[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10999
Non-Argument Calendar

D.C. Docket No. 1:16-cv-04236-WMR

LANCE TOLAND,

Plaintiff-Appellant,

versus

THE PHOENIX INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(March 30, 2021)

Before MARTIN, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

This suit arises from a dispute over insurance proceeds Phoenix Insurance Company ("Phoenix") paid to its policy holder, restaurant group Here to Serve, Inc., ("H2S") without including Lance Toland, the group's financial backer, as a payee on the checks. As a result of Phoenix's failure to include Toland as a payee on the checks, Toland sued Phoenix asserting claims for conversion, negligence, a constructive trust, attorney's fees, and punitive damages. The district court ultimately granted summary judgment to Phoenix on all of Toland's claims, concluding that Toland failed to produce any evidence that established that he possessed a security interest in the insurance proceeds at issue. On appeal, Toland argues that (1) the district court failed to provide him adequate notice and time to respond before granting summary judgment, in violation of Federal Rule of Civil Procedure 56; (2) no security interest is necessary to support Toland's claims; and (3) he in fact possesses a security interest and the case should have been permitted to proceed to trial. After careful review, we affirm.

I. BACKGROUND

A. Factual Background

On January 8, 2015, restaurant group Here to Serve, Inc., ("H2S"), executed a promissory note with Georgia Commerce Bank in the amount of $1,500,000 (the "Note"). H2S secured this debt by having one of its holding companies, Easy as Pie Productions, give Georgia Commerce Bank a security interest via a deed to

secure debt (the "DSD") in the real property, personal property, fixtures, equipment, and other collateral at Crust Bakery, located at 2137 Manchester Street in Atlanta, Georgia.[1] The Note and the DSD may hereinafter be referred to as the "Loan Documents."

The operative portion of the DSD provides that:

> all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances, and appurtenances (hereinafter referred to collectively as the "Premises"):
>
> (a) All those tracts, pieces or parcels of land more particularly described in **Exhibit A**[2] attached hereto and by this reference made a part hereof (hereinafter collectively referred to as the "Land").
>
> (b) All buildings, structures and improvements of every nature whatsoever now or hereafter **situated on the Land** . . . and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles, building supplies and materials . . . now or hereafter owned by Borrower and **located in or on the Premises**[3] . . . The location of the above described collateral is also the location of the Land.
>
> (c) All easements, rights-of-way . . . now or hereafter located on the Land. . . in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower.

[1] Toland argues throughout that there are "security interests." As discussed herein, there is only evidence of one security interest in the record—the Deed to Secure Debt, which gives an interest only in the FF&E at Crust Bakery.

[2] Exhibit A describes the tract of land owned by Easy as Pie on Manchester Street, the property on which Crust Bakery is located.

[3] The "Premises" is defined as the property described in Exhibit A.

(d) All income, rents, issues, profits, and revenues **of the Premises** from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by Borrower or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same; reserving only the right to Borrower to collect the same so long as no Event of Default exists hereunder.

On October 1, 2015, H2S took out a commercial insurance policy from Phoenix to cover some of its restaurant locations and the fixtures, furniture, and equipment ("FF&E") therein, including but not limited to the FF&E for Crust Bakery. The policy contained a loss payable provision providing that Phoenix would pay a covered claim for loss or damage jointly to H2S and the loss payee specified in the Loss Payable Provisions Schedule. The Loss Payable Provisions Schedule listed Georgia Commerce Bank as the sole loss payee for FF&E covered by the policy.

Days after the policy became effective, Leigh Catherall, the owner of H2S, closed all H2S's restaurants for financial reasons. According to Catherall, sometime between October 5, 2015, and October 9, 2015, former employees stole items from some of H2S's restaurants, including FF&E from some of the locations covered by the policy. H2S filed claims with Phoenix for these FF&E losses on November 4, 2015. Notably, no claim was made for any FF&E loss at Crust Bakery.

