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PRECEDENTIAL VALUE	unpublished district court opinion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

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dismissed
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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)