IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RICHARD COURTLAND,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CAUSE NO. EP-24-CV-60-KC**
	§	
STATE FARM LLOYDS,	§	
	§	
Defendant.	§	

ORDER

On this day, the Court considered Defendant's Motion for Summary Judgment ("MSJ"), ECF No. 25, and Plaintiff's Motion to Compel, ECF No. 27. For the reasons set forth below, the MSJ is **GRANTED**, and the Motion to Compel is **DENIED**.

I. BACKGROUND

This case concerns an insurance claim for weather damage to Plaintiffs' home. The essential facts are undisputed.[1] *See* Pl.'s Resp. Proposed Undisputed Facts ("PUF Resp.") (admitting all but one of Defendant's Proposed Undisputed Facts), ECF No. 26-1.

On or about February 26, 2023, Plaintiff reported to Defendant that his property sustained weather damage from a storm.[2] Def.'s Proposed Undisputed Facts ("PUF") ¶ 1, ECF No. 25-1.

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[1] Plaintiff denies paragraph nine of Defendant's PUF, which claims that "State Farm requested a second inspection on or about October 5, 2023." *See* PUF ¶ 9; PUF Resp. ¶ 9. Plaintiff, however, offers no explanation and references no evidence in support of this denial. *See* PUF Resp. 3. In contrast, Defendant provides the Declaration of Holy Lindstrom and Claim Activity File Notes to support its factual assertion that an inspection request was made in October 2023. *See* PUF ¶ 9; Decl. Holy Lindstrom ("Lindstrom Decl.") ¶ 7, ECF No. 25-3; MSJ Ex. B-1 ("Claim Activity Notes"), at 2–4, ECF No. 25-3. To the extent Plaintiff relies on the September 13, 2023, and October 5, 2023, emails sent by his public adjuster to Defendant, neither is inconsistent with Defendant's assertion that it requested, and was denied, an inspection on October 5, 2023. *See* Resp. Ex. D ("Sept. 13, 2023, Email"), ECF No. 26-14; *id.* Ex. F ("Oct. 5, 2023, Email"), ECF No. 26-7. Accordingly, because Plaintiff fails to cite to any evidence demonstrating a dispute as to Defendant's October 2023 request for an inspection, the Court considers it undisputed for purposes of the MSJ. *See* Fed. R. Civ. P. 56(e)(2).

On March 1, 2023, Defendant's representative spoke with Plaintiff to get further information about the damage. *Id.* ¶ 2. Plaintiff reported damage to the exterior of his home during this discussion. *See id.* He did not report any interior damage. *Id.* On March 9, Defendant inspected the property and estimated damage in the amount of $1,035.65, as the replacement cost value. *Id.* ¶¶ 3–4. This estimate fell below the policy's $1,596.00 deductible, and thus no payment was made to Plaintiff. *Id.* ¶¶ 5–7. Defendant explained its damages estimate and why it would not issue payment, given the policy's deductible, in a letter to Plaintiff on March 9. *Id.* ¶ 7.

At some point, Plaintiff hired a public adjuster, and in September 2023, that adjuster submitted a higher damages estimate for the property. *Id.* ¶¶ 8–9; Claim Activity Notes 3–4; Lindstrom Decl. ¶ 7; Sept. 13, 2023, Email. On October 5, 2023, Defendant requested a second inspection, but Plaintiff's public adjuster denied this request and instead demanded appraisal. PUF ¶¶ 8–11; Claim Activity Notes 2–4; Lindstrom Decl. ¶ 7; Oct. 5, 2023, Email. On November 30, Defendant received a letter of representation from Plaintiff's counsel along with another demand for appraisal. *Id.* ¶ 12. On December 5, Defendant responded to the demands for appraisal with another request for an additional inspection. *Id.* ¶ 13. On December 6, Defendant sent further correspondence explaining that it believed appraisal was premature. *Id.* ¶ 14. On January 12, 2024, a second inspection of the property was conducted. *Id.* ¶ 15. Upon completion of this second inspection, Defendant increased its replacement cost value estimate to $1,905.22. *Id.* ¶ 16. After subtracting the policy's $1,596.00 deductible, Defendant issued Plaintiff a $309.22 payment on February 16. *Id.* ¶¶ 17–18. Defendant also issued an additional

