, too, has failed to comply with Local Rule 56.1(b) in that it filed its Statement of Material Facts In Support of Its Motion for Summary Judgment as an attachment rather than a separate document. *See* S.D. Fla. L.R. 56.1(b). Nonetheless, because the Statement of Material Facts In Support of Its Motion for Summary Judgment is otherwise compliant with the Local Rules and does not prejudice Plaintiffs in any way, the Court declines to impose sanctions.

("Bentschneider Aff.") (ECF No. 30-4) at 67. Defendant tendered two additional checks—one for $7,515.00 to First Response Carpet Cleaning, and the other for $1,500.00 to Truview Mold, LLC—on August 28, 2019 and March 31, 2020, respectively. Def.'s 56.1 ¶¶ 9–10; Pls.' Resp. 56.1 ¶¶ 9–10; Bentschneider Aff. at 68–69. "In total, Defendant has made $19,015.00 in payments either to Plaintiffs or agents of Plaintiffs." Def.'s 56.1 ¶ 11; Pls.' Resp. 56.1 ¶ 11. It is undisputed that Defendant has not issued payment for Tear Out Coverage or Ordinance and Law Coverage. Pls.' Resp. 56.1 ¶¶ 14, 23; Def.'s Reply 56.1 ¶¶ 14, 23.

After the covered water loss and Defendant's alleged breach of the Subject Policy for failure to make additional payments for Tear Out Coverage and/or Ordinance and Law Coverage, Plaintiffs retained Reynaldo Alvarez ("Alvarez") from Plumbing Diagnostics Corp. and George Quintero ("Quintero") from Vanguard Public Adjusters as experts "to inspect and prepare an estimate to repair the property."[3] Pls.' Resp. 56.1 ¶¶ 16, 20; Def.'s Reply 56.1 ¶¶ 16, 20. The

[3] Both of Plaintiffs' experts provided affidavits with their findings and expert opinions, to which Plaintiffs cite in the Additional Facts of their Response 56.1. *See* Pls.' Resp. 56.1 ¶¶ 18–19, 21–22. Defendant disputes Plaintiffs' statements which rely on the experts' affidavits for a number of reasons, arguing that (1) they contain characterizations and legal conclusions, not material assertions of fact or proper expert opinion; (2) Plaintiffs' cited affidavit does not contain the alleged reports which detail the findings, photographic evidence, and other information upon which Alvarez based his opinions; and (3) Plaintiffs' cited affidavit does not contain the alleged estimate which detail the findings, amounts, and other information upon which Quintero based his opinions as to the expected "reasonable" costs to be incurred for repair of the interior of the property and replacement of the sanitary lines. Def.'s Reply 56.1 ¶¶ 18–19, 21–22. Defendant is correct that the affidavits Plaintiffs filed in support of the Additional Facts in their Response 56.1 failed to include the reports or information upon which their experts relied. *See generally* ("Alvarez Aff.") (ECF No. 38); ("Quintero Aff.") (ECF No. 39). Further, Plaintiffs did not file amended affidavits with the necessary reports and other relevant information attached until *after* Defendant had already filed its Reply. *See generally* Reply; ("Am. Alvarez Aff.") (ECF No. 49); ("Am. Quintero Aff.") (ECF No. 48). And, again, the Additional Facts of Plaintiffs' Response 56.1 failed to comply with the Local Rules and clearly prejudiced Defendant, which was unable to specifically and effectively dispute the statements included therein because of Plaintiffs' noncompliance. *See* S.D. Fla. L.R. 56.1(b)(1)(B) ("When a material fact requires specific evidentiary support, a general citation to an exhibit without a page number or pincite . . . is non-compliant. If not already in the record on CM/ECF, the materials shall be attached to the

Parties do not dispute that Alvarez ran a camera through the drain lines as part of his inspection of the property. Pls.' Resp. 56.1 ¶ 17; Def.'s Reply 56.1 ¶ 17.

In their Complaint, Plaintiffs assert one claim for breach of contract against NSIC ("Count I"). *See generally* ("Compl.") (ECF No. 8-1). Now, NSIC moves for summary judgment on Plaintiffs' breach of contract claim against it. *See generally* Mot. Specifically, the Parties dispute which provisions of the Subject Policy apply in the instant case and, for those that do, to what extent Defendant is liable. *See generally* Mot.; Resp.; Reply.

II. LEGAL STANDARD

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all

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statement as exhibits specifically titled within the CM/ECF system[.]"). Since the affidavits cited to exhibits not in the record, Plaintiffs' statements in their Response 56.1 and Response referring to those affidavits lacked evidentiary support and were non-compliant. Accordingly, as a sanction under Local Rule 56.1(d), the Court will not consider Plaintiffs' experts' affidavits.

factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001).

Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); *see also* Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992). But if 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, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. DISCUSSION

In its Motion, Defendant argues that it applied the appropriate provisions from the Subject Policy when providing coverage for Plaintiffs' loss. Mot. at 5–7. Plaintiffs assert in response that (1) the cost of Tear Out Coverage is not included in the LWDCE and (2) "the policy provides additional coverage for law & ordinance." Resp. at 4–10. In reply, Defendant maintains that (1) the Tear Out Coverage is limited by the LWDCE; (2) Plaintiffs have produced no genuine issue of material fact showing they are entitled to receive Tear Out Coverage; and (3) "the [Subject] Policy does provide additional coverage for Law & Ordinance for Plaintiffs' claim." Reply at 2–10. The Court addresses each argument below.

A. The Subject Policy's Tear Out Coverage is Limited by the LWDCE, and, Alternatively, Plaintiffs Have Failed to Show They Are Entitled to Tear Out Coverage.

In its Motion for Summary Judgment, Defendant argues generally that it correctly applied the relevant provisions in limiting Plaintiffs' coverage to $10,000.00. Mot. at 5–6. Plaintiffs

respond that (1) the Subject Policy provides Tear Out Coverage; (2) the LWDCE does not "limit the amounts available for the Tear Out Coverage" but rather "applies to actual 'direct' physical water damage, i.e. items that are actually water damaged"; and (3) "if Defendant intended to include the cost of tear out within the [LWDCE], Defendant knew how to clearly and unambiguously do so." Resp. at 4–6. Defendant contends in its Reply that (1) Tear Out Coverage under the Subject Policy is limited by the LWDCE and (2) Plaintiffs have not shown that they are entitled to receive Tear Out Coverage under the Subject Policy. Reply at 2–6.

"Under basic insurance contract interpretation principles, where the policy language is clear and unambiguous, the Court must give effect to the plain language of the policy and any vendor's endorsement contained therein." *Twin City Fire Ins. Co. v. Fireman's Fund Ins. Co.*, 386 F. Supp. 2d 1272, 1276 (S.D. Fla. 2005). "Where the terms of a policy are susceptible of two reasonable constructions, the court should adopt the interpretation which will sustain coverage for the insured." *United States v. Pepper's Steel & Alloys*, 823 F. Supp. 1574, 1581 (S.D. Fla. 1993). And, "[i]f the language of an insurance policy is unclear, confusing, or ambiguous, the language should be construed against the insurer." *Id.* "But courts should not strain to find ambiguity. [I]f there is no genuine ambiguity, there is no reason to bypass the policy's plain meaning." *Travelers Prop. Cas. Co. of Am. v. Salt 'N Blue LLC*, 731 F. App'x 920, 923 (11th Cir. 2018) (citing *Sphinx Int'l, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 412 F.3d 1224, 1228 (11th Cir. 2005)). Moreover, "[a] single policy provision should not be read in isolation and out of context, for the contract is to be construed according to its entire terms, as set forth in the policy and amplified by the policy application, endorsements, or riders." *State Farm Mut. Auto. Ins. Co. v. Mashburn*, 15 So. 3d 701, 704 (Fla. Dist. Ct. App. 2009). Additionally, "in construing insurance policies, courts

should read each policy as a whole, endeavoring to give every provision its full meaning and operative effect." *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000).

For the reasons set forth below, Defendant has met its burden of showing that no genuine issue of material fact exists as to (1) the LWDCE limiting its liability for the covered water loss to $10,000.00, and (2) Plaintiffs' non-entitlement to Tear Out Coverage under the Subject Policy.

1. The LWDCE Limits Defendant's Liability under Section I.2.f of the Subject Policy to $10,000.00.

As an initial matter, the relevant portion of the Subject Policy that the Court must consider in adjudicating this dispute is Section I, titled "Perils Insured Against," which states in relevant part:

> COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES
>
> We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property. *We do not insure, however, for loss*: . . . 2. *Caused by*: . . .
>
> f. *Accidental discharge or overflow of water or steam unless loss to property covered under Coverage A or B results from an accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system* or household appliance on the "residence premises".
>
> *This includes the cost to tear out and repair only that part of any other structure, on the "residence premise", necessary to access and repair the system or appliance.*

Bentschneider Aff. at 27, 45 (emphasis added).

