UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CIV-81270-RAR

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Plaintiff,

v.

OCEAN REEF CHARTERS, LLC,

Defendant.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This case sheds light on the proper application of federal admiralty law in the interpretation of a marine insurance policy. Both parties seek declarations regarding the effect of a breach of an express warranty in a marine insurance policy and urge the Court to apply contrasting legal frameworks in reaching its decision. As explained herein, the Court finds Eleventh Circuit case law governing the interpretation of express warranties in marine insurance contracts navigates us through stormy seas and mandates the application of federal admiralty law, rather than Florida law, to the policy at issue.

The case is before the Court on Defendant Ocean Reef Charters, LLC's ("Ocean Reef") Motion for Summary Judgment [ECF. No. 106] ("Ocean Reef MSJ") and Plaintiff Travelers Property Insurance Company's ("Travelers") Motion for Summary Judgment [ECF No. 108] ("Travelers MSJ").[1] The Court has carefully reviewed the parties' written submissions, the record,

[1] The cross-Motions for Summary Judgment are fully briefed. Travelers responded to Ocean Reef's Motion for Summary Judgment ("Travelers Response") [ECF No. 114] and Ocean Reef replied to Travelers' Response ("Ocean Reef Reply") [ECF No. 119]. Similarly, Ocean Reef responded to Travelers' Motion for Summary Judgment ("Ocean Reef Response") and Travelers replied to Ocean Reef's Response ("Travelers Reply").

and applicable law, and being otherwise fully advised in the premises, it is hereby

ORDERED and **ADJUDGED** that Ocean Reef's Motion for Summary Judgment is **DENIED** and Travelers' Motion for Summary Judgment is **GRANTED** for the reasons stated herein.

BACKGROUND

Hurricane Irma, a Category 4 hurricane, made landfall in Florida in September 2017 and has proven to be one of the costliest hurricanes in history, causing at least 80 fatalities and upwards of $11 billion of damage in Florida alone.[2] Unfortunately, Ocean Reef's yacht, a 1998 92-foot Hatteras called M/Y MY LADY ("Yacht"), was amongst the damage. According to Ocean Reef, one of the pilings of the dock where the Yacht was moored failed during the hurricane, causing the Yacht to strike the seawall until she sank ("Claimed Loss"). Ocean Reef's Statement of Material Facts [ECF No. 106 at 3-8] ("Ocean Reef SMF") at ¶ 24. The Yacht was insured by Travelers at the time of the Claimed Loss. Travelers' Statement of Material Facts [ECF No. 109] ("Travelers SMF") at ¶ 2; Ocean Reef SMF ¶ 1.

Travelers and Ocean Reef have a long history. Travelers insured the Yacht from October 10, 2014 through October 10, 2017 under three consecutive policies. Ocean Reef SMF ¶ 3. The third and final Travelers' policy, effective October 10, 2016 through October 10, 2017, insured the Yacht at an agreed value of $2,000,000 ("Policy"). *Id*. The Policy contained two express warranties attached as stand-alone addendums. *See* Policy at 19-20 [ECF No. 15]. The first warranty was a Captain Warranty that read:

> It is warranted you employ a professional captain for the yacht shown on the Declarations Page of this policy. Such captain shall

[2] Jennifer Kay, *Hurricane Center updates Irma death toll in US, Caribbean*, Associated Press (Mar. 2, 2019), https://apnews.com/1a0426cd280c42958728408e293154f0; Ron Hurtibise, *Hurricane Irma's costs are still rising, and so could your insurance rates,* South Florida Sun Sentinel (Feb. 28, 2019), https://www.sun-sentinel.com/business/fl-bz-property-insurance-rate-rise-predicted-20190228-story.html.

> be employed full time and approved by us. We will pay up to $1,500 for the cost of hiring a replacement captain, approved by us, if your captain is unable to perform his regular duties due to a medically certified cause.

Policy at 19. The second warranty was a Crew Warranty that read:

> You employ 1 full time or part time professional crew for your yacht shown on the Declarations Page of this policy. We also provide coverage tor any additional, temporary crew you employ.

Policy at 20. While there is some dispute as to the purpose of these warranties, neither party argues that the warranties are vague or ambiguous.

