UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

Elio Mulas and Lucia Mulas v. Westchester Surplus Lines Insurance Company

Mulas · No. 2:25-cv-955-SPC-DNF · Decided January 14, 2026

SUMMARY

The United States District Court for the Middle District of Florida grants Westchester Surplus Lines Insurance Company's motion to dismiss the plaintiffs' anticipatory-breach claim. The court holds that the plaintiffs' allegation that the insurer failed to pay actual cash value does not plausibly establish an absolute and unequivocal intent to refuse future replacement-cost-value payment.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Fort Myers Division
JURISDICTION	United States District Court for the Middle District of Florida, Fort Myers Division
DECIDED	January 14, 2026
DOCKET	2:25-cv-955-SPC-DNF
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiffs' anticipatory-breach claim in Count II of the complaint.
STANDARD OF REVIEW	The court applied the Rule 12(b)(6) plausibility standard, accepting well-pleaded factual allegations as true and determining whether they stated a facially plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court opinion

TOPICS

anticipatory repudiation · insurance coverage · breach of contract · motions to dismiss · pleadings

PRACTICE AREAS

insurance coverage · contract law · civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiffs adequately pleaded an anticipatory-breach claim by alleging that Defendant's failure to pay the actual cash value of the covered loss indicated that Defendant would refuse to pay the replacement cost value in the future.

HOLDINGS

1. Plaintiffs failed to state a plausible anticipatory-breach claim because the alleged failure to pay actual cash value did not show Defendant's absolute and unqualified intention to refuse a future replacement-cost payment.

KEY QUOTATIONS

> *"To state a claim for anticipatory breach or repudiation, the factual allegations must show the breach occurred before the time has come when there is a present duty to perform as the result of words or acts evincing an intention to refuse performance in the future."*

> *"The repudiation of the contract must be absolute and without qualification; any ultimatums to refuse to honor the agreement must be issued in no uncertain terms."*

FACTUAL BACKGROUND

Plaintiffs alleged that Hurricane Ian caused windstorm damage to their commercial property and that they submitted an insurance claim to Westchester Surplus Lines Insurance Company. Defendant allegedly had not affirmed or denied coverage and had not issued payment, including the actual cash value of the loss. Plaintiffs alleged that this failure indicated Defendant would also fail to pay the full replacement cost value when it became due.

PROCEDURAL HISTORY

Plaintiffs brought a diversity breach-of-contract action arising from alleged windstorm damage to commercial property during Hurricane Ian. They asserted claims for breach of contract and anticipatory breach of contract after Defendant allegedly failed to affirm or deny coverage or make payment. The district court granted Defendant's motion to dismiss Count II.

DISPOSITION

dismissed

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)
- Amnay v. Select Portfolio Servicing, Inc., No. 8:21-CV-2610-WFJ-CPT, 2022 WL 3577358, at *5 (M.D. Fla. Aug. 19, 2022), aff'd, No. 22-13128, 2023 WL 3944869 (11th Cir. June 12, 2023)

OPINION

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA FORT MYERS DIVISION ELIO MULAS and LUCIA MULAS, Plaintiffs, v. Case No.: 2:25-cv-955-SPC-DNF WESTCHESTER SURPLUS LINES INSURANCE COMPANY, Defendant. OPINION AND ORDER Before the Court is Defendant Westchester Surplus Lines Insurance Company's Motion to Dismiss Count II of Plaintiffs' Complaint (Doc. 17) and Plaintiffs Elio and Lucia Mulas' response (Doc.

20). For the below reasons, the Court grants the motion. This breach-of-contract action arises from windstorm damage to Plaintiffs' commercial property during Hurricane Ian. Plaintiffs allege they submitted a claim to Defendant, but Defendant has neither affirmed nor denied coverage on the claim nor issued any payment.

Accordingly, they bring claims for breach of contract (count I) and anticipatory breach of contract (count II) (Doc. 3). Defendant moves to dismiss count II, arguing Plaintiffs fail to state a claim (Doc. 17). To survive a Federal Rule of Civil Procedure 12(b)(6) motion, a complaint must allege "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Bare "labels and conclusions, and a formulaic recitation of the elements of a cause of action," do not suffice. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). A district court should dismiss a claim when a party does not plead facts that make the claim facially plausible. See id. at 570. A claim is facially plausible when a court can draw a reasonable inference, based on the facts pled, that the opposing party is liable for the alleged misconduct.

See Iqbal, 556 U.S. at 678. This plausibility standard requires "more than a sheer possibility that a defendant has acted unlawfully." Id. (citing Twombly, 550 U.S. at 557 (internal quotation marks omitted)). Defendant moves to dismiss Plaintiffs' anticipatory breach claim. "To state a claim for anticipatory breach or repudiation, the factual allegations must show the breach occurred before the time has come when there is a present duty to perform as the result of words or acts evincing an intention to refuse performance in the future." Amnay v. Select Portfolio Servicing, Inc., No. 8:21-CV-2610-WFJ-CPT, 2022 WL 3577358, at *5 (M.D.

Fla. Aug. 19, 2022), aff'd, No. 22-13128, 2023 WL 3944869 (11th Cir. June 12, 2023) (cleaned up and citation omitted). "The repudiation of the contract must be absolute and without qualification; any ultimatums to refuse to honor the agreement must be issued in no uncertain terms." Id. (citation omitted).

In count II, Plaintiffs allege that Defendant has not paid the actual cash value ("ACV") for their damaged property. Given this failure to pay ACV, Plaintiffs anticipate Defendant will breach the policy again by failing to pay the full replacement cost value ("RCV") when it becomes due. (Doc.

3 {J 21- 26). Defendant argues Plaintiffs have not alleged facts showing Defendant's absolute intention to refuse RCV payment.

The Court agrees. Plaintiffs simply assert that Defendant's failure to pay ACV suggests it will not pay RCV. This is a leap too far beyond plausibility. Accordingly, it is now ORDERED: Defendant's Motion to Dismiss Count II (Doc. 17) is GRANTED. DONE and ORDERED in Fort Myers, Florida this January 14, 2026. UNITED STATES DISTRICT JUDGE Copies: All Parties of Record