

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRED D. GEE, on behalf of himself and all other similarly situated individuals,)	
)	
Plaintiff,)	
)	No. 11-cv-250
v.)	
)	Judge Sharon Johnson Coleman
STATE FARM FIRE AND CASUALTY COMPANY,)	
)	
Defendant.)	

ORDER

Plaintiff claims that defendant breached the payment obligations of a homeowner’s insurance policy by making an improperly large deduction for depreciation in paying his claim for lost property. Defendant seeks summary judgment, and for the reasons explained below, its motion is granted.

Background

Defendant issued to plaintiff a homeowner’s insurance policy that reimbursed plaintiff for the replacement cost of covered personal property losses. The policy obliged defendant to pay plaintiff “the cost to repair or replace less depreciation” for lost property that he did not replace. The parties agree that plaintiff suffered losses of covered property that he decided not to replace. They also agree that, had he replaced the property, “the cost to repair or replace” would have included the price of purchase or repair plus sales tax.

For the property items that plaintiff did not repair or replace, defendant used an estimated total replacement price that included sales tax, then reduced that total by a percentage that varied with the age of the lost item. In using a single percentage reduction figure, defendant's calculation also reduced the sales tax component that had been included in the replacement cost total. Plaintiff contends that the policy's "depreciation" term contemplates only a reduction for items whose value diminishes with age, and that sales tax is excluded from that category. Accordingly, plaintiff contends that "cost to repair or replace less depreciation" should have been calculated by including the amount of sales tax that would have been applicable to an item's full replacement cost, plus an amount that reflected the item's value, accounting for depreciation due to age. Plaintiff alleges that including sales tax in the depreciation reduction resulted in less compensation than the policy required, and that this compensation deficiency was a breach of contract. He seeks to recover the difference between the reduced sales tax amounts he was paid and the full sales tax amounts that would have been paid for expenditures of full replacement costs.

Analysis

The parties agree that interpretation of the policy is governed by Illinois law. Interpretation of an insurance policy is a question of law properly decided on a motion for summary judgment. *BASF AG v. Great American Assurance Co.*, 522 F.3d 813, 818-19 (7th Cir. 2008). The primary objective in interpretation of an insurance policy under Illinois law is to determine and give effect to the intent of the parties. *Rohe v. CNA Insurance Co.*, 312 Ill. App. 3d 123, 127 (2000).

The policy does not define the term “depreciation,” but a term is not considered ambiguous merely because it is not defined in a contract. *Lapham-Hickey Steel Corp. v. Protection Mutual Insurance Co.*, 166 Ill. 2d 520, 529 (1995). Plaintiff argues that Illinois law limits the term to the decrease in the value of property based on its age, physical condition, and other similar factors, and cites *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 281 (2009), as support for this argument.

This court does not read *Carey* so broadly. The policy term at issue in *Carey* was “actual cash value,” not “depreciation.” 391 Ill. App. 3d at 279-80. The *Carey* court vacated a trial award for plaintiff and remanded for a damages retrial because the plaintiff presented only replacement cost evidence at trial rather than evidence of the actual cash value required by the policy. 391 Ill. App. 3d at 282. Although the *Carey* court did recite the dictionary definition of “depreciation” noted by plaintiff, that recitation was in the course of a general description of the depreciation concept and did not purport to establish the meaning of the term under Illinois law. The court made no ruling on the elements to be included in a calculation of depreciation and did not address the inclusion of sales tax in either a replacement cost total or a depreciation reduction calculation. No Illinois precedent cited by plaintiff addresses the distinctions at issue here.

Where standard policy terms acquire an established legal meaning, they will be interpreted in accordance with that meaning. *Ace American Insurance Co. v. RC2 Corporation, Inc.*, 600 F.3d 763, 767 (7th Cir. 2010). Although the parties have identified no Illinois precedent addressing the depreciation calculation at the center of this dispute, the court notes that other jurisdictions defining “repair or replacement costs less depreciation” have interpreted the term to include sales tax within the permitted depreciation reduction figure when they are also

included in the original “replacement cost” total. *Tolar v. Allstate Texas Lloyd’s Co.*, 772 F.Supp.2d 825, 831-32 (N.D. Tex. 2011).

This interpretation is consistent with the aim of the policy in this case, which the parties agree is to place the property owner in a financial position equivalent to that he would have occupied had his loss not occurred. If the property owner elects to replace his property, compensation for sales tax paid in the acquisition ensures that he suffers no loss from the tax imposed on the transaction. If he does not replace the property, and is instead considered to be made whole by payment of a reduced amount, he does not need the sales tax he would have paid on a higher amount to offset his costs. Indeed, reimbursement of sales tax he would have paid on a higher full replacement value would give plaintiff more than the amount necessary to make him whole.

Plaintiff argues that sales tax does not decrease in value due to age, and thus should be excluded from the depreciation calculation. However, sales tax, since it is generally calculated on a percentage basis, does decrease along with a decrease in the value of the taxed transaction. Other percentage-based elements included in the cost total for purposes of insurance policy “replacement costs less depreciation” provisions have been held to be properly included in the depreciation reduction as well. See *Goff v. State Farm Florida Insurance Co.*, 999 So.2d 684, 689-90 (Fla. App. 2008). Plaintiff identifies no precedent adopting his interpretation of a similar provision, and this court’s research has revealed none.

The court finds that defendant’s application of its depreciation reduction to sales tax along with the other components of the replacement cost calculation is consistent with the clear intent of the policy and with the established meaning evidenced by interpretations of similar

terms. The court further finds that the contrary interpretation advocated by plaintiff would produce a result inconsistent with this apparent intent and established meaning. The court accordingly concludes that the policy cannot be reasonably be interpreted in accordance with plaintiff's complaint.

Conclusion

For the foregoing reasons, defendant's motion [101] for summary judgment is granted.
Civil case terminated.

So ordered.

September 23, 2013

A handwritten signature in black ink, appearing to read "Sharon Johnson Coleman", written over a horizontal line.

Sharon Johnson Coleman
District Judge