

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**SFT IV, LLC, MOS18 LLC, and  
2206 AVENUE A LLC,**

**Plaintiffs,**

**Case No.: 6:23-cv-2161-ACC-EJK**

**v.**

**HARTFORD INSURANCE  
COMPANY OF THE MIDWEST,**

**Defendant.**

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**ORDER**

This cause comes before the Court on Defendant Hartford Insurance Company of the Midwest (“Hartford”)’s Motion to for Summary Judgment (Doc. 38). Plaintiffs SFT IV, LLC, MOS18 LLC, and 2206 AVENUE A LLC have filed a Response (Doc. 40) and Hartford has filed a Reply. (Doc. 42). Thus, the matter is ripe for consideration. For the reasons that follow, the Court will grant the motion.

**I. BACKGROUND**

This case arises out of a denial of an insurance claim for property located at 3455 Highway A1A, Melbourne Beach, FL 32951 (the “Properties”) which were damaged from Hurricane Nicole. Plaintiffs sue for breach of contract arising from Hartford’s denial of the insurance claim.

The following facts are not in dispute and are taken from Hartford's Statement of Material Facts. (Doc. 38 at 4-7).<sup>1</sup> At all times material hereto, Hartford was a Write-Your-Own ("WYO") Program company participating in the National Flood Insurance Program ("NFIP"). (*Id.* at ¶ 1). Hartford is a WYO company which participates in the NFIP pursuant to its signing of the Arrangement with FEMA, pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. § 4001, *et seq.*). (*Id.* at ¶ 2). At all times material hereto, Plaintiffs were insured by a Dwelling Form Standard Flood Insurance Policy ("SFIP") issued to them by Hartford, said policies bearing policy number 6500126906 (Building A) and 6500110406 (Building B). (*Id.* at ¶ 3). Plaintiffs' properties, insured by SFIP No.'s 6500126906 and 6500110406, are located at 3455 S. Highway A1A, Building A, Melbourne Beach, FL 32951 and 3455 S. Highway A1A, Building B, Melbourne Beach, FL 32951 and are a non-residential business. (*Id.* at ¶ 5). The coverage limits of each of the Plaintiffs' SFIPs were \$500,000.00 for building coverage and \$10,000.00 for contents coverage, each with a separate \$10,000.00 deductible. (*Id.* at ¶ 6).

On or about November 9, 2022, Plaintiffs' properties suffered a flood loss from Hurricane Nicole, which they reported on December 6, 2022. (*Id.* at ¶ 7). On

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<sup>1</sup> Hartford has submitted the following records in support: Declaration of Wendy Strow, Corporate Representative for Hartford Insurance Company of the Midwest (Doc. 38-1), a copy of the SFIP GP Policy Version F-123 dated October 2021 (Doc. 38-2), and correspondence from Hartford to Plaintiffs dated December 24, 2022 (Doc. 38-3).

or about December 12, 2022, James DiBella, an independent claim adjuster with All Seasons Adjusting (“All Seasons”), inspected the Plaintiffs’ property and flood loss on behalf of Hartford. (*Id.* at ¶ 8). Mr. DiBella prepared a line-item estimate of Plaintiffs’ flood-related damages, took photos, and completed other pertinent forms associated with the flood loss pursuant to his investigation of the loss. (*Id.* at ¶ 9). On December 24, 2022, Hartford mailed correspondence to the Plaintiffs’ informing them that they must submit a proof of loss by January 8, 2023 otherwise non-compliance could jeopardize their rights to settlement funds, and cited to “General Conditions and Provision, para J. 4, Requirements in Case of Loss” in the applicable insurance policy. (*Id.* at ¶ 10). Subsequently, on or about January 11, 2023, Steven Gibson, P.E., a Professional Engineer with Donan Engineering (“Donan”), also inspected the Plaintiffs’ properties and flood loss on behalf of Hartford. (*Id.* at ¶ 11).

On April 10, 2023, one hundred and fifty-three days after the date of loss, Plaintiffs provided an executed Proof of Loss in the amount of \$686,560.21 for building damage. (*Id.* at ¶ 12). On May 4, 2023, Hartford notified the Plaintiffs that pursuant to the totality of its claim investigation, the amount of covered damages fell below the applicable \$10,000.00 deductible and thus payment could not be made. (*Id.* at ¶ 13). Plaintiffs did not timely submit a properly signed and sworn Proof of Loss to comply with the requirements of Article VII(G) of the SFIP to Hartford. (*Id.* at ¶ 14).