[2] The PUF states that the claim was filed on February 26, 2024. PUF ¶ 1. However, this date is logically incongruous, if not impossible, considering the rest of the timeline. Thus, the Court assumes that "2024" reflects a typographical error and the parties meant to agree that the claim was filed on that date in 2023.

payment of $36.94 in interest. *Id.* ¶¶ 19–20. The calculation of this interest was based on the 8.5% Judgment Rate under Section 304.003 of the Texas Finance Code, plus 5% under Section 542.060(c) of the Texas Insurance Code. *Id.* ¶ 22.

On February 22, 2024, Plaintiff filed suit against Defendant, bringing claims for Bad Faith, Breach of Contract, Deceptive Insurance Practices, Late Payment of Claims, Common Law Fraud, Fraud by Nondisclosure, and Fraud in Sale of Insurance Policy. Compl. ¶¶ 44–95, ECF No. 1. About a month later, Defendant demanded appraisal. PUF ¶ 24. Because of the appraisal, the parties filed a joint motion to abate the lawsuit on May 29, 2024. *Id.* ¶ 26.

Defendant's valuation of the damage to Plaintiff's property greatly increased following reappraisal. The appraisers set the amount of loss at $22,987.11 on a replacement cost basis, and $16,159.45 on an actual cash value basis. *Id.* ¶ 28. On October 3, 2024, Defendant issued payment in the amount of $14,254.23, after subtracting depreciation, deductible, code-required shingles, and prior payments. *Id.* ¶ 29. That same day, Defendant issued an interest payment in the amount of $2,915.48. *Id.* ¶ 33. The $2,915.48 interest payment was calculated based on the 8.5% Judgment Rate under Section 304.003 of the Texas Finance Code plus 5% under Section 542.060(c) of the Texas Insurance Code. *Id.* ¶ 36.

In the payment letter, Defendant extended the period for Plaintiff to claim replacement cost benefits of $1,171.46 until September 23, 2026. *Id.* ¶ 30. Defendant also explained that it would release the $5,656.20 for the Building Code required shingles upon proof that the work was completed. *Id.* ¶ 31. As of the time of filing of the MSJ, Plaintiff had not submitted any repair documentation or requested release of the replacement cost benefits. *Id.* ¶ 32.

Plaintiff filed an Amended Complaint, ECF No. 22, on March 3, 2025, now bringing only two claims: (1) breach of contract and (2) fraud. Am. Compl. ¶¶ 39–56. Defendant filed the

MSJ on April 1, seeking summary judgment on both claims. Plaintiff filed a Response, ECF No. 26, and Defendant filed a Reply, ECF No. 30. On April 17, Plaintiff filed the Motion to Compel, to which Defendant filed a Response, ECF No. 31. Plaintiff has not filed a reply in support of his Motion to Compel, and the deadline to do so has long elapsed. *See* W.D. Tex. L.R. CV-7(e)(2).

II. MOTION FOR SUMMARY JUDGMENT

A. Standard

A court must enter summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Weaver v. CCA Indus., Inc.*, 529 F.3d 335, 339 (5th Cir. 2008). "A fact is 'material' if its resolution in favor of one party might affect the outcome of the lawsuit under governing law." *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 326 (5th Cir. 2009) (quoting *Hamilton v. Segue Software, Inc.*, 232 F.3d 473, 477 (5th Cir. 2000) (per curiam)). A dispute about a material fact is genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Ellison v. Software Spectrum, Inc.*, 85 F.3d 187, 189 (5th Cir. 1996).