Travelers first insured the Yacht in 2014. Travelers SMF ¶ 3; Ocean Reef SMF ¶ 1. In 2016, Ocean Reef submitted a claim for damage caused to the Yacht by a lightning strike. Travelers SMF ¶ 26; Ocean Reef SMF ¶ 12. Whether Ocean Reef employed a captain in compliance with the Captain Warranty at that point is disputed, but Travelers ultimately found that Ocean Reef complied with the terms of the policy and paid the claim. *See* Ocean Reef SMF ¶ 13. In 2017, Ocean Reef submitted a claim for a loss of a jet ski that occurred while it was anchored off the Bahamas. Travelers SMF ¶ 27; Ocean Reef SMF ¶ 14. Travelers denied the claim because the Yacht did not have a professional, full time, approved, licensed captain at the time of the loss. Travelers SMF ¶ 27; Ocean Reef SMF ¶ 14. Just before Hurricane Irma, in August 2017, a Travelers underwriter recommended non-renewal of the Yacht's coverage after the Policy expired in October due to a "very shady" claims history. Ocean Reef SMF ¶ 16.

The back and forth between Ocean Reef and Travelers peaked in September 2017, just as it became likely that Hurricane Irma would strike South Florida. At that time, the Yacht was moored at Hillsboro Inlet in Pompano Beach, rather than the location prescribed in the policy. Travelers SMF ¶ 29. Travelers was never advised that the Yacht was moved. *Id*. On or about September 5, 2017, Richard Gollel, an Ocean Reef representative, sought to re-hire Captain

Michael McCall to move the Yacht before Hurricane Irma arrived. Captain McCall had previously been approved by Travelers to captain the Yacht. Travelers SMF ¶ 23, 34; Ocean Reef SMF ¶ 17; Ocean Reef SMF Response ¶ 23. While the parties dispute whether Captain McCall was appropriately hired, it is undisputed that Captain McCall was not in Florida from September 5, 2017 through September 10, 2017, when Hurricane Irma made landfall. *See id.;* Travelers SMF ¶ 35. Additionally, in an October 23, 2017 email, Captain McCall confirmed that he "was hired by Mr. Gollel on September 5 thru [sic] September 10, 2017 as ***temporary*** Captain." *See* Ocean Reef SMF ¶ 17, Ex. M.

On or about September 6, 2019, a day after Captain McCall was allegedly hired, Mr. Gollel asked one of Ocean Reef's insurance brokers for permission to move the Yacht to a more protected location himself because "he was between captains." Travelers SMF ¶ 32; Ocean Reef SMF ¶ 19. Mr. Gollel is not and has never been a U.S. Coast Guard licensed captain, is not a professional captain, and did not have experience operating a vessel as large as the Yacht. Travelers SMF ¶¶ 9-10. Ocean Reef's insurance broker responded that she did not know if Mr. Gollel, who was "watching" the Yacht for two months while it was moored, could operate the Yacht without violating the Captain Warranty and consequently voiding the Policy. *See* Travelers SMF ¶ 23, 33; Ocean Reef SMF Response ¶ 23; 33. Indeed, it is undisputed that the Yacht did not have a professional crew or a full time, professional, licensed captain located in Florida in September 2017. Travelers SMF ¶ 41; Ocean Reef SMF Response ¶ 41.

Ultimately, the Yacht was not moved from its position and remained moored at Hillsboro Inlet in Pompano Beach. Ocean Reef SMF ¶ 22. According to Ocean Reef, the Yacht suffered enough damage in the hurricane to amount to a "total loss" under the Policy. Ocean Reef SMF ¶ 25. Travelers promptly issued a reservation of rights letter on September 25, 2017 and agreed to pay to raise the Yacht and tow it to Bradford Marine for storage and inspection. Ocean Reef SMF

¶ 26. The following day, Travelers filed suit against Ocean Reef in the Western District of New York, seeking a declaration that the Claimed Loss was not covered due to an alleged breach of the Captain and Crew warranties. *See* Complaint [ECF No. 1]. Finally, on November 9, 2017, Travelers officially denied coverage under the Policy on the basis that Ocean Reef breached the Captain and Crew warranties.