Plaintiff has presented the following additional undisputed facts.<sup>2</sup> (Doc. 40 at 2-4). On or about November 15, 2022, Brevard County deemed the Property “UNSAFE” to enter, citing “structural undermining due to beach erosion was noted as a result of Hurricane Nicole.” (*Id.* at ¶ 3). Plaintiffs’ public adjuster, Oded Yahav, visited the Property to assess the damage and prepare a repair estimate in conjunction with a sworn proof of loss but was denied entry by the Brevard County Fire Rescue department due to the unsafe condition. (*Id.* at ¶ 4). Mr. Yahav took photographs of the condition of the exterior of the property showing a Brevard County fire official blocking the entrance, yellow caution tape around the building, a “DO NOT ENTER” sign taped to the front door and signed by a Brevard County official and an image showing the significant sand erosion underneath the building. (*Id.* at ¶ 5).

Even if Mr. Yahav was legally permitted to enter the building to perform his assessment of the damage, he did not feel safe entering the building, which was required to determine the price, scope and extent of the damage to submit a sworn proof of loss to Defendant. (*Id.* at ¶ 6). It is the public adjuster’s responsibility to assess the damage and gather information, including but not limited to photographs, measurements, and testing for water damage using a moisture meter and thermal

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<sup>2</sup> Plaintiffs have attached the following record evidence to their Response: Certified Copy of the Brevard County Fire Rescue Report dated November 15, 2022 (Doc. 40-1), Affidavit of Plaintiffs’ Public Adjuster, Oded Yahav with Public Adjusting Agreement and Photos of the Properties (Doc. 40-2), and Plaintiffs’ FEMA Proof of Loss Form signed April 10, 2023 (Doc. 40-3).

imaging camera, to assist in the preparation of a detailed repair estimate that was necessary for the sworn proof of loss. (*Id.* at ¶ 7). Due to the condition of the property and short time window to submit the sworn proof of loss, Plaintiffs argue it was legally impossible for this task to be completed by January 8, 2023. (*Id.* at ¶ 8).

It is undisputed that Plaintiffs submitted the sworn proof of loss on April 10, 2023. (*Id.* at ¶ 10). Hartford did not provide Plaintiffs with its repair estimate until May 4, 2023. (*Id.* at ¶ 11). Moreover, the Defendant references a December 24, 2022, letter that was sent by U.S. Mail on Christmas Eve. However, Plaintiffs assert that the letter Defendant references was mailed to the Peoples Bank, not Plaintiffs. (*Id.* at ¶ 12).

Hartford requests that the Court grant final summary judgment in its favor and find that it is not liable to Plaintiffs for any damages allegedly sustained to the Property. (Doc. 38 at 2). Based on these undisputed facts, Hartford contends that, as a matter of law, Plaintiffs are barred from recovery due to their failure to timely submit a Proof of Loss in support of the amount they seek in this lawsuit. Further, Hartford argues Plaintiffs' failure to provide an inventory of damaged personal property is also a violation of Article VII(O), entitling Defendant to summary judgment. Plaintiffs argue it was impossible to meet the condition precedent given the condition of the property.

## II. LEGAL STANDARDS

Summary judgment is appropriate when the moving party demonstrates “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). The movant must satisfy this initial burden by “identifying 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.” *Norfolk S. Ry. Co. v. Groves*, 586 F.3d 1273, 1277 (11th Cir. 2009) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). In response, “a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of [her] pleading, but must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 256 (1986) (citation omitted). The movant is entitled to summary judgment where “the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.” *Celotex*, 477 U.S. at 323. In deciding whether to grant summary judgment, the Court resolves all ambiguities and draws all permissible factual inferences in favor of the non-moving party. *Anderson*, 477 U.S. at 255; *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1164 (11th Cir. 2003) (citation omitted).

Federal courts cannot weigh credibility at the summary judgment stage. *See Feliciano v. City of Mia. Beach*, 707 F.3d 1244, 1252 (11th Cir. 2013) (“Even if a

district court believes that the evidence presented by one side is of doubtful veracity, it is not proper to grant summary judgment on the basis of credibility choices.” (citation and internal quotation marks omitted)). Therefore, the Court will “make no credibility determinations or choose between conflicting testimony, but instead [will] accept [the non-moving party’s] version of the facts drawing all justifiable inferences in [the non-movant’s] favor.” *Burnette v. Taylor*, 533 F.3d 1325, 1330 (11th Cir. 2008). Notwithstanding this inference, “[t]here is [still] no genuine issue for trial unless the non-moving party establishes, through the record presented to the court, that [she] is able to prove evidence sufficient for a jury to return a verdict in [her] favor.” *Cohen v. United Am. Bank of Cent. Fla.*, 83 F.3d 1347, 1349 (11th Cir. 1996).