"[The] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323; *Wallace v. Tex. Tech. Univ.*, 80 F.3d 1042, 1046–47 (5th Cir. 1996). To show the existence of a genuine dispute, the nonmoving party must support its position with citations to "particular parts of materials in the record, including depositions, documents, electronically

stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials[,]" or show "that the materials cited [by the movant] do not establish the absence . . . of a genuine dispute, or that [the moving party] cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c).

The court resolves factual controversies in favor of the nonmoving party, but factual controversies require more than "conclusory allegations," "unsubstantiated assertions," or "a 'scintilla' of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). Further, when reviewing the evidence, the court must draw all reasonable inferences in favor of the nonmoving party and may not make credibility determinations or weigh evidence. *Man Roland, Inc. v. Kreitz Motor Express, Inc.*, 438 F.3d 476, 478–79 (5th Cir. 2006) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)). Thus, the ultimate inquiry in a summary judgment motion is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251–52.

B. Analysis

1. Breach of Contract

The breach of contract claim turns on Defendant's alleged breach of the appraisal clause in the parties' contract—that is, Defendant's failure to conduct an appraisal when requested in the fall of 2023. Am. Compl. ¶¶ 39–47. Defendant argues that it is entitled to summary judgment on Plaintiff's breach of contract claim because the condition precedent necessary to demand appraisal had not yet been satisfied. MSJ ¶¶ 20–22. Plaintiff responds that the appraisal demand was not premature because the appraisal clause authorizes either party to demand

appraisal upon a disagreement as to the amount of loss, and by fall 2023, the parties already disagreed regarding the amount of loss to the roof. Resp. ¶ 13.

"A breach of contract claim under Texas law requires proof of four elements: (1) the existence of a valid contract, (2) plaintiff's performance of duties under the contract, (3) defendants' breach of the contract, and (4) damages to plaintiff resulting from the breach." *Romo v. Waste Connections US, Inc.*, No. 18-cv-570, 2019 WL 3769108, at *5 (N.D. Tex. Aug. 9, 2019) (citation omitted). Defendant's argument goes to the third element. If there was no requirement to conduct an appraisal in the fall of 2023, then there was no breach.

"Texas courts generally interpret insurance policies under the same rules of construction that apply to other contracts, reading all parts of an insurance policy together and viewing the policy in its entirety to give effect to the written expression of the parties' intent." *Thompson v. Geico Ins. Agency, Inc*., 527 S.W.3d 641, 644–55 (Tex. App. 2017). The "primary objective" in contract interpretation "is to ascertain and give effect to the parties' intent as expressed in the instrument." *James Constr. Grp., LLC v. Westlake Chem. Corp.*, 650 S.W.3d 392, 403 (Tex. 2022) (quoting *URI, Inc. v. Kleberg County*, 543 S.W.3d 755, 763 (Tex. 2018)). To do so, courts must "attempt to give effect to all contract provisions so that none will be rendered meaningless." *Kelley-Coppedge, Inc. v. Highlands Ins. Co.*, 980 S.W.2d 462, 464 (Tex. 1998) (citation omitted). "Contract terms cannot be viewed in isolation; each provision must be considered in the context of the contract as a whole." *Austin Tr. Co. v. Houren*, 664 S.W.3d 35, 42 (Tex. 2023) (citation omitted).

Within that framework, to create a condition precedent to performance within a contract, Texas law typically requires that "a term such as 'if', 'provided that', 'on condition that', or

some similar phrase of conditional language" be included. *Criswell v. Eur. Crossroads Shopping Ctr., Ltd.*, 792 S.W.2d 945, 948 (Tex. 1990) (citation omitted).

Plaintiff and Defendant debate whether the "Conditions" provision under "Section I" of the insurance policy creates an additional condition for the right to invoke appraisal. MSJ ¶¶ 22–24; Resp ¶ 13. Under "Conditions," the appraisal provision states, "If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal."[3] MSJ ¶ 22 (emphasis omitted). Standing alone, this sentence could plausibly be read to create an immediate right to appraisal upon disagreement related to the amount of loss.