Meanwhile, on November 10, 2015, Iberia Bank, which recently had acquired Georgia Commerce Bank, transferred and assigned the Loan Documents to Toland (the "Transfer Documents"). The Transfer Documents assigned and transferred only that security interest perfected in the DSD.

After Phoenix investigated H2S's filed insurance claims but before it had issued any claim payments, Phoenix learned that Iberia Bank had acquired Georgia Commerce Bank.

On January 15, 2016, Toland e-mailed H2S's independent insurance broker and said that he had "concluded" his "assumption of the IberiaBank/Georgia Commerce Bank loan" and that he was the assignee of "the same rights and privileges enjoyed by the bank on this debt." Thus, he asserted that he was the loss payee and payments for the claims should be made to him. When the insurance broker asked Catherall about Toland's claim, she responded "[t]his is not correct. Please do not share any information with Mr. Toland. He has no business contacting you at all."

On April 22, 2016, Catherall e-mailed Phoenix's claims adjuster a copy of an e-mail from that same day from Iberia Bank that explained that there was a "zero balance" on the Note. After seeing this e-mail, Phoenix began issuing payments for the insurance claims in three separate checks. The first two checks were dated May 12, 2016, and May 18, 2016, and were made payable to H2S only.

Before Phoenix issued the third check, Toland contacted Phoenix's adjuster directly and told him that his attorney would forward information showing Toland's interest in the property covered by the policy. Toland then e-mailed H2S's independent broker and forwarded a copy of the Transfer Documents, which Toland claimed entitled him to be listed as a loss payee on H2S's insurance policy.

H2S's insurance broker contacted Phoenix's underwriting department and asked whether it was possible to list Toland as the loss payee. Phoenix indicated that it was not possible because it was concerned both about the authenticity of the Transfer Documents and that H2S had not made any changes to the loss payee listed in its policy. At the time, Phoenix was unsure whether H2S was aware that Toland sought to change the insurance policy. When Phoenix asked Catherall about the Transfer Documents, she told Phoenix that they "had nothing to do with the furniture or equipment in the restaurants." Catherall's attorney told Phoenix that they were dealing with Toland directly. Phoenix's parent company, Travelers Indemnity Company, advised that the policy could only be changed to list Toland as a loss payee with H2S's consent. H2S did not give consent to alter the policy to include Toland as a loss payee, and Phoenix issued the third check to H2S on June 6, 2016.

B. Procedural History

Toland sued Phoenix in October 2016, and brought claims for conversion and negligence. Toland sought an implied constructive trust, attorney's fees, and punitive damages.[4] As the basis for his claims, Toland alleged that he had "title and interest" in the Loan Documents which he acquired through the Transfer Documents. Toland also alleged that he notified Phoenix of "his lien and interest in the policy proceeds" after Phoenix made payments to H2S, and that Phoenix "failed to make Toland a loss payee." Toland did not specify in the complaint whether his lien and interest in the policy proceeds was secured or unsecured.

After discovery, Phoenix moved for summary judgment on all of Toland's claims, arguing that it had no contractual duty to Toland, it was not required to list him as the loss payee, and Toland's claims for conversion and a constructive trust failed as a matter of law. Toland opposed the motion, asserting that he was a secured creditor that provided notice and that, as such, Phoenix owed him a duty of care. He also argued that there was a covered loss as evidenced by the fact that Phoenix paid the claims, and that he stated valid claims for conversion and constructive trusts.

The district court granted summary judgment to Phoenix on Toland's claim for a constructive trust but denied summary judgment on Toland's conversion

[4] Toland initially filed suit in the Superior Court of Gwinnett County, but Phoenix removed the suit to the United States District Court for the Northern District of Georgia, claiming diversity of citizenship with an amount in controversy greater than $75,000.

claim, negligence claim, and the related attorney's fees and punitive damages claims. When it denied summary judgment on Toland's conversion claim, the district court concluded that Toland had submitted evidence that could establish his secured creditor status at trial and relied on Georgia law providing a conversion cause of action for secured creditors. The district court also denied summary judgment on Toland's negligence claim because it concluded that Toland put forth enough evidence to create a triable issue under Georgia law.

