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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a  
Connecticut corporation,

No. 2:08-CV-00743-JAM-GGH

ORDER GRANTING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

Plaintiff,

v.

ALDER GROVE, LLC, a Delaware  
limited liability company;  
ALDER GROVE ASSOCIATES, LLC, a  
California limited liability  
company; ALFRED E. NEVIS, an  
individual; and SACRAMENTO  
MADISON WOODS CONDOMINIUMS  
OWNERS ASSOCIATION, a  
California Corporation,

Defendants.

\_\_\_\_\_ /

Travelers Property Casualty Company of America  
("Travelers") brought this action against Alder Grove, LLC,  
("Alder Grove"), Alder Grove Associates, LLC ("Alder Grove  
Associates"), Alfred E. Nevis ("Nevis"), and Sacramento Madison  
Woods Condominiums Owners Association ("Madison Woods") for  
declaratory relief and unjust enrichment. On May 19, 2009, this

1 Court held that Travelers did not have a duty to defend or  
2 indemnify Alder Grove under an insurance policy. Travelers now  
3 moves for partial summary judgment that Nevis is not covered  
4 under the same policy. Madison Woods and Nevis oppose the  
5 Motion. Alder Grove filed a joinder in these oppositions. For  
6 the reasons stated below, Travelers' Motion for Partial Summary  
7 Judgment is GRANTED.<sup>1</sup>

8  
9 BACKGROUND

10 In 2004, Alder Grove purchased a building located at 3939  
11 Madison Avenue in Sacramento County (the "Property") through  
12 Klamath Investors, LLC. Subsequently, Travelers issued Alder  
13 Grove a one-year multi-line policy (the "Policy") that went into  
14 effect on May 25, 2004. Statement of Undisputed Material Facts,  
15 ("SUF"), Docket at 50, Ex. 3, ¶ 5. Under the terms of the  
16 Policy, Alder Grove received both first and third-party coverage  
17 related to the Property. Id. Alder Grove was the only named  
18 insured. Id.

19 The Policy stated "This insurance does not apply to: . . . j.  
20 'Property damage' to: . . . (2) Premises you sell, give away or  
21 abandon, if the 'property damage' arises out of any part of  
22 those premises. . . Id. ¶ 7. The Policy defined "you" as "the  
23 Named Insured shown in the Declarations and any other person or  
24 organization qualifying as a Named Insured under" the Policy.  
25 Id. ¶ 8.

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28 <sup>1</sup> This motion was determined to be suitable for decision  
without oral argument. E.D. Cal. L.R. 78-230(h).

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2 On May 19, 2009, this Court issued an order finding that  
3 coverage was excluded under the Policy because Alder Grove had  
4 leased the Property prior to selling it. Travelers now seeks a  
5 declaratory judgment that Nevis is not entitled to coverage  
6 under the Policy.  
7

8 OPINION

9 Summary judgment is appropriate if "the pleadings, the  
10 discovery and disclosure materials on file, and any affidavits  
11 show that there is no genuine issue as to any material fact and  
12 that the movant is entitled to judgment as a matter of law."  
13 Fed.R.Civ.P. 56(c). The moving party bears the initial burden  
14 of demonstrating the absence of a genuine issue of material  
15 fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).  
16 Where the nonmoving party will have the burden of proof on an  
17 issue at trial, the movant's burden may be discharged by  
18 pointing out to the district court that there is an absence of  
19 evidence to support the nonmoving party's case. See id. at 325.  
20 Summary judgment for a defendant is appropriate when the  
21 plaintiff fails to make a showing sufficient to establish the  
22 existence of an element essential to its case, and on which [he]  
23 will bear the burden of proof at trial. Id. at 322.  
24

25 If the moving party sustains its burden, the burden then  
26 shifts to the nonmoving party to go beyond the pleadings and by  
27 his or her own affidavits, or by the depositions, answers to  
28 interrogatories, and admissions on file, designate specific  
facts showing that there is a genuine issue for trial. See

1 Celotex, 477 U.S. at 324 (citing Fed.R.Civ.P. 56(e)). "If the  
2 nonmoving party fails to produce enough evidence to create a  
3 genuine issue of material fact, the moving party wins the motion  
4 for summary judgment." Nissan Fire & Marine Ins. Co. v. Fritz  
5 Companies, Inc., 210 F.3d 1099, 1103 (9th Cir. 2000). Summary  
6 judgment is appropriate if, viewing the evidence and the  
7 inferences therefrom in the light most favorable to the  
8 nonmoving party, there are no genuine issues of material fact in  
9 dispute and the moving party is entitled to judgment as a matter  
10 of law. Valandingham v. Bojorquez, 866 F.2d 1135, 1137 (9th  
11 Cir. 1989).

12  
13 "While insurance contracts have special features, they are  
14 still contracts to which the ordinary rules of contractual  
15 interpretation apply." Bank of the West v. Superior Court, 2  
16 Cal. 4th 1254, 1264 (1992). "If contractual language is clear  
17 and explicit, it governs." Id.; see also Cal. Civ. Code § 1638.  
18 Here, the contract is clear. The Policy does not apply to  
19 property Alder Grove, the Named Insured, sold, gave away, or  
20 abandoned. This Court has previously held that Alder Grove  
21 leased the Property prior to selling it, and therefore the  
22 Policy **does not apply** to the Property. Accordingly, neither  
23 Nevis nor any other party is covered with regard to the  
24 Property.

25  
26 Madison Woods argues that the Court must take into account  
27 the distinction between named insureds, the insured, and any  
28 insured. In the present case, this distinction is irrelevant.  
The Policy clearly states that in cases where the Named Insured

1 sells the Property, it does not apply. The Policy does not  
2 state that it does not apply to certain parties but could apply  
3 to others. Rather, it clearly states that it does not apply at  
4 all. Under the clear terms of the Policy, Nevis cannot receive  
5 coverage for claims regarding the Property.

6 Finally, Nevis and Alder Grove argue that the Court should  
7 reconsider its previous order finding that Alder Grove was not  
8 covered under the policy. Requests that the Court reconsider a  
9 previous order must be made in the form of a motion. See Fed.  
10 R. Civ. P. 59(e), 60(b). No such formal motion is before the  
11 Court at this time. Accordingly, Nevis is excluded from  
12 coverage under the Policy for property damage claims regarding  
13 the Property.  
14

15 ORDER

16 For the reasons stated above, Travelers' Motion for Partial  
17 Summary Judgment is GRANTED.  
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20 IT IS SO ORDERED.

21 Dated: September 9, 2009

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23 JOHN A. MENDEZ,  
24 UNITED STATES DISTRICT JUDGE  
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