

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED NATIONAL INSURANCE)
COMPANY,)
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Plaintiff,)
)
vs.)
)
LIMMIE YOUNG, III, et al.,)
)
Defendants.)
)

Case No.: 2:16-cv-00121-GMN-PAL

ORDER

Pending before the Court is the Motion for Summary Judgment, (ECF No. 27), filed by Plaintiff United National Insurance Company (“United National”). Defendants Audra Duvall and Michael Duvall (collectively “the Duvalls”) did not file a response. For the reasons set forth herein, Plaintiff’s Motion for Summary Judgment is **GRANTED**.

I. BACKGROUND

This declaratory judgment action arises from a lawsuit filed in Clark County District Court, styled Duvall, et al. v. Aposseadesse III, LLC, et al., case no. A-13-681072-C (“the Duvall Action”). At all times relevant to this case, Defendant Limmie Young, III (“Young”) was employed as a masseuse by Defendant Aposseadesse III, LLC (“Aposseadesse”). (See Duvall Compl. ¶ 14, Ex. 1 to Nielsen Decl., ECF No. 28-1). On May 8, 2011, Young allegedly engaged in inappropriate and sexual acts against Audra Duvall while administering a massage at Aposseadesse. (Id. ¶¶ 14–25). This incident became the subject matter of the state court lawsuit. (Id.).

In March 2016, the Duvall Action proceeded to a jury trial, and the jury returned a verdict in favor of Audra Duvall and Michael Duvall. (Jury Verdict, Ex. 2 to Nielsen Decl., ECF No. 28-2). The jury awarded \$59,675 in general damages and \$100,000 in punitive

1 damages to Audra Duvall and \$750 in general damages to Michael Duvall. (Judgment 2:13–
2 3:23, Ex. 5 to Nielsen Decl., ECF No. 28-5). The punitive damages were awarded based on a
3 finding that both Aposseadesse and Young “engaged in oppressive or malicious conduct”
4 against Audra Duvall. (Punitive Verdict Form, Ex. 3 to Nielsen Decl., ECF No. 28-3).

5 Throughout the underlying litigation, United National defended Aposseadesse as the
6 named insured on a contract of professional liability insurance. (Mawby Decl. ¶¶ 4, 5, ECF No.
7 29). On January 22, 2016, United National filed the instant declaratory judgment action,
8 seeking a declaration regarding its contractual and financial obligations in the underlying
9 lawsuit. (Compl., ECF No. 1). Defendants Young and Aposseadesse failed to respond to the
10 Complaint, and the Court granted United National’s Motions for Entry of Clerks Default
11 against those parties. (ECF Nos. 16, 17). On July 31, 2017, United National filed its Motion for
12 Summary Judgment against the Duvalls. (ECF No. 27).

13 **II. LEGAL STANDARD**

14 The Federal Rules of Civil Procedure provide for summary adjudication when the
15 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
16 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
17 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
18 may affect the outcome of the case. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
19 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
20 jury to return a verdict for the nonmoving party. See *id.* “Summary judgment is inappropriate if
21 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
22 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
23 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
24 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
25 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

1 In determining summary judgment, a court applies a burden-shifting analysis. “When
2 the party moving for summary judgment would bear the burden of proof at trial, it must come
3 forward with evidence which would entitle it to a directed verdict if the evidence went
4 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
5 the absence of a genuine issue of fact on each issue material to its case.” C.A.R. Transp.
6 Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
7 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
8 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
9 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
10 party failed to make a showing sufficient to establish an element essential to that party’s case
11 on which that party will bear the burden of proof at trial. See Celotex Corp., 477 U.S. at 323–
12 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
13 the court need not consider the nonmoving party’s evidence. See Adickes v. S.H. Kress & Co.,
14 398 U.S. 144, 159–60 (1970).

15 If the moving party satisfies its initial burden, the burden then shifts to the opposing
16 party to establish that a genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v.
17 Zenith Radio Corp., 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
18 the opposing party need not establish a material issue of fact conclusively in its favor. It is
19 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
20 parties’ differing versions of the truth at trial.” T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors
21 Ass’n, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
22 summary judgment by relying solely on conclusory allegations that are unsupported by factual
23 data. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
24 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
25 competent evidence that shows a genuine issue for trial. See Celotex Corp., 477 U.S. at 324.