Then, on January 21, 2020, Phoenix filed a trial brief and argued that Toland had "identified no evidence to show that he enjoyed the status of a secured creditor." Phoenix argued that the evidence established that Toland was only a general, unsecured creditor, and under Georgia law, Phoenix owed no duty of care to unsecured creditors.

The next day, the district court held a hearing and ruled on several motions *in limine*. During this hearing, Toland "tendered a binder of original promissory notes for the [c]ourt to review." The documents had not been produced to Phoenix or listed as evidence in the pretrial order, but Toland asserted that the binder contained at least one document that would show that he had security interests in the insurance proceeds. After reviewing the new documents, the court "[did] not find documents creating a security interest between [H2S] . . . and Georgia Commerce Bank." The court concluded that "Georgia Commerce Bank thought it

had a security interest, but there are no documents identified which show this, nor any documents identifying if [Toland] was granted an interest in FF&E." Nevertheless, the court permitted the parties to brief the issue further. The court "asked [Toland] to identify the document that he contended created a valid security interest in his favor or in the favor of [Georgia Commerce Bank]."

Following the parties' briefing, the court held a hearing on January 27, 2020, to hear the parties' arguments on whether Toland had security interests in the FF&E in H2S's restaurants and, if not, whether Toland had any rights as an unsecured creditor. During the hearing, Toland argued that under Georgia law, an insurance company owes a duty to a creditor, regardless of whether the creditor is secured or unsecured. Toland acknowledged that he did not have any additional evidence to present at trial to establish his security interests in the insurance proceeds at issue other than that which had been presented already to the court.

After the hearing, the district court *sua sponte* reconsidered and granted Phoenix's earlier motion for summary judgment on Toland's remaining claims for conversion, negligence, attorney's fees, and punitive damages. *See* Fed. R. Civ. P. 56(f). The district court noted that it had given the parties "notice of the significance of the issue of whether documentary evidence existed to show that [Toland] held a security interest in the insurance proceeds at issue" and that it had provided the parties with "reasonable time to brief the topic and present argument

on the topic." It then concluded that Toland had not identified any documents that established his security interest in the disputed insurance proceeds. Rather, the district court explained that, at most, the documents established only Toland's security interest in the FF&E at Crust Bakery, but no insurance claim was filed as to any FF&E from Crust Bakery, thus Toland's security interest was not triggered. Next, the district court acknowledged that Toland, as the assignee of the Note, was an unsecured creditor of H2S. Under Georgia law, however, Phoenix owed no duty of care to Toland as an unsecured creditor because he did not obtain a judgment against H2S for any debt owed, and, therefore, Toland could not maintain a negligence claim. Finally, the court explained that under Georgia law, the right to a conversion cause of action does not extend to unsecured creditors and consequently, Toland could not maintain that claim or his claims for attorney's fees or punitive damages, as the latter two were premised on the conversion claim. This appeal followed.

II. STANDARD OF REVIEW

We review a district court's grant of a summary judgment motion *de novo*, "viewing the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion." *Grange Mut. Cas. & Ins. Co. v. Slaughter*, 958 F.3d 1050, 1056 (11th Cir. 2020) (quoting *Essex Ins. Co. v. Barrett Moving & Storage, Inc.*, 885 F.3d 1292, 1299 (11th Cir. 2018)). Summary

judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, presents no genuine dispute as to any material fact and compels judgment as a matter of law. Fed. R. Civ. P. 56(a).

III. DISCUSSION

A. The district court properly entered summary judgment *sua sponte*.

Toland argues that the district court erred in granting summary judgment without first providing him with adequate notice of its intent to do so. In particular, he argues that, under the Northern District of Georgia's local rules, he was entitled to 21 days to respond to Phoenix's trial brief, which he did not receive.

Under Federal Rule of Civil Procedure 56(f)(3),[5] a district court may grant summary judgment *sua sponte* "after giving [the parties] notice and a reasonable time to respond." *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) ("[D]istrict courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that [he] had to

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[5] The full text of Rule 56(f) reads:

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

come forward with all of h[is] evidence."). The Northern District of Georgia's Local Rule 56.1(A) specifies that, upon the filing of a motion for summary judgment, the non-moving party shall have 21 days in which to file a responsive pleading. N.D. Ga. LR 56.1(A). The local rules do not address *sua sponte* judgments entered by a district court independent of a motion for summary judgment. *See generally id.* While Federal Rule of Civil Procedure 56(f) provides for "notice and a reasonable time to respond" before a district court may issue a judgment *sua sponte* independent of a motion for summary judgment, it does not specify any particular time frame. *See* Fed. R. Civ. P. 56(f).[6]

As an initial matter, Phoenix raised the secured creditor issue in its trial brief; it did not file a renewed motion for summary judgment. Nowhere in the initial trial brief did it urge the district court to grant summary judgment or to otherwise reconsider its prior ruling on summary judgment. Thus, the 21-day response window set forth in Local Rule 56.1(a) for responding to motions for summary judgment was not triggered.

Because the Local Rules do not address a district court's *sua sponte* entry of summary judgment, we turn our attention next to Federal Rule of Civil Procedure

[6] In a single sentence, Toland asserts that the district court also failed to provide a statement of undisputed material facts when entering summary judgment in violation of "the rules." We will not address this argument on appeal. When, as in this case, a party fails to "devote a discrete, substantial portion" of his appellate brief to an issue and, instead, "buries" the issue within other arguments, the issue is deemed abandoned. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–82 (11th Cir. 2014).

56(f). When applying Rule 56(f)'s "notice and reasonable time to respond" provision, "we have . . . distinguished between *sua sponte* grants of summary judgment in cases that involve purely legal questions based on complete evidentiary records, and cases that involve factual disputes where the non-moving party has not had an adequate opportunity to develop the record." *Artistic Ent., Inc. v. City of Warner Robins*, 331 F.3d 1196, 1201 (11th Cir. 2003). In the first situation, when "a legal issue has been fully developed[] and the evidentiary record is complete, summary judgment is entirely appropriate *even if no formal notice has been provided*." *Id*. at 1201–02 (citing *Burton v. City of Belle Glade*, 178 F.3d 1175, 1204 (11th Cir. 1999) (emphasis added). Indeed, in *Artistic Entertainment*, we upheld a *sua sponte* grant of summary judgment on certain claims even though no party had made a formal motion for summary judgment and the district court did not formally notify Artistic that it was considering summary judgment. *Id.* at 1202. We noted that Artistic had sufficient notice that the district court might rule on the supplemental claims for purposes of Rule 56 because the court had ordered the parties to submit motions related to a new claim, the merits of the claim were fully briefed, and evidence was accepted and considered simultaneously with a motion to amend the complaint. *Id.*

Like Artistic, Toland had sufficient notice and time to respond. After Phoenix submitted its trial brief raising the issues of Toland's secured creditor

status and whether he had any cognizable rights as an unsecured creditor, the district court discussed the issues with the parties during a discovery-related hearing the next day, and Toland tendered a binder of financial documents to the court that he had not previously produced in discovery. Additionally, the court gave Toland one day to submit a brief in response to Phoenix, and then held a hearing solely on the issues of whether Toland had presented evidence to establish security interests in stolen FF&E and the resultant insurance proceeds, and, if not, whether he had any cognizable rights as an unsecured creditor. At the hearing, Toland presented his arguments and told the district court that he did not have any more evidence to submit that would establish his security interests other than what he had tendered already to the district court. In short, Toland had two hearings and a brief in which to present his evidence and arguments and establish his security interests in the insurance proceeds, and as he told the court, the evidentiary record was complete. We have found that far less notice is sufficient when the evidentiary record is complete. *See, e.g.*, *id.*