However, in the next few sentences within this same appraisal provision, the right to demand appraisal is conditioned upon Plaintiff complying with specific duties: "You must comply with SECTION I – CONDITIONS, Your Duties After Loss before making a demand for appraisal." *Id.* (emphasis omitted). This provision uses specific, mandatory language in stating that certain duties *must* be complied with before Plaintiff has a right to demand appraisal. Thus, this provision creates a condition precedent to the right to invoke appraisal. *See City of Madisonville v. Sims*, 620 S.W.3d 375, 379 (Tex. 2020) ("The term 'must' creates a condition precedent."). In other words, the right to demand appraisal is conditioned on Plaintiff first executing duties under "Your Duties After Loss."

In turn, "Your Duties After Loss" states, "After a loss to which this insurance may apply, you must cooperate with us in the investigation of the claim and also see that the following duties are performed: . . . (d) as often as we reasonably require: (1) exhibit the damaged property." MSJ ¶ 22 (emphasis omitted). Thus, one of Plaintiff's duties after loss is to exhibit his damaged property as often as Defendant reasonably requires. In this case, Plaintiff exhibited

[3] In the policy provisions at issue in this case, "you" refers to Plaintiff and "us" refers to Defendant.

his exterior damage to Defendant on its first request, but did not report or exhibit any interior damage. *See* PUF ¶¶ 2–3. When Plaintiff then claimed interior damage, it was reasonable for Defendant to request a second inspection, because Plaintiff had not yet exhibited the full extent of his claimed damages to allow Defendant to properly evaluate the claim. Plaintiff would not allow Defendant to perform a second inspection but instead demanded immediate appraisal. PUF ¶¶ 9–10. Thus, Plaintiff's demand for appraisal occurred before he satisfied the condition precedent of exhibiting the damage as often as Defendant reasonably required.

This interpretation is supported by the decision in *Grotts v. State Farm Lloyds*, No. 22-cv-2806, 2024 WL 5198837 (S.D. Tex. Mar. 28, 2024). *Grotts* involved a different insured's contract dispute with this same Defendant and dealt with the same contract language and the same disagreement as to whether Plaintiff complied with the "Your Duties After Loss" condition before demanding appraisal. *Grotts*, 2024 WL 5198837, at *1. The *Grotts* court decided that the duty to "exhibit the damaged property" "as often as [Defendant] reasonably require[s]," created a condition precedent to the insured's right to appraisal. *Id.* at *3. The *Grotts* plaintiff failed to disclose the full scope of damage to his house upon Defendant's first inspection, denied Defendant's additional requests for inspection, and then demanded appraisal before Defendant investigated the unexhibited damages. *Id.* at *1–2. Because Defendant was denied the ability to inspect the full scope of the alleged damages, the plaintiff "failed to satisfy the conditions precedent to demand appraisal under the policy." *Id.* at *2. The Court finds *Grotts* to be persuasively reasoned and helpful to the analysis here.

Like the plaintiff in *Grotts*, Plaintiff similarly failed to disclose the full scope of his damages to Defendant upon first inspection, and Plaintiff demanded appraisal before Defendant investigated the unexhibited damages. PUF ¶¶ 9–11. Therefore, as in *Grotts*, Plaintiff failed to

satisfy the condition precedent of exhibiting the damages as often as Defendant reasonably required. By failing to satisfy a condition precedent to appraisal, Plaintiff had no right to an appraisal at the time it was demanded. Accordingly, on the undisputed facts, Defendant did not breach the contract, and Defendant is entitled to summary judgment on Plaintiff's breach of contract claim.

