Prepared by the Court

	SUPERIOR COURT OF NEW JERSEY
UNITED STATES FIRE INSURANCE COMPANY	LAW DIVISION
Plaintiff,	
v.	OCEAN COUNTY
MACHANE OF RICHMOND, LLC,	CIVIL ACTION
Defendant.	
	DOCKET NO. OCN-L-1465-20
MACHANE OF RICHMOND, LLC,	
Defendant/Third-Party Plaintiff,	
v.	
GROSS & CO., LLC,	
Third-Party Defendant.	

OPINION

This action comes before this court on Motion for Summary Judgment filed by Plaintiff, United States Fire Insurance Company, seeking rescission of an insurance policy issued to Defendant, Machane of Richmond, LLC ("Machane"). The Court briefly summarizes the facts pertinent to this Motion.

Machane operated a summer camp in Richmond, Virginia during the month of August 2019. Machane offered participants transportation to Richmond from both Lakewood, New

Jersey and Brooklyn, New York. On July 9, 2019, Machane contacted Hertz Entertainment Services ("Hertz"), a vehicle rental company, requesting "4 fifteen seater Transit vans" for the purpose of transporting campers to and from Richmond, Virginia. Hertz responded to the inquiry on July 10, 2019 by providing reservation numbers for four 15-passengaer vans.

Machane contacted Gross & Co LLC ("Gross"), to procure insurance coverage for the 2019 summer camp, including Non-Owned/Hired Auto coverage. On July 30, 2019, Gross submitted an application for insurance on behalf of Machane to FL Dean, the national program administrator for U.S. Fire's Sport and Entertainment Insurance Program. The application requested coverage of $100,000 in Non-Owned/Hired Auto coverage.

FL Dean advised Gross that in order to obtain $100,000 in Non-Owned/Hired Auto, Machane must complete a Non-Owned/Hired Auto Supplemental Form. The Supplemental Form was sent to Machane and Machane completed to the form, which consisted of six questions with subparts.

Question Number 4, which appears under a "Hired Auto Liability" subheading, read as follows:

> 4. Do you hire or rent vehicles during your fair/festival/event? □ Yes □ No If yes, please describe vehicle types, estimated number, duration and usage.
>
> _____
>
> _____
>
> If yes to #4, are any of these vehicles 12 or 15-passenger vans?
>
> □ Yes (How many?)
>
> □ No

Machane responded to the first part of #4 "no" and the second part "N/A". Machane did not answer the final part of question #4 pertaining to 12 or 15-passenger vans. Relying on the information provided in the Supplemental Form, FL Dean provided coverage pursuant to U.S. Fire Insurance Company's underwriting guidelines. The underwriting guidelines provide that Non-Owned/Hired Auto coverage is available at the following limits: $150,000, $500,000 or $1,000,000. The guidelines explicitly state that "12 or 15 passenger vans are ineligible for this program."

On August 6, 2019, Gross provided Machane with a price quotation which included Accident, General Liability, and Hired/Non-Owned Auto coverages. The price quotation explicitly stated that 12 and 15+ passenger vans are excluded from the coverage. On that same day, Gross requested that FL Dean bind coverage pursuant to the price quotation.

U.S. Fire issued certificate number 972303011, to Machane as a named insured member under master policy number SRPGAPML 101 0719, which was issued to Sports and Recreation Providers Association Purchasing Group (together, the "U.S. Fire Policy").The U.S. Fire Policy provides Commercial General Liability coverage.

On August 15, 2019, one of the 15-passenager vans rented by Machane was involved in a single-car accident in Henrico, North Carolina. Multiple passengers brought suit against Machane for alleged personal injuries as a result of the accident. Subsequently, Plaintiff, U.S. Fire Insurance Co., commenced this present action in the Law Division to obtain a declaration that the U.S. Fire Policy may be rescinded.

Plaintiff has filed a motion for summary judgment seeking policy recissions, arguing that the U.S. Fire policy should be declared void *ab initio* due to Machane's material misrepresentations regarding rental of 15-passenager vans from the 2019 summer camp when applying for the U.S. Fire Policy.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). This standard requires the Court to consider the evidence presented "in the light most favorable to the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). The Court must determine whether a rational factfinder could possibly resolve the alleged dispute in favor of the non-moving party. Ibid. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). Because the grant of summary judgment serves as a final disposition of the issues contemplated by the order, courts generally "seek to afford 'every litigant who has a bona fide cause of action or defense the opportunity for full exposure of his case.'" Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 193 (1988).

I. *Recission*

It is well settled in New Jersey that equitable fraud provides a basis for a party to rescind a contract. Jewish Ctr. Of Sussex Cty. v. Wahle, 86 N.J. 619, 432 A.2d 521 (1981). Recission voids the contract *ab initio*, meaning that it is considered "null from the beginning" and treated as if it does not exist for any purpose." First Am. Title Ins. Co. v. Lawson, 177 N.J. 125, 136 (2003). "In general, equitable fraud requires proof of (1) a material misrepresentation of a presently existing or past fact; (2) the maker's intent that the other party rely on it; and (3) detrimental reliance by the other party." Liebling v. Garden State Indem., 337 N.J. Super. 447, 453, 767 A.2d 424 (2001).

New Jersey courts have found that rescission of an insurance policy is appropriate "if the insured's application for coverage included a misrepresentation of fact that materially affects the insurer's decision to enter the contract, the estimation of the risk or the rate of the premium." Chen v. Vigilant Ins. Co., 2009 WL 2341444 at *3 (N.J. Super. Ct. App. Div. July 31, 2009); see also Lawson, 177 N.J. 125, 135; Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 637-39 (1995).

A misrepresentation on an application for insurance is considered to be "material" if it "naturally and reasonably influenced the judgment of the underwriter in making the contract at all, or in estimating the degree or character of the risk, or in fixing the rate of premiums." Mass. Mutual Ins. Co. v. Manzo, 122 N.J. 104, 115 (1991).

To establish a claim for rescission based on material misrepresentations in a policy application, an insurer needs to prove equitable fraud, but not legal fraud. See Ledley, 138 N.J. Where an objective question is posed, "[e]ven an innocent misrepresentation can constitute equitable fraud justifying rescission." Ledley, 138 N.J. at 635. "Objective questions call for information within the applicant's knowledge [.]" Id. at 636. "Examples of subjective information include when an insurer asks an insured to indicate a belief about the status of his or her health [.]" Lawson, 177 N.J. 125, 137.

In the present matter the court finds that the questions on the Supplemental Form asking whether Machane would use rental vehicles, and whether it would use 12-15 passenger vans during the time of the policy are objective questions. In response to the objective questions, Machane indicated that it did not intend to use rental vehicles nor 12-15 passenger vans. The Court also finds that whether Machane intended to defraud U.S. Fire is irrelevant because where an objective question is posed, "[e]ven an innocent misrepresentation can constitute equitable fraud justifying rescission." Ledley, 138 N.J. at 635.

The court finds that prior to answering the Supplemental Form, in late July of 2019, Machane contacted Hertz Entertainment Services ("Hertz"), a vehicle rental company, requesting "4 fifteen seater Transit vans" for the purpose of transporting campers. Therefore, Machane knew at the time it completed the Supplemental Form that it intended to use both rental vehicles and 12-15 passenger vans. Therefore, Machane misrepresented these presently known facts on the Supplemental Form provided to U.S. Fire.

U.S. Fire asserts that it relied on the statements made on the Supplemental Form when issuing the U.S. Fire Policy. U.S. Fire specifically sought this information from Machane because U.S. Fire's underwriting guidelines provide that 12 to 15 passenger vans are ineligible for Hired/Non-Owned Auto coverage. Therefore, U.S. Fire would not have issued Non-Owned/Hired Auto coverage to Machane in the amount of $1 million if it had known that Machane would be using 15-passenger vans in connection with the camp.

Under these circumstances, the court finds that recission of the insurance policy issued by U.S. Fire is the appropriate remedy. Machane knew that it was utilizing rental vans in the form of 12-15 passenger vans at the time it filled out the Supplemental Form and U.S. Fire detrimentally relied on this information when issuing the insurance policy. Therefore, the Motion for Summary Judgment seeking recission of the U.S. Fire Insurance policy is Granted.

/s/ Craig L. Wellerson

CRAIG L. WELLERSON, P.J.Cv.