Regardless, the alleged lack-of-notice error here is harmless. *See Restigouche, Inc. v. Town of Jupiter*, 59 F.3d 1208, 1213 (11th Cir. 1995) ("Because [the plaintiff] has not been deprived of the opportunity to present facts or arguments which would have precluded summary judgment in this case, any violation of the . . . notice rule is harmless."). Toland does not allege that the lack

of notice or of a longer opportunity to respond deprived him of his ability to obtain or present any evidence or additional arguments that would support his claim to security interests in the insurance proceeds paid to cover the stolen FF&E. In other words, under the circumstances in this case, even if the district court had formally told Toland it was considering granting summary judgment based on Phoenix's arguments in its trial brief, "we are convinced that the outcome would not have been different." *Artistic Ent.*, 331 F.3d at 1202; *see also Restigouche*, 59 F.3d at 1213 (explaining that when "we have before us, on *de novo* review of the summary judgment motion, all of the facts and arguments that [the plaintiff] would have or could have presented had [the plaintiff] been given the required notice," and the plaintiff raises "no genuine issues which would prevent summary judgment" either before the district court or on appeal, a rule 56 notice violation is harmless).[7] Accordingly, the district court properly adhered to Rule 56(f) when it granted summary judgment.

[7] In support of this argument, Toland cites to *Massey v. Congress Life Ins. Co.*, 116 F.3d 1414, 1417–18 (11th Cir. 1997), when we reversed a trial court's *sua sponte* grant of summary judgment because it did not provide the nonmoving party with 10 days of notice and an opportunity to respond, as required by then-current Federal Rule of Civil Procedure 56(c). However, *Massey* pre-dates the 2009 and 2010 amendments to Rule 56. After these amendments, district courts are now required to provide a nonmoving party with "notice and a reasonable time to respond" instead of 10 days. *See* Edward J. Brunet, Martin H. Redish & Michael A. Reiter, *Summary Judgment: Federal Law and Practice* § 7.2 (2019).

B. Toland did not have a security interest in the stolen FF&E that entitled him to the insurance proceeds.

Toland argues that, like Georgia Commerce Bank, he had security interests in the FF&E that entitle him to the resultant insurance proceeds based on the Transfer Documents and the Loan Documents. He maintains that Phoenix had an obligation to account for his security interests in the FF&E when it paid the insurance proceeds.

Under Georgia law, a security interest properly attaches to collateral when: (1) there is a written security agreement signed by the debtor and containing a description of the collateral; (2) the secured party has given value to the debtor; and (3) the debtor has "rights" in the collateral. *In re Pierce*, 581 B.R. 912, 917 (U.S.B.C., S.D. Ga. 2018); O.C.G.A. § 11-9-203(a)–(b). A secured party has a security interest only in the collateral described in the security agreement. *See ITT Fin. Servs. v. Gibson*, 372 S.E. 2d 468, 469 (Ga. Ct. App. 1988) (explaining that a creditor did not have a security interest in part because the document that he relied on to perfect his security interest did not describe the collateral).

As the district court correctly found, the DSD grants a security interest in the collateral located at Crust Bakery. And it is true that the DSD meets the requirements of a perfected security interest under Georgia law: it describes the collateral, all property located at Crust Bakery; it is signed by the debtor, H2S, who received value from Georgia Commerce Bank; and it gave Georgia Commerce

Bank rights to the property located at Crust Bakery in exchange. Similarly, the district court is also correct that the security interest in the DSD was transferred to Toland and that Toland *does* have a security interest in the FF&E located at Crust Bakery. But H2S did not file any insurance claim with Phoenix for any FF&E from Crust Bakery, and the insurance proceeds at issue were paid to H2S for its losses at other restaurants. Because Toland has not identified any written agreement that gives him a security interest in the FF&E at any other location, Toland thus does not have a security interest in the insurance proceeds at issue in this case.[8]

Toland raises three objections to the district court's interpretation of the Loan Documents and the Transfer Documents, none of which are persuasive. First, he argues that the district court incorrectly interpreted these documents, and that it should have interpreted them to reach any and all property of any kind of the insured, including the insurance proceeds at issue. More specifically, he argues that the term "premises" in the DSD included all the entities' personal and non-real

[8] Toland argues that the Loan Documents and the Transfer Documents create a security interest in the insurance proceeds that cover the FF&E from all of H2S's restaurants, and Phoenix should have paid him the proceeds of H2S's claims. To support this argument, Toland cites to *JSC Enterprises, Inc., v. Vanliner Insurance*, 489 S.E. 2d 95 (Ga. Ct. App. 1997), when the court found that a lender with a perfected security interest in an accident victims' motor vehicle should have been paid by the automobile insurer before it paid the victims, and that it was conversion to pay the victims first. Toland has correctly described *Vanliner*'s holding, but it does not help him, as he does not have a security interest in the insurance proceeds paid for the FF&E stolen from the restaurants other than Crust Bakery.

property that made up the insured parent company. Thus, he maintains that subsection (d), which gave him an interest in "[a]ll income, rents, issues . . . *of the Premises* from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance . . .)," included all property and collateral located at all the premises owned by H2S. He is incorrect. Subsection (d) gives Georgia Commerce Bank/IberiaBank (and, by transfer, Toland) a security interest in non-tangible forms of capital, such as income, rents, profits, and proceeds of insurance claims. But it limits the rights in those forms of capital to those derived from the Premises, which is defined in the DSD as the property described in Exhibit A. And Exhibit A described only Crust Bakery. Thus, contrary to Toland's claim, subsection (d) of the DSD does not give him a security interest in all the real and non-real property located at all the entities owned by H2S.[9]

[9] Toland makes passing references to the binder of financial documents that he produced in court at the January 22, 2020 hearing, which he alleges establishes his security interest in any and all insurance proceeds recouped by H2S. But he does not cite to these documents or discuss them in his brief with any specificity. Toland also claims that unspecified documents that "have existed in the public record since before [the] litigation began," establish his secured creditor status. To the extent he is relying on financing statements, pursuant to Georgia's Uniform Commercial Code, they alone do not create a security interest. *Gibson*, 372 S.E. 2d at 469 ("[A] financing statement does not create or impose any personal obligation. . . . [It] does not create a security interest . . . [and it also] cannot serve as a security agreement because it does not grant the creditor a security interest in the collateral and does not identify the obligation owed to the creditor." (quoting *Amoco Oil Co. v. G. Sims & Assoc.*, 291 S.E.2d 128, 130 (Ga. App. 1982))). To the extent he is relying on other unspecified documents, we will not undertake to "cull the record ourselves" in search of a document that will make his argument. *Johnson v. City of Fort Lauderdale*, 126 F.3d 1372, 1373 (11th Cir. 1997).

Second, Toland argues that even if the host of documents that he submitted to the district court do not grant him a security interest, they "demonstrate that [H2S] plainly intended to grant a right in the property and proceeds" and therefore, Toland is "entitled to relief such as equitable reformation or subrogation." Toland does not explain which documents the district court should have equitably reformed, but assuming he is referring to the DSD, his claim fails. Under Georgia law, equitable reformation of a contract is only appropriate when there is evidence that "the form of the conveyance is, by accident or mistake, contrary to the intent of the parties in their contract." O.C.G.A. § 23-2-25. Toland has not submitted evidence that there was any mistake or accident in the DSD to make it contrary to the parties' interests. Thus, he is not entitled to relief on this claim.