1 At summary judgment, a court’s function is not to weigh the evidence and determine the truth
2 but to determine whether there is a genuine issue for trial. See *Anderson*, 477 U.S. at 249. The
3 evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn in
4 his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not
5 significantly probative, summary judgment may be granted. See *id.* at 249–50.

6 **III. DISCUSSION**

7 In the instant Motion, United National seeks a declaration regarding its remaining
8 obligations towards the Duvall Action. (See Pl.’s MSJ 1:24–2:5, ECF No. 27). In ruling on this
9 Motion, the Court must evaluate two issues: (1) whether United National’s policy with
10 Aposseadesse affords indemnity for punitive damages; and (2) whether United National has
11 fulfilled its obligations towards the Duvall Action judgment. The Court addresses each issue in
12 turn.

13 **a) Punitive Damages**

14 United National argues that its indemnity obligation under the insurance contract does
15 not extend to the \$100,000 punitive damages award. (Pl.’s MSJ 7:3–10). In interpreting
16 contracts, courts “should not rewrite contract provisions that are otherwise unambiguous.” *Id.*;
17 *see also Ellison v. Cal. State Auto. Ass’n*, 797 P.2d 975, 977 (Nev. 1990) (“[C]ontracts will be
18 construed from the written language and enforced as written.”). With respect to insurance
19 contracts, “[p]olicy terms should be viewed in their plain, ordinary and popular connotations.”
20 *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 729 P.2d 1352, 1354 (Nev. 1986).
21 Contractual construction is a question of law and “suitable for determination by summary
22 judgment.” *Ellison*, 797 P.2d at 977.

23 The insurance contract states that United National agrees to “pay those sums that the
24 insured becomes legally obligated to pay as ‘compensatory damages’ to which no other
25 insurance applies, as a result of a ‘wrongful act.’” (Agreement at 25, Ex. 1 to Mawby Decl.

1 ECF No. 29-1). Compensatory damages are expressly defined to exclude “damages imposed
2 upon the insured as punitive or exemplary damages for wanton, willful, outrageous, malicious
3 or reckless conduct or for gross negligence.” (Id. at 27).

4 Here, the jury in the Duvall Action awarded punitive damages based on a finding that
5 Aposseadesse and Young “engaged in oppressive or malicious conduct.” (Punitive Verdict
6 Form, Ex. 3 to Nielsen Decl., ECF No. 28-3). Accordingly, based on a plain reading of the
7 insurance contract, United National’s indemnity obligation does not extend to the punitive
8 damage portion of the Duvall Action judgment.

9 **b) Remaining Obligations**

10 The judgment in the Duvall Action consists of three elements: (1) the court-awarded
11 litigation costs; (2) the general damages award; and (3) the punitive damages. (See Judgment
12 2:13–3:23, Ex. 5 to Nielsen Decl.). United National argues that it has fulfilled its obligations
13 by paying the full judgment aside from the punitive damages. (Pl.’s MSJ 6:25–3:7). The Court
14 agrees.

15 On July 17, 2017, United National sent the Duvalls’ attorney two checks totaling
16 \$86,211.02, which represented the general damages and litigation costs, along with the accrued
17 interest. (Payment, Ex. 6 to Nielsen Decl., ECF No. 28-6). The Court finds no basis to believe
18 these checks were not properly tendered and received. Accordingly, the Court finds that United
19 National has satisfied its payment obligations and grants United National’s Motion for
20 Summary Judgment on this issue.

21 **IV. CONCLUSION**

22 **IT IS HEREBY ORDERED** that United National’s Motion for Summary Judgment,
23 (ECF No. 27), is **GRANTED** consistent with the foregoing.

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1 **IT IS FURTHER ORDERED** that United National must file a status report within 30
2 days from the issuance of this Order detailing any outstanding issues in this case. Specifically,
3 Untied National should address whether it intends to seek default judgment against the
4 remaining parties.

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6 **DATED** this 26 day of February, 2018.

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Gloria M. Navarro, Chief Judge
10 United States District Judge
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