2. Fraud

As to Plaintiff's fraud claim, Defendant argues that its issuance and Plaintiff's acceptance of the appraisal award with interest bars that claim because there is no independent injury. MSJ ¶ 30. Defendant also argues that it made no actionable misrepresentations, and even if it did, Plaintiff did not rely on them and was not harmed by them. *Id.* In the Response, Plaintiff briefly reiterates his fraud theory as alleged in the Amended Complaint. Resp. ¶ 16. Plaintiff does not refer to any evidence in support of those allegations, nor does he engage with the caselaw cited by Defendant or reference any legal authorities of his own. *See id.* Plaintiff describes his fraud claim as predicated on the allegation that "prior to [Defendant]'s sale of the policy," it "created a fraudulent claims handling program that would apply to any claim that arose under the policy." *Id.*

The elements of fraud under Texas law are "(1) a material misrepresentation; (2) that was either known to be false when made or made without knowledge of its truth; (3) which was intended to induce reliance; (4) which was relied upon; and (5) which caused injury." *Vine v. PLS Fin. Servs., Inc.*, No. 3:16-cv-31-PRM, 2018 WL 456031, at *11 (W.D. Tex. Jan. 16, 2018) (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001)). "In addition to affirmative misrepresentations, an omission constitutes a misrepresentation if [a defendant] fail[s] to disclose

'a material fact in light of a duty to disclose.'" *Id.* (quoting *Smith v. BCE Inc.*, 225 F. App'x 212, 218 (5th Cir. 2007)).

The crux of Plaintiff's fraud theory is that Defendant failed to disclose that his claims would be subject to the "ACE claim handling system," under which Plaintiff "would not be allowed to receive payment on any covered claim [he] would file under the policy." Am. Compl. ¶¶ 55, 57(b). In other words, the alleged misrepresentation is the omission of information about the ACE claim handling system.[4] And this omission is allegedly material because it "caused plaintiff to purchase a worthless insurance policy." *Id.* ¶ 37.

But the undisputed evidence shows that Defendant paid and Plaintiff accepted an award of $17,515.87, across four payments, that covered all of the damage to Plaintiff's property plus interest. PUF ¶¶ 18–19, 29, 33; PUF Resp. ¶¶ 18–19, 29, 33. Plaintiff's fraud theory thus fails on its own terms. The policy was not "worthless." *See* Am. Compl. ¶ 37. Quite the opposite: it fully compensated Plaintiff for his loss. *Cf. Provident Am. Ins. Co. v. Castañeda*, 988 S.W.2d 189, 201 (Tex. 1998) ("Of course, if the policy did cover her claim, she was entitled to recover policy benefits, and the policy was not 'valueless.'"). Unlike other home insurance fraud claims that have proceeded past summary judgment, Plaintiff has not submitted any evidence of any damages that should have been, but were not, covered by the appraisal award. *See, e.g.*, *Lee v.*

[4] Plaintiff alludes to other affirmative misrepresentations, including promises of "fair treatment" and "prompt payment." Am. Compl. ¶ 14. But these vague assurances are textbook puffery, that is, sales talk and opinions not intended by sellers as concrete representations of fact. *See, e.g.*, *Wesdem, LLC v. Ill. Tool Works, Inc.*, No. 3:20-cv-987-OLG, 2021 WL 4053414, at *5 n.3 (W.D. Tex. Mar. 12, 2021) (finding promise to treat "distributors with loyalty, honestly, and as family members" vague and indefinite and thus insufficient to support a fraud claim); *McNeely v. Salado Crossing Holding, L.P.*, No. 16-cv-678, 2017 WL 2561551, at *6 (Tex. App. June 14, 2017) (holding statement that company tries to resolve complaints quickly is puffery); *cf. Deseret Tr. Co. v. Unique Inv. Corp.*, No. 18-cv-1180, 2019 WL 7938223, at *6 (C.D. Cal. Sept. 10, 2019) (finding statement that plaintiff would be "treated fairly" insufficient by itself to support a fraud claim under California law). Such statements are immaterial as a matter of law and cannot support a fraud claim. *McNeely*, 2017 WL 2561551, at *6.