Additionally, the LWDCE reads in its entirety:

> For a premium credit, *your policy is endorsed to reduce the limit of liability for sudden and accidental direct physical loss to covered property by discharge or overflow of water* or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

> LIMIT OF LIABILITY:
> The *limit for liability for all covered property provided by this endorsement is $10,000 per occurrence*. This coverage does not increase the limit of liability that applies to the damaged covered property.
>
> All other provisions of this policy apply.

Id. at 64 (emphasis added).

Accordingly, Plaintiffs are correct that Tear Out Coverage *is* available to them under subsection f of the Subject Policy for the accidental discharge or overflow of water, but only to repair the part of the system that actually caused the loss. *See* Bentschneider Aff. at 45 ("The cost that we will pay for the tear out and repair above is *only* that cost necessary to access and repair *only* that portion or part of the system or appliance that *caused the covered loss*.") (emphasis added). The Subject Policy further states that, "[i]n the event that additional tear out and repair are required beyond the coverage provided for access and repair in this provision," Defendant will still only pay for its "portion of the access and repair cost required to repair only that portion or only that part of the system or appliance that caused the covered loss[.]" *Id.* And, Defendant is not liable for losses "otherwise excluded or limited elsewhere in this policy." *Id.*

Further, despite Plaintiffs arguments to the contrary, the LWDCE limits Defendant's liability for covered accidental water damage to $10,000.00. *See* Bentschneider Aff. at 64; *see also* Resp. at 5. To this point, the language of the LWDCE is clear that "the limit of liability for sudden and accidental direct physical loss to covered property by discharge or overflow of water or steam from within a plumbing . . . system" is reduced to $10,000.00 in exchange for a premium credit. Bentschneider Aff. at 64. Additionally, Plaintiffs' assertion that the LWDCE "applies to actual 'direct' physical water damage, i.e. items that are actually water damaged" is unsupported by the language in the Subject Policy or the record. Resp. at 5. The LWDCE's language unambiguously limits Defendant's liability under subsection f of the Subject Policy, which

specifically provides coverage for Plaintiffs' dwelling and other structures, but *not* personal property. *See* Bentschneider Aff. at 23, 27, 45, 64 (noting that Coverage A and B apply to the dwelling and other structures, respectively, while Coverage C applies to personal property).

Finally, Plaintiffs' remaining argument comparing the LWDCE to the Limited Fungi, Mold, Wet or Dry Rot, or Bacteria Coverage Endorsement (the "Fungi Endorsement") is unpersuasive. *See* Resp. at 5. Unlike the Fungi Endorsement, the LWDCE limits the Subject Policy's accidental water discharge coverage, which is included within Section I – Perils Insured Against and, as discussed above, includes Tear Out Coverage under certain circumstances. *See* Bentschneider Aff. at 27,45, 64; *see also* Reply at 4. The Fungi Endorsement does not limit an existing provision within the Subject Policy, but rather stands alone in (1) offering additional coverage under Section I, including tear out and repair coverage, and then (2) limiting that tear out coverage to $10,000.00. *See* Bentschneider Aff. at 8, 61 ("We will pay up to the amount stated in the above schedule for Limit of Liability for 'Fungi' Coverage for: . . . The cost to tear out and replace any part of the building or other covered property as needed to gain access to the 'fungi', mold, wet or dry rot, or bacteria[.]"). Therefore, the fact that the LWDCE does not expressly mention Tear Out Coverage is inconsequential, since including such language would be redundant.

Reading the provisions of the Subject Policy together as a whole, the Court finds that Defendant's liability under the Subject Policy—including liability for Tear Out Coverage—*is* limited by the LWDCE to $10,000.00. *See Mashburn*, 15 So. 3d at 704 (noting that "[a] single policy provision should not be read in isolation and out of context, for the contract is to be construed according to its entire terms, as set forth in the policy and amplified by the policy application, endorsements, or riders"). And, Defendant has already tendered a $10,000.00 check to Plaintiffs as obligated under Section I.2.f of the Subject Policy. Def.'s 56.1 ¶¶ 6–8; Pls.' Resp.

56.1 ¶¶ 6–8; Bentschneider Aff. at 27, 45, 67. In so finding, the Court relies, in part, on the Third District's holding in *Certain Underwriters at Lloyds London v. Pitu, Inc.*, which stands for the proposition that courts should apply the clear and unambiguous language of a policy endorsement limiting coverage as written. 95 So.3d 290, 292–93 (Fla. Dist. Ct. App. 2012) (reversing the trial court's entry of summary judgment in the plaintiff's favor "[b]ecause the policy and endorsement unambiguously limit coverage for the damage sustained to $25,000").

2. Plaintiffs Have Not Shown They Are Entitled to Tear Out Coverage under the Subject Policy.

Nonetheless, even if the LWDCE did not limit the Tear Out Coverage provided for in the Subject Policy, Defendant has shown—and Plaintiffs have failed to rebut—that Plaintiffs are not entitled to additional Tear Out Coverage in the instant case. Here, there is no dispute that Plaintiffs sustained a covered loss as a result of sudden and accidental failure of the plumbing system in the Property.[4] Def.'s 56.1 ¶ 1; Pls.' Resp. 56.1 ¶ 1. However, as explained above, the Subject Policy only provides Tear Out Coverage in certain instances. *See* Bentschneider Aff. at 45. Specifically, it states in part:

> This [coverage] includes the cost to tear out and repair only that part of any other structure, on the "residence premise", necessary to access and repair the system or appliance. *The cost that we will pay for the tear out and repair above is only that cost necessary to access and repair only that portion or part of the system or appliance that caused the covered loss, whether the system or appliance, or any part or portion of the system or appliance, is repairable or not*.

[4] Plaintiffs do not dispute that the covered loss was a result of sudden and accidental failure of the plumbing system in the Property; however, they attempt to qualify their purported agreement by adding: "More specifically, Plaintiffs [sic] property sustained damage due to a sudden and accidental discharge of water resulting from a broken cast iron drain line." *See* Pls.' Resp. 56.1 ¶ 1. Plaintiffs provide no citation to the record in support of this statement. *Id.* And, Plaintiffs' Complaint expressly alleges that "[o]n or about January 15, 2019, while the Policy was in full force and effect, the Property sustained a covered loss *as a result of sudden and accidental failure of [sic] plumbing system*." Compl. ¶ 10 (emphasis added). As previously mentioned *supra*, Plaintiffs' Response 56.1 is noncompliant with Local Rule 56.1 and the Court will not consider Plaintiffs' additional language.

> In the event that additional tear out and repair are required beyond the coverage provided for access and repair in this provision, *we will still pay only for our portion of the access and repair cost required to repair only that portion or only that part of the system or appliance that caused the covered loss* as described above.

Id. (emphasis added).

The Court agrees with Defendant that, although there has been a covered loss, Plaintiffs have not shown they are entitled to Tear Out Coverage under the Subject Policy. Reply at 5–6. To begin, the Court has already concluded that the affidavits relied upon by Plaintiffs do not comply with Local Rule 56.1 and should be disregarded as a sanction. *Supra* Section I. Without the Court's consideration of their affidavits, Plaintiffs have produced no other evidence showing that Defendant is liable for Tear Out Coverage for "that portion of the plumbing system necessary to prevent further damage." *See* Resp. at 5. In fact, contrary to Plaintiffs' argument, the language of the Subject Policy expressly states that Defendant will only pay for "that cost necessary to access and repair only that portion or part of the system or appliance that caused the covered loss." Bentschneider Aff. at 45. The Subject Policy makes no mention of the availability of Tear Out Coverage for the prevention of future damage. *See generally id.* Therefore, Plaintiffs have not met their burden of proving they are entitled to Tear Out Coverage. *See Bodo v. GeoVera Specialty Ins. Co.*, No. 8:18-CV-678-T-30AAS, 2019 WL 9598314, at *5 (M.D. Fla. Mar. 8, 2019) (noting that "in Florida, the insured has the burden of proving facts that bring her claim within an insurance policy's affirmative grant of coverage").

Alternatively, if the Court were to consider the affidavits—both as originally filed and as amended—they nevertheless fail to opine that the alleged breaks in the plumbing lines *caused* Plaintiffs' covered loss. *See* Am. Alvarez Aff. at ¶ 13 ("I observed breaks, and failures throughout the drain pipes which are located beneath the slab of the Property."); Am. Quintero Aff. at ¶ 15 ("I

conducted an in-person inspection of the Property and observed water damage caused by the sudden and accidental failure of the plumbing system."). Thus, even if the Court relied upon the affidavits, Plaintiffs' evidence is insufficient to create a genuine issue of material fact with respect to their ineligibility for Tear Out Coverage under the Subject Policy. *See Bodo*, 2019 WL 9598314, at *5 (granting a defendant's motion for summary judgement as to a plaintiff's breach of contract claim for non-payment of tear out and rebuild costs where the plaintiff failed to produce evidence of direct physical loss to the plumbing system). Accordingly, Defendant has shown that no genuine issue of material fact exists as to (1) the LWDCE limiting its liability for the covered water loss to $10,000.00, and (2) Plaintiffs' failure to show their entitlement to Tear Out Coverage under the Subject Policy.