On August 31, 2017, the Western District of New York transferred the case to this Court, finding that "the choice-of-laws analysis disfavors New York and favors the State of Florida, which appears to have more relevant contacts." [ECF No. 37]. Travelers moves for summary judgment seeking a declaration that Ocean Reef breached the Captain and Crew warranties and Travelers is therefore released from any obligations to Ocean Reef regarding the Claimed Loss. *See generally,* Compl. Ocean Reef seeks a declaration to the opposite effect and, in its Counterclaim [ECF No. 49], seeks an award of damages against Travelers for non-payment under the Policy.

LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In making this assessment, the Court "must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party," *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997) (citation omitted), and "must resolve all reasonable doubts about the facts in favor of the non-movant." *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1558 (11th Cir. 1990) (citation omitted).

The movant's initial burden on a motion for summary judgment "consists of a responsibility to inform the court of the basis for its motion and to identify those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993) (alterations and internal quotation marks omitted) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the moving party has shouldered its initial burden, the burden shifts to the non-moving party to "demonstrate the existence of evidence that would support a verdict in its favor." *Id.* (citing *Celotex*, 477 U.S. at 322–23). "[I]f reasonable minds might differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Id.* (quoting *Washington v. Dugger* 860 F.2d 1018, 1020 (11th Cir.1988)) (internal citations omitted).

ANALYSIS

I. Choice of Law

The parties agree that the Policy is a maritime insurance contract governed by federal admiralty law. However, the parties disagree on how the Court should apply federal maritime conflict of law principles.[3] Ocean Reef primarily points to *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955) and argues that the Court should apply Florida law to the interpretation of the Policy because there is no specific federal rule governing the interpretation of an express warranty in maritime contracts. *See generally,* Ocean Reef MSJ. Conversely, Travelers relies on *Lexington Ins. Co. v. Cooke's Seafood*, 835 F.2d 1364 (11th Cir. 1988) for the proposition that in the Eleventh Circuit, federal admiralty law requires strict construction of express warranties

[3] The Policy does not contain a choice-of-law provision.

in maritime insurance contracts. *See generally,* Travelers MSJ. The Court agrees with Travelers for the reasons stated below.

A. The *Wilburn Boat* Framework

In *Wilburn Boat*, the Supreme Court held that state law, instead of federal maritime law, should be applied to interpret a maritime insurance contract where no judicially established federal admiralty rule exists on the issue. *Great Lakes Reinsurance (UK), PLC v. Rosin*, 757 F. Supp. 2d 1244, 1253 (S.D. Fla. 2010) (interpreting *Wilburn Boat*, 348 U.S. 310). There, the insured owned a houseboat and took out an insurance policy containing warranties against change of ownership and commercial use. *Wilburn Boat*, 348 U.S. at 311. The insured breached both the change of ownership and commercial use warranties and the boat was later destroyed in a fire that was completely unrelated to the breaches. *Id*. Consequently, the insurer denied the insured's claim. *Id*. The insured argued that Texas law, which (like Florida law) holds a breach of warranty is not a policy defense unless it contributed to the loss, should apply. *Id*. at 312. The lower courts rejected this argument and ruled for the insurer, holding that under federal admiralty law, breach of a warranty voids coverage regardless of any connection between the breaches and the loss. *Id.* at 313.

The Supreme Court reversed, holding that state law—not federal maritime law—should be applied to interpret a maritime insurance contract where no judicially established federal admiralty rule exists on the issue. *Id*. at 320. The Supreme Court determined that it had to answer two questions: "(1) Is there a judicially established federal admiralty rule governing these warranties? (2) If not, should we fashion one?" *Id*. at 314. In answering the first question, the Supreme Court reasoned:

> Whatever the origin of the 'literal performance' rule may be, we think it plain that it has not been judicially established as part of the body of federal admiralty law in this country. Therefore, the scope

> and validity of the policy provisions here involved and the consequences of breaching them can only be determined by state law unless we are now prepared to fashion controlling federal rules.

Id. at 318. In other words, the Supreme Court found that no judicially established federal rule of admiralty regarding the interpretation of express warranties existed at the time of its opinion and thus, the Court turned to state law to interpret the provisions. Importantly, *Wilburn Boat* does not stand for the proposition that all maritime insurance contracts should be interpreted under state law. Rather, the Supreme Court found that no federal rule of admiralty governed the interpretation of express warranties at the time the case was decided, necessitating the application of state law. *See Kossick v. United Fruit Co.*, 365 U.S. 731, 742 (1961) ("Nor is *Wilburn Boat* . . . apposite. The application of state law in that case was justified by the Court on the basis of a lack of any provision of maritime law governing the matter there presented.") (internal citations omitted). On remand, the former Fifth Circuit interpreted *Wilburn Boat* to hold "merely that state law is to be applied in the field of maritime insurance only where 'entrenched federal precedent is lacking' with respect to a specific issue." *Fireman's Fund Ins. Co. v. Wilburn Boat Co*., 300 F.2d 631, 647 n. 12 (5th Cir. 1962). Indeed, the Supreme Court's reasoning left the door open for the creation of judicially established federal rules of admiralty that may not have existed at the time the case was decided.

B. *Cooke's, Hilton Oil*, and the Eleventh Circuit

If the Supreme Court left the door open in *Wilburn Boat*, the Eleventh Circuit walked through it over 30 years later in *Cooke's*. In *Cooke's,* the Eleventh Circuit was faced with a breach of a navigation limit warranty that may not have contributed to the claimed loss. 835 F.2d at 1364. There, the Eleventh Circuit held that "admiralty law requires the strict construction of express warranties in marine insurance contracts" and "breach of the express warranty by the insured releases the insurance company from liability ***even if compliance with the warranty would not***

have avoided the loss." *Id*. at 1367 (citing *Aguirre v. Citizens Casualty Co. of New York*, 441 F.2d 141, 143 (5th Cir.), *cert. denied*, 404 U.S. 829, (1971) (emphasis added) (internal citations omitted)). Importantly, the Eleventh Circuit did not analyze whether there was "any federally entrenched admiralty rule governing the breach of a navigation warranty that would displace state law *under Wilburn Boat*." *Rosin*, 757 F. Supp. 2d (citing *Cooke's*, 835 F.2d at 1367). Instead, the Eleventh Circuit fashioned a rule for the interpretation of express warranties in maritime insurance contracts generally.

Eight years after *Cooke's*, the Eleventh Circuit reinforced its rule regarding the strict construction of express warranties in maritime insurance contracts. In *Hilton Oil Transport v. Jonas*, 75 F.3d 627, 630 (11th Cir. 1996), the Court applied federal admiralty law to interpret a breach of an express warranty that a ship would not travel outside its "trading limits." *Id*. The ship was destroyed by a storm while navigating outside its limits. *Id*. The Court held that "[i]n the absence of a "held covered" clause "[a] breach of warranty **discharges the insurer from liability** and deprives the assured from recourse against the insurer, **whether the loss can be traced to the breach or not and even though such breach was innocently or inadvertently committed by the assured**." *Id*. at 630 (emphasis added). It went on to state that "[t]he admiralty cases that support this principle are legion and form a judicially established and entrenched federal admiralty rule." *Id*. (citing *Wilburn Boat*, 348 U.S. 310 at 315). Indeed, as in *Cooke's*, the Court conspicuously extended its rule to *all* express warranties, not simply those implicating limits on navigation or trade.

In sum, the Eleventh Circuit has fashioned an entrenched federal rule of admiralty: express warranties in maritime insurance contracts *must* be strictly construed in the absence of some limiting provision in the contract. This rule squares with the holding in *Wilburn Boat*, which left

room for development of the law and, at least as it relates to express warranties, the Eleventh Circuit has heeded the call.

C. Strict construction of warranties in a maritime insurance contract as an entrenched rule of federal admiralty law

In opposition, Ocean Reef cites *Great Lakes Reinsurance (UK), PLC v. Rosin*, 757 F. Supp. 2d 1244, 1257 (S.D. Fla. 2010). *See* Ocean Reef Response at 5. In *Rosin*, the Court was faced with a similar issue regarding the effect of a breach of a "named operator" warranty on the enforceability of a maritime insurance policy. The Court, after a thorough analysis of the operative case law, concluded:

> [T]he Eleventh Circuit has held, post-*Wilburn Boat*, that federal admiralty law requires strict compliance with certain warranties in marine insurance policies, such as navigation limit and trading limit warranties. But if *Wilburn Boat* means anything, it is that a court has to look to see if the specific warranty at issue is (or should be) the subject of a uniform or entrenched federal admiralty rule. With respect to a "named operator" warranty, there is no established and entrenched federal admiralty precedent.

