

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

DONALD E. CLARK; and STACY L.  
CLARK,

Plaintiffs,

v.

Case No. 6:18-cv-780-Orl-37KRS

ROCKHILL INSURANCE COMPANY,

Defendant.

---

**ORDER**

In the instant insurance dispute, Plaintiffs bring a breach of contract claim against Defendant, their insurer, for allegedly denying a claim following water damage to Plaintiffs' property. (Doc. 26.) Defendant answered and asserted a counterclaim for declaratory relief.<sup>1</sup> (Doc. 29, pp. 10-18.) Plaintiffs then moved to dismiss Defendant's counterclaim, now before the Court. (Doc. 33 ("**Motion**").) As Defendant responded (Doc. 38), the matter is ripe.

On referral, U.S. Magistrate Judge Karla R. Spaulding issued a report recommending denying the Motion. (Doc. 41 ("**R&R**").) She found: (1) a justiciable controversy plausibly exists regarding the insurance policy, despite issues of fact; and (2) Defendant's counterclaim does not seem to be entirely duplicative of Plaintiffs' claims.

---

<sup>1</sup> Defendant filed an amended answer following Magistrate Judge Spaulding's ruling on Plaintiffs' motion to strike, but that amended answer did not change its counterclaim. (See Docs. 39, 40.)

(*Id.* at 6–14.) Thus, Magistrate Judge Spaulding found no reason to dismiss Defendant’s counterclaim at this time. (*Id.* at 14.)


Neither party objected to the R&R, and the time for objecting has since passed. Absent objections, the Court has examined the R&R for clear error. *See Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at \*1 (M.D. Fla. Jan. 28, 2016); *see also Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006). Finding none, the Court concludes that the R&R is due to be adopted in its entirety.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Karla R. Spaulding’s Report and Recommendation (Doc. 41) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Plaintiffs’ Motion to Dismiss Defendant’s Counterclaim for Declaratory Relief for Failure to State a Cause of Action (Doc. 33) is **DENIED**.
3. The operative counterclaim in this action is included in Defendant Rockhill Insurance Company’s Amended Answer and Affirmative Defenses to Plaintiffs’ Second Amended Complaint and Incorporated Counterclaim (Doc. 40).

**DONE AND ORDERED** in Chambers in Orlando, Florida, on October 9, 2018.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record