

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

_____)
BANCINSURE, INC.,)
)
Plaintiff,)
)
vs.)
)
JAMES MICHAEL JACOBS et al.,)
)
Defendants.)
_____)

3:13-cv-00302-RCJ-VPC

ORDER

This case arises out of the failure of a Carson City, Nevada bank due to malfeasance by its officers and directors. The case is related to another case previously pending before the Court, *FDIC v. Jacobs*, 3:13-cv-84. On February 26, 2010, the Financial Institutions Division of the Nevada Department of Business and Industry revoked the charter of Carson River Community Bank (“the Bank”) and appointed the Federal Deposit Insurance Corp. (“FDIC”) as receiver of the Bank pursuant to 12 U.S.C. § 1821(c). In the ‘84 Case, the FDIC sued James Michael Jacobs and other officers and directors of the Bank (Charlie Glenn, Daniel Dykes, Byron Waite, and Richard McCole) for gross negligence and breach of fiduciary duties, alleging that approximately \$3.6 million of the Bank’s losses were attributable to their malfeasance. That case has concluded.

1 In the present case, BancInsure, Inc., now known as Red Rock Insurance Co. (“Red
2 Rock”), has sued Jacobs, Glenn, Dykes, Waite, and McCole for a declaration that Red Rock is
3 not liable to reimburse them under a corporate insurance policy (“the Policy”). Glenn filed a
4 counterclaim for a declaration that Red Rock must reimburse him under the Policy for his fees
5 and costs in defending the ’84 Case. Jacobs filed counterclaims for reformation of contract,
6 breach of contract, equitable estoppel, negligent misrepresentation, and breach of the implied
7 covenant of good faith and fair dealing. The Court granted the FDIC’s motion to substitute itself
8 as a Defendant for Dykes, Waite, and McCole, because it had succeeded to their rights by
9 assignment. The FDIC filed counterclaims essentially mirroring Jacobs’s. Jacobs amended his
10 answer and counterclaim to match the FDIC’s.

11 Red Rock filed the First Amended Complaint (“FAC”), separating its declaratory
12 judgment claim into seven claims and adding three Defendants whom it later voluntarily
13 dismissed, making the fourth through seventh claims moot. (*See* First Am. Compl., ECF No. 54).
14 Red Rock seeks declarations that: (1) Red Rock has no obligation under the Policy to indemnify
15 Defendants or reimburse them for their costs of defending the ’84 Case due to an exclusion in
16 Section IV of the Policy; (2) Defendants did not satisfy the notice of claim requirements in
17 Section IX of the Policy; and (3) there was no “loss” as defined in Section III of the Policy. The
18 FDIC and Jacobs filed second amended counterclaims without substantive changes. The
19 originally assigned judge recused himself, and the case was reassigned to this Court. The FDIC
20 further amended its counterclaims, separating its claim for breach of the implied covenant of
21 good faith and fair dealing into two claims asserting different theories and adding counterclaims
22 for unfair claims practices under Nevada Revised Statutes section (“NRS”) 686A.310 and for a
23 declaration consistent with the theories put forth in its substantive claims.

1 An Oklahoma state court put Red Rock into receivership under that state’s Insurance
2 Commissioner, who in turn asked the Court to dismiss all claims by and against Red Rock and to
3 enjoin the parties from pursuing such claims in any court. The Court denied that motion and a
4 subsequent motion to certify the issue for interlocutory appeal. In the meantime, Glenn and
5 Jacobs assigned their rights to the FDIC. The FDIC further amended its answer and
6 counterclaims. (*See* Fourth Am. Answer and Countercl., ECF No. 177).

7 In summary, Red Rock and the FDIC are the only remaining parties, and the operative
8 pleadings are the FAC and the Fourth Amended Answer and Counterclaim (“FAAC”). Red
9 Rock moved for offensive summary judgment on its claims and for defensive summary judgment
10 against the FDIC’s counterclaim for a contrary declaration. The FDIC counter-moved for
11 defensive summary judgment against the FAC and for offensive summary judgment on its
12 counterclaims for declaratory judgment and breach of contract.

13 The Court noted that three federal district courts had ruled against the FDIC under
14 paragraph A.21 of Section IV of the Policy (“the Exclusion”) in other substantively identical
15 cases, that the Court of Appeals for the Tenth Circuit had affirmed such a ruling in one of those
16 cases, and that the only case in which a district court had ruled against Red Rock on the issue
17 was then on appeal to the Court of Appeals, *see FDIC-R v. BancInsure, Inc.*, 99 F. Supp. 3d
18 1084 (C.D. Cal. 2014), where oral argument had been held on June 8, 2016. Because the
19 impending decision by the Court of Appeals would likely determine the proper outcome here, the
20 Court stayed the case pending the Court of Appeals’ ruling in *FDIC v. BancInsure, Inc.*, No. 14-
21 56132 and denied the motions for summary judgment without prejudice.

22 As directed by the Court, Red Rock has now notified the Court of the issuance of the
23 mandate in *FDIC v. BancInsure, Inc.*, No. 14-56132. In that case, the Court of Appeals reversed
24

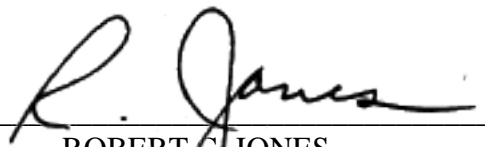
1 the district court and joined the Tenth Circuit and the other district courts to decide the issue,
2 ruling in favor of Red Rock that the Exclusion “unambiguously excludes from coverage the
3 FDIC’s claims against Security Pacific’s former directors and officers.” *FDIC v. BancInsure,*
4 *Inc.*, No. 14-56132, 2017 WL 83489, at *4 (9th Cir. Jan. 10, 2017).

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the stay is LIFTED, and the parties shall SUBMIT any
7 renewed motions for summary judgment within fourteen (14) days.

8 IT IS SO ORDERED.

9 Dated this 8th day of March, 2017.

10
11 
12 _____
13 ROBERT C. JONES
14 United States District Judge
15
16
17
18
19
20
21
22
23
24