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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Scottsdale Condo-Business Center
Association Incorporated,

10 Plaintiff,

11 v.

12 Sentinel Insurance Company Limited,

13 Defendant.
14

No. CV-13-01727-PHX-DGC

ORDER

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16 Defendant has filed a motion for summary judgment. Doc. 36. The motion is
17 fully briefed. The Court will deny the motion.¹

18 **I. Background.**

19 This is an insurance coverage dispute. Plaintiff's property was damaged in a hail
20 and wind storm that occurred on October 5, 2010. Doc. 36 at 2. Plaintiff maintains an
21 insurance policy with Defendant. Plaintiff submitted a claim for damage to skylights and
22 a claims adjuster visited the property on October 16, 2010. *Id.* at 2-3. The adjuster
23 "noted the roof of all four (4) buildings was in good condition and found no hail damage
24 to the mineral surface sheet of the roofs," and "found no damage on any of the exterior
25 surfaces of the insured buildings." *Id.* at 3. Defendant paid \$12,831.24 to repair damage
26 to skylights and turbines based on the adjuster's estimate. *Id.*

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28 ¹ The requests for oral argument are denied because the issues have been fully
briefed and oral argument will not aid the Court's decision. *See* Fed. R. Civ. P. 78(b);
Partridge v. Reich, 141 F.3d 920, 926 (9th Cir. 1998).

1 Several months later, Plaintiff submitted a quote from S G & L Construction for
2 \$281,805.81 to “recoat the existing roof and paint the exterior of all buildings[.]” *Id.*
3 Defendant retained an engineering firm to do an independent inspection of the property,
4 and the independent engineer, Terry Taylor, “concluded that the paint coating on the
5 exterior faces of the concrete walls . . . were not damaged by hail impact” and that
6 “neither hail nor wind necessitated a re-roof of any of the buildings[.]” *Id.* at 3-4. Mr.
7 Taylor did identify a nine-foot by fifteen-foot section of the roof that had storm damage.
8 *Id.* at 4. Defendant then “partially denied Plaintiff’s claim to re-coat/re-paint the walls”
9 of Plaintiff’s buildings because the damage was “due to long-term deterioration” not
10 covered by the policy. *Id.* It also denied Plaintiff’s claim to re-coat the roofs because the
11 wind and hail did not cause damage to the entire roof, but did agree to pay for repairs to
12 the section identified by Mr. Taylor. *Id.*

13 Plaintiff then hired a public adjusting company and later submitted reports from
14 Becker Engineering and MDM Design Group, both hired by the public adjuster, which
15 opined that “the integrity of the roofs at Scottsdale Condo was compromised by the
16 impact of hail and that the roof needed to be completely replaced.” *Id.* The public
17 adjuster submitted to Defendant a “proof of loss totaling \$897,663.40 to replace the entire
18 roofs at all buildings . . . as well as re-coat/re-paint all walls of every building.” *Id.*

19 A re-inspection was conducted in February 2013 with Mr. Taylor and the public
20 adjuster present. *Id.* at 5. Mr. Taylor maintained his previous position and Defendant
21 reasserted its denial of coverage on May 21, 2013. *Id.* Plaintiff commenced this action
22 in August 2013. The Court recently dismissed Plaintiff’s claims for breach of the
23 covenant of good faith and fair dealing and punitive damages pursuant to a stipulation of
24 the parties. Doc. 44.

25 **II. Legal Standard.**

26 A party seeking summary judgment “bears the initial responsibility of informing
27 the district court of the basis for its motion, and identifying those portions of [the record]
28 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*

1 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the
2 evidence, viewed in the light most favorable to the nonmoving party, shows “that there is
3 no genuine dispute as to any material fact and the movant is entitled to judgment as a
4 matter of law.” Fed. R. Civ. P. 56(a). Only disputes over facts that might affect the
5 outcome of the suit will preclude the entry of summary judgment, and the disputed
6 evidence must be “such that a reasonable jury could return a verdict for the nonmoving
7 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

8 **III. Analysis.**

9 The parties agree that Plaintiff bears the burden of proving the existence of a
10 contract, its breach, and resulting damages. *See Graham v. Asbury*, 540 P.2d 656, 657
11 (Ariz. 1975). Defendant argues that “Plaintiff has utterly failed to establish any facts
12 supporting an alleged breach of contract claim.” Doc. 36 at 6. The Court does not agree.
13 Plaintiff has submitted evidence in the form of an expert report which indicates that the
14 October 2010 hail and wind storm caused damage to the roofs, necessitating replacement,
15 caused damage to the condenser coils of the air conditioning units, and that the damage to
16 the roof has in turn caused water damage to the interior of the buildings. Doc. 42-7 at 12.
17 Defendant does not address this expert report in its reply. Defendant instead relies on a
18 statement made by Plaintiff’s 30(b)(6) deponent, Dr. Merrill Stromer, that he had no
19 knowledge that anyone from Defendant acted in violation of any contract. Doc. 45 at 2.
20 In light of the evidence presented by Plaintiff’s expert, this statement does not entitle
21 Defendant to summary judgment.

22 Defendant does not dispute that it is required to provide coverage for damage
23 caused by the October 2010 storm. Plaintiff has presented evidence that the damage from
24 the storm was far more extensive than the payments it has received from Defendant. Mr.
25 Taylor’s findings, presented by Defendant, reach the opposite conclusion. This is a
26 genuine issue of material fact that precludes summary judgment. A reasonable jury could
27 conclude, based on Plaintiff’s evidence, that Defendant breached the insurance contract
28 by failing to pay for covered damage caused by the 2010 storm. The Court will deny

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Defendant's motion for summary judgment on Plaintiff's breach of contract claim.

IT IS ORDERED that Defendant's motion for summary judgment (Doc. 36) is **denied**.

Dated this 18th day of August, 2014.



David G. Campbell
United States District Judge