Third and finally, Toland argues that the DSD is ambiguous and thus the district court should have submitted the interpretation issue to a jury. Under Georgia law, when "the language of a contract is plain, unambiguous, and capable of only one reasonable interpretation, construction of the contract is not permitted, and the language of the contract is given effect." *Eastside Gardens of Snellville, LLC v. Sims*, 547 S.E. 2d 383, 385 (Ga. Ct. App. 2001) (quotation omitted). If the contract's terms are ambiguous, however, the Court must employ statutory rules of contract interpretation to resolve the ambiguity. O.C.G.A. § 13-2-2. Then, if the contract's terms remain ambiguous even after application of the rules

of contract interpretation, the court must submit the case to a jury to determine the parties' intent. *Simpson v. Infinity Select Ins. Co.*, 605 S.E. 2d 39, 42 (Ga. Ct. App. 2004). Here, there is no need to move beyond the first step. The DSD is unambiguous, and Toland has not presented any argument that has cast doubt on its meaning. Thus, the district court did not err in not looking beyond its plain language.

For these reasons, we conclude that Toland has not established a security interest in the insurance proceeds at issue in this case.

C. The district court correctly determined that Toland must have a security interest before Phoenix owes him a duty of care.

In an effort to establish an interest in the insurance proceeds, Toland argues that, under Georgia law, a creditor need not possess a security interest before an insurer owes him a duty of care. Specifically, he argues that because he provided notice of his "right to the proceeds of the insurance claim," Phoenix owes him a duty of care. To support his argument, Toland relies on *Santiago v. Safeway Insurance Company*, 396 S.E. 2d 506, 509 (Ga. Ct. App. 1990). The district court rejected Toland's arguments and explained that Toland's reliance on *Santiago* is misplaced because its holding that certain creditors have a right to be paid insurance proceeds if they notify the insurer applies to circumstances that are not present in this situation. We agree.

In *Santiago*, a physician sued an insurance company after it paid insurance proceeds to the patients he treated rather than to him. The physician was not a secured creditor but sought to recover the insurance proceeds paid to his patients because they had assigned their rights in the proceeds to him. The Court of Appeals of Georgia upheld a post-loss assignment of insurance proceeds to the physician for two reasons. *Santiago*, 396 S.E. 2d at 507. First, the assignment was validated by a statute, O.C.G.A. § 33-24-17, which applies to assignments of life, sickness, and accident insurance policies. And second, the assignment "did not assign the policy itself but only the benefits due the insureds after the loss had already occurred." *Id*. Toland asserts that this case allows him to recover the insurance proceeds at issue here, even though he is not a secured creditor because, like the physician in *Santiago*, he notified the insurance carrier of his claim. Toland has not presented evidence that any insurance proceeds paid for the stolen FF&E were assigned to him, post-loss or otherwise. Instead, he points to the Loan Documents and the Transfer Documents, which give him only a security interest in the FF&E at Crust Bakery. Accordingly, *Santiago* does not apply to the present case.[10]

[10] Toland focuses on language in *Santiago* that says that "'[a] debtor of the assignor, who has notice of the assignment, [pays] the debt to the assignor . . . at his own peril.'" But Toland takes that language out of context and does not address the fact that he has not presented a proper assignment of the insurance proceeds.

In sum, Toland has not shown that, as an unsecured creditor, Phoenix owed him a duty of care.

* * *

For these reasons, we affirm.

AFFIRMED.

Toland also cites to *JSC Enterprises, Inc., v. Vanliner Insurance*, 489 S.E. 2d 95 (Ga. Ct. App. 1997), to support his argument that Georgia law provides unsecured creditors with a right to recover insurance proceeds if they notify the insurer. *Vanliner* held that a post-loss assignment of insurance proceeds pursuant to a Georgia statute allowing these kinds of assignments for life, accident, and sickness insurance is enforceable if the insurer has notice of the assignment. *Id*. at 97. But the creditor in *Vanliner* had a secured interest, and the court found that the security interest made the issue of knowledge of the assignment irrelevant, as the security interest provided constructive notice. *Id*. at 96. Here, as Toland has not established a security interest, *Vanliner* does not apply.