

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 10/12/2021 EVENT TIME: 08:20:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2012-00421417-CU-BC-VTA
CASE TITLE: VINCENT VS. CERTAIN UNDERWRITERS AT LLOYDS LONDON

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion for Summary Judgment - or in the Alternative, Summary Adjudication
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment, 03/29/2021

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts between 8:30 and 8:45 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Denise Arreola at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

COVID-19 NOTICE: Pursuant to the administrative orders of the Presiding Judge effective June 28, 2021, and until further notice, attorneys and self-represented parties in law and motion hearings shall appear telephonically via Court Call. Attorneys and self-represented parties shall not appear in person for law and motion matters except by prior leave of the Court. All persons appearing in person in Courtroom 20 must comply with the Court's COVID-19 safety protocol, which requires them to wear a mask over the nose and mouth at all times while in the courthouse, including the courtroom. You may contact Court Call as follows: www.courtcall.com or call 888-882-6878.

PLEASE NOTE: The Court will *not* accept any Court Call reservations submitted later than 4:30 p.m. the court day before the scheduled hearing. Court Call reservations are not accepted on Court Furlough Days or Court Holidays.

The following is the Court's tentative decision concerning the motion of defendant, Certain Underwriters at Lloyds, London ("Lloyds"), for summary judgment or, in the alternative, summary adjudication of causes of action and/or issues, as to the Complaint of plaintiffs, Martha Vincent ("Vincent") and Billy Ridge ("Ridge") (alternatively and collectively, "plaintiffs"):

Request for Judicial Notice

The Court GRANTS plaintiffs' request for judicial notice of documents court records. (Evid. Code, § 452, subd. (d).)

Undisputed Material Facts ("UMF"s) and Additional Material Facts ("AMF"s)

For the purpose of ruling on this motion only, the Court makes the following findings as to the UMFs and AMFs:

The Court finds that the following UMFs are established by the supporting evidence and undisputed (either expressly or actually): 1, 2 (in part: Togetherness Productions, LLC, was not a party to the 12/23/2008 lease; established and undisputed in all other respects), and 3-32.[1]

The Court finds that AMF numbers 1 and 2 are established by the supporting evidence.

The Court finds that AMF numbers 3-5 are not established by the supporting evidence.

The Court declines to rule on the objections stated by plaintiffs in the body of the opposition separate statement and memorandum of points and authorities. These objections are not in the form required by California Rules of Court, rule 3.1354.

Legal Principles Governing Summary Judgment/Adjudication

Summary judgment procedure is well settled: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code of Civ. Proc., § 437c, subd. (a).) A party may also move for "summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty. . . ." (Code of Civ. Proc., § 437c, subd. (f)(1).) "The court must grant the motion if all the papers submitted show that there is no triable issue as to any material fact [citation omitted]-that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law [citations omitted]-and that the moving party is entitled to a judgment as a matter of law [citation omitted]." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855-56, 107 Cal.Rptr.2d 841, 24 P.3d 493, internal quotation marks omitted ("*Aguilar*").) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Id.*, 25 Cal.4th at p. 855, 107 Cal.Rptr.2d 841, 24 P.3d 493.) The court must construe the evidentiary showing, and all reasonable inferences therefrom, in the light most favorable to the opposing party. (*Id.*, 25 Cal.4th at p. 857, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

The Court follows a three-part test in ruling on the motion:

(a) "First, . . . the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Id.*, 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

(b) "Second, . . . the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Ibid.*)

(c) "Third, . . . how the parties moving for and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial." (*Id.*, 25 Cal.4th at p. 851, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

In determining whether a material triable issue exists, the Court must construe the evidence offered by the moving party in support of the motion strictly and the evidence offered in opposition to the motion liberally. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839, 89 Cal.Rptr.2d 540.) Moreover, the Court is not permitted to weigh or assess the credibility of, or resolve conflicts concerning, the evidence offered in support of or opposition to the motion; conflicts in the evidence must be resolved by the trier of fact, not the Court. (Code of Civ. Proc., §437c, subd. (e); *Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1397, fn. 4, 93 Cal.Rptr.2d 763; *AARTS Productions, Inc. v. Aetna Life Ins. Co.* (1986) 179 Cal.App.3d 1061, 1064, 225 Cal.Rptr. 203.)

Ruling on Motion

For the following reasons, the Court GRANTS the motion of Lloyds for summary judgment:

(1) The interpretation of insurance contracts presents a question of law for resolution by the Court. (*Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1115, 90 Cal.Rptr.2d 647, 988 P.2d 568.) Thus, the instant motion is uniquely suited to summary judgment or adjudication, especially since the material facts are undisputed.

(2) It is materially undisputed that the tortious acts underlying the *Christie v. Vincent* litigation (conversion of tenants' personal property by landlord) arose before plaintiffs applied for and Lloyds issued the property damage liability policy at

issue in this action. It is undisputed that plaintiffs were aware of the underlying dispute concerning the personal property damages claimed by the tenants, but they did not disclose these facts to the insurer, Lloyds.

(3) It is elemental that insurance covers losses ". . . arising from a contingent or unknown event." (Ins. Code, § 22.) This principle is known as the "fortuitous loss" doctrine. It is materially undisputed that the "accident" or "occurrence" triggering coverage under the property damage insurance policy in question was not fortuitous at all; it was known by plaintiffs and concealed from Lloyds when the latter entered into the insurance contract at issue. Under these circumstances and as a matter of law, Lloyds is legally justified in denying both a defense and indemnity of plaintiffs under the fortuitous loss doctrine. (See *Chu v. Canadian Indemnity Company* (1990) 224 Cal.App.3d 86, 274 Cal.Rptr. 20; *Compagnie des Bauxites de Guinee v. Insurance Co. of North America* (3rd Cir., 1983) 734 F.2d 369; *Kilroy Industries v. United Pacific Ins. Co.* (C.D. Cal., 1985) 608 F.Supp. 847.)

(4) Accordingly, the Court GRANTS the motion of Lloyds for summary judgment. Lloyds is entitled to judgment on each cause of action as a matter of law.

(5) As a result of the above ruling, the Court declines to reach the motion for summary adjudication as having been rendered moot.

The Court intends to enter JUDGMENT in favor of Lloyds and against plaintiffs. Plaintiffs shall take nothing by their Complaint. The Court intends to award costs of suit to Lloyds in an amount to be determined pursuant to the timely service and filing of cost memorandum in conformity with the Code of Civil Procedure and the Rules of Court.

Counsel for Lloyds shall serve and file a notice of ruling, proposed order, and proposed judgment consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final ruling) may be attached and incorporated into to any such notice and/or proposed order in lieu of copying the same verbatim in the body of the notice and/or proposed order. /n

[1] UMF numbers 33-64 and 65-95 are identical to UMF numbers 1-32. The Court's findings as to UMF numbers 1-32 apply equally to numbers 33-95.