### III. ANALYSIS

The National Flood Insurance Act of 1968 authorized FEMA’s Administrator “to establish and carry out a national flood insurance program which will enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States.” 42 U.S.C. § 4011(a). The WYO program is conducted pursuant to this authorization. Under the WYO program, “the Federal Insurance Administrator may enter into arrangements with individual private sector property insurance companies or other insurers,” called “WYO Companies.” 44 C.F.R. § 62.23(a), (b). A WYO Company “may offer flood insurance coverage under

the [WYO] program to eligible applicants.” *Id.* § 62.23(a). The relationship between the Federal Government and a WYO Company is “one of a fiduciary nature,” where the Federal Government is “a guarantor” and the WYO Company is “a fiscal agent of the Federal Government.” *Id.* § 62.23(f), (g). “A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the [WYO] Program, based upon the terms and conditions of the [SFIP].” *Id.* § 62.23(d); *see* 44 C.F.R. Pt. 61, App’x A(1) (providing the SFIP terms and conditions for a dwelling). Payment of claims under the flood insurance coverage is made from a National Flood Insurance Fund in the United States Treasury. 42 U.S.C. § 4017(a), (d).

An “insured must adhere strictly to the requirements of the [SFIP] before any monetary claim can be awarded against the government.” *Sanz v. U.S. Sec. Ins. Co.*, 328 F.3d 1314, 1317–18 (11th Cir. 2003) (agreeing with five other Circuits that had held similarly); *see also Shuford v. Fid. Nat’l Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1343 (11th Cir. 2007) (stating that “strict compliance with the provisions of federal flood insurance policies is required because payments are drawn from the federal treasury”). No provision of the SFIP “shall be altered, varied, or waived other than by the express written consent of the Federal Insurance Administrator through the issuance of an appropriate amendatory endorsement, approved by the Federal



Insurance Administrator as to form and substance for uniform use.” 44 C.F.R. § 61.13(d).

One of the SFIP conditions is that “[w]ithin 60 days after the loss,” an insured must send a signed and sworn proof of loss, which is a statement of the amount the insured is claiming under the SFIP and includes, among other information, the date and time of loss. 44 C.F.R. Pt. 61, App’x A(1), Art. VII(G)(4). “[F]ailure to file a proof of loss within 60 days without obtaining a written waiver of the requirement eliminates the possibility of recovery” under a SFIP. *Sanz*, 328 F.3d at 1319; *see also Shuford*, 508 F.3d at 1343 (stating that “failure to file a proof of loss bars recovery absent an express written waiver of the proof-of-loss requirement”).


Here, it is undisputed that Hartford did not receive a signed and sworn Proof of Loss from Plaintiffs within sixty days from the date of the loss, nor is there a dispute that no waiver of the deadline was issued by the Federal Insurance Administrator. (Doc. 38-1 ¶¶12-15). The cases cited by Plaintiffs (Doc. 40 at 8-9) regarding impossibility of fulfillment of a condition precedent are unavailing. They are not binding on this Court because they arose outside the Eleventh Circuit and they predate the holdings in *Sanz* and *Shuford*. Moreover, Plaintiffs have not provided any legal precedent which would instruct the Court to permit consideration of evidence in support of this argument under the particular facts and circumstances of this case. The Court is not unsympathetic to Plaintiffs’ plight that the Properties were unsafe at a certain point in time due to code violation and that Mr. Yahav, the

public adjuster, did not feel safe entering the building. Yet Hartford has provided uncontroverted evidence that All Seasons was able to access and inspect the Properties on December 12, 2022, well before the January 8, 2023 deadline for submission of a timely proof of loss. The Court's hands are tied. The proof of loss requirements must be strictly construed. *See Sanz v. U.S. Sec. Ins.*, 328 F.3d 1314, 1318 (11th Cir. 2003) (“[N]ot even the temptations of a hard case should cause courts to read the requirements of a federal insurance contract with ‘charitable laxity.’”). Accordingly, the Plaintiffs’ failure to satisfy the condition precedent to filing of this action and recovery of damages warrants the granting of the Motion for Summary Judgment.

Based on the foregoing, it is ordered as follows:

1. Defendant Hartford Insurance Company of the Midwest’s Motion for Summary Judgment (Doc. 38) is **GRANTED**.
2. The Clerk is **DIRECTED** to enter judgment for Defendant and against Plaintiffs, terminate any deadlines, and close the case.

**DONE** and **ORDERED** in Chambers, in Orlando, Florida on March 12, 2025.

  
ANNE C. CONWAY  
United States District Judge

Copies furnished to:

Counsel of Record  
Unrepresented Parties