Liberty Ins. Corp., No. 19-cv-321, 2021 WL 4502323, at *14–15 (N.D. Tex. Sept. 30, 2021); *cf. Royal Globe Ins. Co. v. Bar Consultants, Inc.*, 577 S.W.2d 688, 694 (Tex. 1979) ("The injury . . . was that [the plaintiff] believed it was covered by a policy of insurance from any loss caused by vandalism when it was not so covered."). For instance, in *Lee*, the plaintiff was allegedly tricked into buying insurance on the basis that he believed it would cover expenses associated with hiring a general contractor. 2021 WL 4502323, at *14. The Court denied summary judgment as to the plaintiff's fraudulent inducement claim, even though he had been paid an appraisal award, because that award did not include general contractor overhead and profit. *Id.* at *14–15. Here, by contrast, there is no allegation or evidence of any expense that Plaintiff believed the insurance would pay for that was not covered by the appraisal award he ultimately received. Therefore, there can be no fraud claim.

Plaintiff resists this conclusion by arguing that "[b]ecause [he] had to hire legal counsel before he could have his claim appraised, [P]laintiff became legally obligated to pay his attorney out of the proceeds of his appraisal award." Am. Compl. ¶ 12; *see also id.* ¶¶ 45, 47. The Court assumes, without finding, that attorneys' fees incurred in this dispute could constitute cognizable damages for a fraud claim. *But see In re Nalle Plastics Fam. Ltd. P'ship*, 406 S.W.3d 168, 173 (Tex. 2013) ("While attorney's fees for the prosecution or defense of a claim may be compensatory in that they help make a claimant whole, they are not, and have never been, damages."); *Landmark Dividend LLC v. Hickory Pass L.P.*, No. 16-cv-2, 2017 WL 5560082, at *4 (Tex. App. Nov. 17, 2017) (describing "long-standing precedent that distinguishes attorney's fees from damages").

Even so, the evidence does not support Plaintiff's allegations. As discussed above in greater detail, the undisputed evidence shows that the delays in the appraisal process were

wholly attributable to Plaintiff's own failure to satisfy the conditions precedent to appraisal under the contract. *See Grotts*, 2024 WL 5198837, at *2. Therefore, even assuming that Plaintiff' attorneys' fees are cognizable damages, and assuming that Defendant's failure to disclose its claim handling system was an actionable omission, there is no evidence that such an omission caused Plaintiff to incur those fees. When Plaintiff hired his attorney and filed this lawsuit, he still had not exhibited all of the damage to his property, as required by the parties' contract. *See* PUF ¶¶ 8–23. Throughout that time, Defendant was within its rights to deny appraisal. *See Grotts*, 2024 WL 5198837, at *2. In sum, there is not even a scintilla of evidence to connect the delay in appraisal or Plaintiff's decision to hire an attorney and file this lawsuit to anything other than Plaintiff's own failure to satisfy the conditions precedent to appraisal under the parties' contract. Without causation, Plaintiff's fraud claim cannot succeed. *See Vine*, 2018 WL 456031, at *11. Accordingly, Defendant is entitled to summary judgment on the fraud claim.

III. MOTION TO COMPEL

Turning to Plaintiff's Motion to Compel, Plaintiff contends that discovery of documents related to the ACE claim handling system is relevant to his claims because they provide evidence that Defendant never intended to pay Plaintiff what he was owed for the damage to his home unless he hired an attorney. Mot. Compel ¶¶ 15–17. However, none of this evidence would alter the analysis. Simply put, the Court can assume that the ACE documents would show that Defendant had some cynical or nefarious intent to avoid satisfying its obligations to its insureds until they hired attorneys. But despite any such general intent by Defendant to defraud its customers, in this particular case, the undisputed evidence shows that Plaintiff was ultimately paid everything he was owed, and any delay in obtaining that payment was wholly attributable to

Plaintiff's failure to comply with his obligations under the parties' contract. Therefore, the Motion to Compel is denied.

IV. CONCLUSION

For the foregoing reasons, Defendant's MSJ, ECF No. 25, is **GRANTED**. Plaintiff's claims for breach of contract and fraud are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel, ECF No. 27, is **DENIED**.

SO ORDERED.

SIGNED this 30th day of March, 2026.

KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE