UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2864

SUNSHINE SHOPPING CENTER, INC., d/b/a Mall of St. Croix; YAHYA YUSUF; HATIM YUSUF; SAFI YUSUF,
Appellants

v.

TRAVELERS EXCESS AND SURPLUS LINES COMPANY

On Appeal from the District Court, D.V.I.
Judge Timothy J. Savage, No. 1:24-cv-00026

Before: RESTREPO, MONTGOMERY-REEVES, and MCKEE, *Circuit Judges*
Submitted: Sept. 9, 2026; Filed: Sept. 21, 2026

NONPRECEDENTIAL OPINION[*]

MONTGOMERY-REEVES, *Circuit Judge*.

Sunshine Shopping Center, Inc., and its former directors and officers Yahya Yusuf, Hatim Yusuf, and Safi Yusuf (collectively "Sunshine") sued Travelers Excess and Surplus Lines Company ("Travelers") for breach of contract. The District Court granted summary judgment in favor of Travelers. We will affirm.

I. BACKGROUND

In 2023, Travelers issued Sunshine an insurance policy covering director and officer liability (the "Policy"). The Policy covers (with certain, unrelated exceptions) "Loss . . .

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[*]This is not an opinion of the full Court and, under 3d Cir. I.O.P. 5.7, is not binding precedent.

from any Claim," and defines "Claim" as eight specific actions.[1] Appendix (hereinafter "App. __") 88–89. The Policy also defines "Security Holder Derivative Claim" as "any Claim brought on behalf of, or in the name or right of [Sunshine] by one or more security holders of [Sunshine] in their capacity(ies) as such," if "brought and maintained without the assistance, participation or solicitation of any member of the board of directors, officer, member of the board of managers, or . . . equivalent thereof." App. 90. But the Policy bars coverage of "Loss for any Claim brought or maintained by or on behalf of, or with the assistance, participation, or solicitation of any person or entity that owns or did own more than 5% of the Named Insured" in the "Ownership Percentage Exclusion" (the "OPE"). App. 149 (emphases omitted).

During the Policy's effective period, three security holders, each owning more than five percent of Sunshine's shares, filed a derivative suit against Sunshine (the "Security Holder Suit"). Travelers denied coverage for the Security Holder Suit, citing the OPE. Sunshine then brought a diversity action in federal court alleging breach of contract

[1] "Loss means Defense Expenses and money which an Insured is legally obligated to pay as a result of a Claim . . . ." App. 89 (emphases omitted). "Claim" means, in relevant part: (1) "a written demand, other than a Security Holder Derivative Demand, for monetary damages or non-monetary relief"; (2) "a civil proceeding"; (3) "a criminal proceeding"; (4) "a formal administrative or regulatory proceeding"; (5) "an arbitration, mediation or similar alternative dispute resolution proceeding" subject to certain limitations; (6) "a Security Holder Derivative Demand solely with respect to Investigation Expenses" subject to expense limitations; (7) "the service of a subpoena on an Insured Person identified by name if served upon such person pursuant to a formal administrative or regulatory proceeding"; or (8) "a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding" brought "against an Insured for a Wrongful Act" and subject to certain limitations. App. 88–89 (emphases omitted).

under Virgin Islands law. The District Court granted summary judgment in favor of Travelers, holding that the OPE unambiguously barred coverage for the Security Holder Suit and that interpretation did not render the Policy's coverage illusory. Sunshine timely appealed, challenging both holdings.

II. ANALYSIS[2]

Under Virgin Islands law, an insurance policy is "construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy." V.I. CODE ANN. tit. 22, § 846. We construe an unambiguous policy "according to its plain language." *James v. Guardian Ins. Co.*, 69 V.I. 26, 34 (Super. Ct. 2015) (citation omitted). Policy terms are ambiguous when they are subject to multiple reasonable interpretations. *Thomas v. V.I. Bd. of Land Use Appeals*, 60 V.I. 579, 595 (2014). But we "read policy provisions to avoid ambiguities, if possible, and not torture the language to create them." *James*, 69 V.I. at 33 (citation omitted).

Sunshine strains to find ambiguity, arguing that the District Court's interpretation of the OPE categorically bars coverage of all "Security Holder Derivative Claims," a specifically anticipated coverage category. According to Sunshine, the OPE *actually* bars direct, not derivative, claims brought by or on behalf of security holders. But the OPE plainly bars coverage for "any Claim brought by or maintained by or on behalf of, or with the

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[2] The District Court had jurisdiction under 28 U.S.C. § 1332. We have jurisdiction under 28 U.S.C. § 1291. We review the District Court's interpretation of the insurance policy de novo. *Alexander v. Nat'l Fire Ins. of Hartford*, 454 F.3d 214, 219 n.4 (3d Cir. 2006).

assistance, participation, or solicitation of any person or entity that owns or did own more than 5% of the Named Insured." App. 149. It makes no distinction between direct and derivative claims. In fact, it captures claims in which security holders participate in any number of ways. So the OPE is not ambiguous, and the Security Holder Suit clearly meets the OPE's criteria—it is a claim brought by three of Sunshine's security holders who each own more than five percent of Sunshine's shares.

But even where a policy is unambiguous, we will not enforce its terms if doing so renders a bargained-for promise illusory. *Agueda v. Marcano*, 79 V.I. 533, 545–46 (2024). A promise is illusory where its performance is "entirely optional." Restatement (Second) of Contracts § 77 cmt. a (A.L.I. 1981).[3] Sunshine argues the District Court's interpretation of the OPE renders the Policy illusory because it "converts" promised coverage of Security Holder Derivative Claims "into a nullity." Opening Br. 22. But the Policy's coverage is not entirely optional because the Policy plainly covers claims by a security holder who owns less than and never owned more than five percent of Sunshine, as well as a host of other claims. So applying the OPE to bar coverage of the Security Holder Suit does not make the Policy's coverage illusory.

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The District Court properly concluded Travelers is entitled to summary judgment because the OPE unambiguously barred coverage for the Security Holder Suit and that

[3] V.I. CODE ANN. tit. 1, § 4 (mandating that, in the absence of local law to the contrary, the Restatements govern in Virgin Islands courts).

interpretation did not render the Policy's coverage illusory. So we will AFFIRM.