B. Plaintiffs Are Not Entitled to Ordinance and Law Coverage for their Claim under the Subject Policy.

Again, Defendant asserts in its Motion that it applied the appropriate provisions from the Subject Policy. Mot. at 5–6. Plaintiffs argue in response that the Subject Policy provides additional Ordinance and Law Coverage up to $20,000.00. Resp. at 6–9. In its Reply, Defendant acknowledges that the Subject Policy contains an Ordinance and Law Coverage Endorsement, but maintains that Plaintiffs have failed to (1) present genuine issues of material fact that the subject sewer line was damaged by the water loss which occurred on January 15, 2019" and (2) "cite to any specific ordinance which might lead to the conclusion that the sewage lines needed to be replaced pursuant to either law or local ordinances." Reply at 7–10.

Here, the Ordinance and Law provision states, in part:

SECTION I – PROPERTY COVERAGES

11. Ordinance Or Law

> a. You may use up to the limit of liability stated in the Policy Declarations that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:
>
> > (1) The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against; . . . or
> >
> > (3) The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against. . . . .
>
> d. Enforcement of Ordinance or Law must apply directly to the repair of:
>
> > (1) That specific part of the dwelling or separate structure which sustained the covered damage; or
> >
> > (2) An undamaged part of the dwelling or a separate structure which is physically necessary in the course of repairs to complete the repair of that part of the dwelling or separate structure which has sustained the covered damage. Physically necessary does not include where Ordinance or Law does not directly apply to the covered damage, but a governmental authority will not approve or permit repair of the covered damage unless you or anyone acting on your behalf also complies with that Ordinance or Law.

Bentschneider Aff. at 65. The insurance contract interpretation principles discussed above also apply to the Law and Ordinance provision. *Supra* Section III.A.

Here, Defendant has shown—and Plaintiffs have again failed to rebut—the absence of any dispute of material fact as to the unavailability of the Subject Policy's Ordinance and Law Coverage to Plaintiffs. Without their experts' affidavits, which the Court has not relied upon as a sanction for noncompliance with Local Rule 56.1, Plaintiffs provide no evidence that the subject sanitary line was damaged by the covered loss in January 2019 as required by subsection d of the Ordinance and Law provision. *See* Bentschneider Aff. at 65 (noting that the Ordinance or Law Coverage must apply directly to the repair of: (1) "That specific part of the dwelling or separate structure which sustained the covered damage"; or (2) "An undamaged part of the dwelling or a separate structure which is physically necessary in the course of repairs to complete the repair of that part of the dwelling or separate structure which has sustained the covered damage.").

Moreover, Plaintiffs' experts' affidavits, if considered by the Court, would nonetheless fail to carry Plaintiffs' burden. *See generally* Am. Alvarez Aff.; Am. Quintero Aff. Specifically, the affidavits fail to show how or why the Property's sanitary lines do not comply with the Florida Building Code. *See* Am. Alvarez Aff. at ¶ 16 ("As it stands now, the current condition of the cast iron drain line does not comport with the Florida Building Code. Therefore, the conditions of the pipes are adequate to be replaced according to the Florida Building Code."); Am. Quintero Aff ¶ 17 ("My estimate of damages takes into account that the sanitary lines need to be replaced to comply with the Florida Building Code."). And, in its gratuitous review of both experts' attached reports, the Court cannot find any mention of how the sanitary drain lines fail to comply with the Florida Building Code or which specific ordinance they violate. *See generally* Am. Alvarez Aff., Ex. A.; Am. Quintero Aff., Ex. A. These legal conclusions, unsupported by record evidence, are insufficient to rebut Defendant's showing. *See Avirgan v. Hull*, 691 F. Supp. 1357, 1369 (S.D. Fla. 1988) ("The evidence produced by plaintiffs cannot consist of conclusory allegations or legal conclusions.") (citing *First National Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968)); Fed. R. Civ. P. 56 (e) ("[E]vidence presented to refute the movants' summary judgment must be supported by admiss[i]ble evidence showing a genuine issue of material fact."). Therefore, Plaintiffs have failed to meet their burden of showing the existence of a genuine issue of material fact precluding summary judgment. *See Bodo*, 2019 WL 9598314, at *5 ("[I]n Florida, the insured has the burden of proving facts that bring her claim within an insurance policy's affirmative grant of coverage.").

Accordingly, Defendant is entitled to judgment as a matter of law as to Plaintiffs' breach of contract claim.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant National Specialty Insurance Company's Motion for Summary Judgment (ECF No. 30) is GRANTED. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, final judgment shall be entered by separate order. The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of April, 2021.

K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record