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| **DR. DONALD GANIER, JR., ET AL.** | * | **NO. 2007-CA-1374** |
| | * | **C/W** |
| **VERSUS** | * | **NO. 2007-CA-1375** |
| **SPECIALTY RISK ASSOCIATES, INC., ET AL.** | * | **COURT OF APPEAL** |
| **CONSOLIDATED WITH** | * | **FOURTH CIRCUIT** |
| **DR. DONALD GANIER, JR., ET AL** | * | **STATE OF LOUISIANA** |
| | * | |
| **VERSUS** | * | |
| **INGLEWOOD HOMES, INC.** | * * * * * * * | |

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 2006-07691 C/W 2004-11772, DIVISION "F"
Honorable Yada Magee, Judge
* * * * * *
**CHIEF JUDGE JOAN BERNARD ARMSTRONG**
* * * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Charles R. Jones, Judge Patricia Rivet Murray, Judge James F. McKay III and Judge Edwin A. Lombard)

**JONES, J., DISSENTS WITH REASONS**
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**AFFIRMED**

The plaintiffs-appellants, Dr. Donald Ganier, Jr. and Mrs. Pamela Ganier, appeal the summary judgment dismissal of that portion of their claim directed against the defendant-appellee, Chubb Custom Insurance Company. We affirm.

The plaintiffs originally sued Specialty Risk Associates, Inc.; Chub Insurance Agency, Inc.; Louis Noah and Donna Monteleone, for obtaining homeowners and flood insurance that did not comport with their specific request for the maximum coverage available as a result of which the plaintiffs allegedly sustained substantial damages from Hurricane Katrina for which they find themselves uninsured.

Chubb Custom Insurance Company was added as a defendant in a supplemental petition based on allegations that "Chubb arbitrarily and capriciously denied Plaintiffs' claim on the grounds that the Policy contained a purported 'wind exclusion' that allegedly precluded Plaintiffs from any recovery under the Policy for any damages related to wind/and/or wind driven water."

Appellate courts review summary judgment *de novo,* using the same criteria applied by the trial courts to determine whether the summary judgment is appropriate. *Independent Fire Ins. Co. v. Sunbeam Corp.,* 99-2181 c/w 99-2257,

p. 7 (La. 2/29/2000), 755 So.2d 226, 230. The supporting documentation submitted by the parties should be scrutinized equally, and there is no longer any overriding presumption in favor of trial on the merits. *Id.*, 99-2181, p. 7, 755 So.2d at 231.

The Supreme Court reinforced this position shortly thereafter in *Independent Fire Ins.* in *Willis v. Medders*, 00-2507, p. 1 (La. 12/8/00), 775 So.2d 1049, 1050:

> First, despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. See *Independent Fire Insurance Co. v. Sunbeam Corp.*, 99-2181, 99-2257 at pp. 16-17 (La.2/29/00), 755 So.2d 226, 236 (noting the court "must draw those inferences from the undisputed facts which are most favorable to the party opposing the motion"); See also *Hebert v. St. Paul Fire and Marine Ins. Co.*, 99-0333 (La.App. 4th Cir.2/23/00), 757 So.2d 814.

*Id.*

In their original petition, the plaintiffs' allege that:

> On or after August 29, 2005, Plaintittfs' Residence sustained significant wind driven water damage as a result of Hurricane Katrina.

In their opposition to Chubb's motion for summary judgment, the plaintiffs repeat this allegation verbatim.

This is the only Katrina related damage to their home alleged by the plaintiffs.

Any ambiguity in an insurance policy is to be strictly construed against the insurer and in favor of the insured. *Peterson v. Schimek*, 98-1712, p. 5 (La. 3/299), 729 So.2d 1024, 1029. However, the rule of strict "construction of insurance contracts does not authorize a perversion of the words, or the exercise of inventive

powers to create an ambiguity where none exists." *Id*; *Marcotte v. Progressive Sec. Ins. Co.*, 06-1368, p. 4 (La.App. 4 Cir. 3/21/07), 955 So.2d 708, 710. Nor does it authorize the court to make a new contract for the parties or disregard the evidence as expressed, or to refine away the terms of a contract expressed with sufficient clearness to convey the plain meaning of the parties, and embodying requirements, compliance with which is made the condition of liability thereon. *Id.* This is an outgrowth of the general rule concerning the construction of contract language found in the Civil Code. La. C.C. art. 2056; *Marcotte, supra; Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co.*, 93-0911 (La. 1/14/94), 630 So.2d 759, 763. When language of the insurance policy is clear, courts lack authority to change or alter its terms under guise of interpretation. *Id.*