Rosin, 757 F. Supp. 2d at 1257. Here, the Court agrees with the vast majority of *Rosin*, but is hesitant to depart from the Eleventh Circuit's unequivocal rule. Indeed, both *Cooke's* and *Hilton Oil* stand for the proposition that express warranties in maritime insurance contracts should be strictly construed absent a contractual clause to the contrary. Ocean Reef reads *Wilburn Boat* too broadly and *Cooke's* and *Hilton Oil* too narrowly. While those cases happen to deal with navigation and trading limits, the Eleventh Circuit explicitly *did not* limit its rule to those types of warranties.

This reasoning comports with *Wilburn Boat*. *Wilburn Boat* stands for the proposition that state law, instead of federal maritime law, should be applied to interpret a maritime insurance contract where no judicially established federal admiralty rule exists on the issue. While no such established federal admiralty rule existed at the time *Wilburn Boat* was decided, the Eleventh

Circuit has since fashioned such a rule and it is well-entrenched thanks to *Cooke's* and *Hilton Oil*—all express warranties in maritime contracts are to be strictly construed. The rule is not limited to certain types of express warranties. This Court is bound to adhere to the plain text of the rule and finds that warranties in a maritime insurance contract, like the Captain and Crew Warranties here, must be strictly construed.

II. Ocean Reef breached the Captain and Crew Warranties

It is essentially undisputed that Ocean Reef breached the Captain and Crew Warranties. *See* Travelers SMF ¶ 41 ("It is undisputed that the Vessel did not have a professional crew or full time, professional licensed captain located in the state of Florida during September 2017."); Ocean Reef SMF Response ¶ 41 ("Undisputed.").

Strictly construing the plain language of the Captain Warranty, Ocean Reef was required to "employ a professional captain . . . Such captain shall be employed ***full time*** and approved by us." Policy at 19 (emphasis added). To the extent that Ocean Reef argues the hiring of Captain McCall satisfied this warranty, a brief look at the record evidence undermines such an argument. As previously mentioned, in an October 23, 2017 email from Captain McCall to Mr. Gollel, Captain McCall confirmed that he "was hired by Mr. Gollel on September 5 thru September 10, 2017 as ***temporary*** Captain." *See* Ocean Reef SMF ¶ 17, Ex. M. Moreover, Captain McCall testified that a "full-time captain" is a "year-round" position. *See* Traveler SMF ¶ 39.

Finally, it is undisputed that Captain McCall was not in the State of Florida during his five-day stint as the captain of the Yacht. SMF ¶ 41. Thus, even if Travelers approved Captain McCall, Ocean Reef cannot credibly argue that he was a "full-time captain" considering his 5-day tenure, his own admission that he was a "temporary captain" as opposed to a "full-time captain" (which is a "year-round" position), and his location outside the state throughout his very brief captaincy.

Given that federal admiralty law applies, and the Captain's Warranty must be strictly construed,[4] the Court finds that Ocean Reef breached the Captain's Warranty and said breach releases Travelers from liability even if compliance with the warranty would not have avoided the loss.

Similarly, the Crew Warranty called for the employment of "1 full time or part time professional crew for your yacht . . . ." Policy at 20. Ocean Reef does not argue that it had a "full time or part time professional crew" for the Yacht at the time of the loss. Assuming, *arguendo,* that Captain McCall qualifies as a professional part-time crew, Ocean Reef would have satisfactorily complied with the Crew Warranty. However, that finding is unnecessary considering Ocean Reef's indisputable breach of the Captain Warranty, which releases Travelers from liability.

CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Ocean Reef's Motion for Summary Judgment [**ECF No. 106**] is **DENIED** and Travelers Motion for Summary Judgment [**ECF No. 108**] is **GRANTED**. A judgment will be entered in accordance with the foregoing by separate order.

DONE AND ORDERED in Ft. Lauderdale, Florida, this 26th day of August, 2019.

RODOLFO RUIZ
UNITED STATES DISTRICT JUDGE

cc: counsel of record

[4] The Policy contains a "held covered" clause, but that clause is completely unrelated to the Captain or Crew Warranties. *See* Policy at 17 ("Held Covered: If a Covered Person unintentionally navigates your yacht beyond the Navigational Limits shown in this Policy, the Policy will remain in effect. You must give us written notice within ten (10) days of the Navigational Limits breach and pay any additional premium for the coverage extension.")