Courts should not strain to find ambiguity in an insurance policy where none exists. *Mossy Motors, Inc. v. Cameras America*, 04-0726, p. 5 (La.App. 4 Cir. 3/2/05), 898 So.2d 602, 606; *New Orleans Property Dev. v. Aetna Cas.*, 93-0692 (La. App. 1 Cir. 1994), 642 So.2d 1312, 1315; *Strickland v. State Farm Insurance Companies*, 607 So.2d 769, 772 (La. App. 1 Cir.1992).

An insurance policy should not be interpreted in an unreasonable or a strained manner so as to enlarge or to restrict its provisions beyond what is reasonably contemplated by its terms or so as to achieve an absurd conclusion. *Louisiana Ins. Guar. Ass'n,, supra,* at 763. Absent a conflict with statutory provisions or public policy, insurers, like other individuals, are entitled to limit their liability and to impose and to enforce reasonable conditions upon the policy obligations they contractually assume. *Id.*

In construing the language of an exclusionary clause in an insurance policy, courts must look to the general rule that exclusionary clauses are to be narrowly

construed against the insurer and in favor of coverage. *Capital Bank & Trust Co. v. Equitable Life Assur. Soc. Of the United States*, 542 So.2d 494, 495 (La.1989).

The Chubb policy contains an endorsement issued on December 21, 2004, (Form 10-02-0492) near the back of the policy showing in the left hand column in oversized, boldface letters the title: "**Exclusions**." The "exclusions" are then described as follows:

> **Wind.** We do not cover any loss caused by, contributed to, made worse by, or in any way resulting from any of the following:
>
> . wind;
>
> . wind driven water, rain, snow, sleet, sand or dust;
>
> . wind driven objects;
>
> . collapse or the imminent collapse due to wind; or
>
> . erosion due to any of the above.

These exclusions clearly exclude the type of loss alleged by the plaintiffs. The plaintiffs do not contend otherwise. Instead, they complain that the exclusions should not be enforced because they conflict with the statement on the "Coverage Summary" at the beginning of the policy which lists among the policy coverages: "Water Damage INCLUDED." However, we note that in addition to the endorsement excluding wind driven water quoted above, there is also a long list of water exclusions found on Form 10-02-0331, pp. B7-B8, not to mention the limits on water coverage referred to in Form 10-02-0331, pp. B1 –B2. It is clear that the water damage coverage is subject to the policy exclusions. Exclusions and limitations by their very nature provide exceptions to broader coverage provisions in policies. Thus, the existence of a general declaration of broad coverage does not

preclude provisions restricting that coverage elsewhere in the policy, subject to the [1]proviso that they be clearly and unambiguously expressed. Moreover, we note that the two page quote for the policy sent to the plaintiffs prior to their decision to purchase the policy displayed on the first page thereof the term: "**WIND EXCLUSION**," thereby flagging the existence of the exclusion that the plaintiffs now complain was not adequately called to their attention.[2] Therefore, we are compelled to conclude that the policy provides water damage coverage subject to the unambiguous exclusions and limitations set forth in the policy. Accordingly, we find the exclusions for wind and wind driven water to be clear and unambiguous. Therefore, we find no error in the judgment of the trial court.

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED**

[2] The plaintiffs have challenged the authenticity of this "quote" for the first time in their reply brief on appeal, arguing that it is for a different policy. This challenge was not made to the trial court and cannot be raised for the first time on this appeal. The plaintiffs contend that the "quote" was dated October 16, 2003, more than a year before the issuance of the Chubb policy in question which has an effective date of October 20, 2004. However, we note that there are two "quotes" annexed to Chubb's motion for summary judgment in the trial court. The other quote is dated October 4, 2004, a date completely relevant to this case. Both "quotes" make the same identical upper case reference to "**WIND EXCLUSION."