CASE LAW WEBINAR SERIES

WINDSTORM INSURANCE NETWORK

FLORIDA CASE LAW UPDATE

CASE LAW AND LEGISLATIVE UPDATE

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LEGISLATIVE CHANGES

Section 624.1551, Florida Statutes

Civil remedy actions against property insurers.—Notwithstanding any provision of s. 624.155, a claimant must establish that the property insurer breached the insurance contract to prevail in a claim for extracontractual damages under s. 624.155(1)(b).

Section 626.854, Florida Statutes

626.854 “Public adjuster” defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(10)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlements paid to the insured, exclusive of attorney fees and costs, ~~settlement~~ obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

Section 626.854, Florida Statutes

1. Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured ~~made~~ by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured ~~made~~ by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: “I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/ condominium unit).”

(e) Public adjuster rate of compensation may not be increased based solely on the fact that the claim is litigated.

Sections 626.9373 and 627.428, Florida Statutes

Section 626.9373, Florida Statutes, is amended to read:

626.9373 Attorney fees.— (3) In a suit arising under a residential or commercial property insurance policy, the right to attorney fees under this section may not be transferred to, assigned to, or acquired in any other manner by anyone other than a named or omnibus insured or a named beneficiary.

Section 627.428, Florida Statutes, is amended to read:

627.428 Attorney fees.— (4) In a suit arising under a residential or commercial property insurance policy, the right to attorney fees under this section may not be transferred to, assigned to, or acquired in any other manner by anyone other than a named or omnibus insured or a named beneficiary.

Section 627.7011, Florida Statutes

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. However, if a roof deductible under s. 627.701(10) is applied to the insured loss, the insurer may limit the claim payment as to the roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time. If a total loss of a dwelling occurs, the insurer must shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702

Section 627.7011, Florida Statutes

(b) An insurer may not refuse to issue or refuse to renew a homeowner's policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.

(c) For a roof that is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof of a residential structure as a condition of issuing or renewing a homeowner's insurance policy. The insurer may not refuse to issue or refuse to renew a homeowner's insurance policy solely because of roof age if an inspection of the roof of the residential structure performed by an authorized inspector indicates that the roof has 5 years or more of useful life remaining.

(d) For purposes of this subsection, a roof's age shall be calculated using the last date on which 100 percent of the roof's surface area was built or replaced in accordance with the building code in effect at that time or the initial date of a partial roof replacement when subsequent partial roof builds or replacements were completed that resulted in 100 percent of the roof's surface area being built or replaced.

(e) This subsection applies to homeowners' insurance policies issued or renewed on or after July 1, 2022.

Section 627.70131, Florida Statutes

Effective January 1, 2023, subsection (3) and paragraph (a) of subsection (7) of section 627.70131, Florida Statutes, are amended to read:

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number. For claims other than those subject to a hurricane deductible, an insurer must conduct any such physical inspection within 45 days after its receipt of the proof of loss statements.

(d) Within 7 days after the insurer's assignment of an adjuster to the claim, the insurer must notify the policyholder that he or she may request a copy of any detailed estimate of the amount of the loss generated by an insurer's adjuster. After receiving such a request from the policyholder, the insurer must send any such detailed estimate to the policyholder within the later of 7 days after the insurer received the request or 7 days after the detailed estimate of the amount of the loss is completed. This paragraph does not require that an insurer create a detailed estimate of the amount of the loss if such estimate is not reasonably necessary as part of the claim investigation.

Section 627.70131, Florida Statutes

(7)(a) Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. The insurer shall provide a reasonable explanation in writing to the policyholder of the basis in the insurance policy, in relation to the facts or applicable law, for the payment, denial, or partial denial of a claim. If the insurer's claim payment is less than specified in any insurer's detailed estimate of the amount of the loss, the insurer must provide a reasonable explanation in writing of the difference to the policyholder. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured must ~~shall~~ select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

Section 627.70152, Florida Statutes

Section 16. Paragraph (d) of subsection (2) and subsection (8) of section 627.70152, Florida Statutes, are amended to read:

(b) In a suit arising under a residential or commercial property insurance policy not brought by an assignee, if a court dismisses a claimant's suit pursuant to subsection (5), the court may not award to the claimant any incurred attorney fees for services rendered before the dismissal of the suit. When a claimant's suit is dismissed pursuant to subsection (5), the court may award to the insurer reasonable attorney fees and costs associated with securing the dismissal.

(c) In awarding attorney fees under this subsection, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

Rule 1.442, Florida Rules of Civil Procedure

(c) Form and Content of Proposal for Settlement.
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(2) A proposal shall:

(A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;

(B) state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served, subject to subdivision (F);

(C) ~~state with particularity any relevant conditions~~ exclude nonmonetary terms, with the exceptions of a voluntary dismissal of all claims with prejudice and any other nonmonetary terms permitted by statute;

(D) state the total amount of the proposal ~~and state with particularity all nonmonetary terms of the proposal~~;

(E) state with particularity the amount proposed to settle a claim for punitive damages, if any;

(F) state whether the proposal includes attorneys' fees and whether attorneys' fee are part of the legal claim; and

(G) include a certificate of service in the form required by Florida Rule of General Practice and Judicial Administration 2.516.

CASE LAW

Post Loss Conditions

Godfrey v. People's Tr. Ins. Co.

2022 WL 1100490 (Fla. 4th DCA 2022)

Facts:

Trial court granted summary judgment in favor of the Insurer due to failure to provide a sworn proof of loss based on the argument that the Insurer need not show prejudice when there is a total breach of a condition precedent.

Holding:

The 4th DCA reversed the trial court. "The People's Trust's policy expressly requires a showing of prejudice by stating that the insurer had 'no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us.'" Policyholder's "failure to comply with policy conditions requires prejudice to insurer in order for that failure to constitute a material breach and permit an insurer to deny coverage for a claim. Whether insurer is prejudiced is a question of fact."

Huertas v. Avatar Property & Casualty Ins. Co.

333 So. 3d 767 (Fla. 4th DCA 2022)

Facts:

Trial court granted summary judgment in favor of the Insurer due to a failure by the Homeowners to file an affidavit in opposition to the Insurer's affidavit in support of its motion for summary judgment.

Holding:

The 4th DCA reversed the trial court's decision. "The trial court erred in ruling that Homeowners did not sufficiently oppose Insurer's motion for summary judgment. Insurer has failed to 'conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law' under the summary judgment standard in effect at the time of the court's final judgment. Moreover… genuine questions of material fact remain 'for the jury to resolve in view of 'all of the facts and circumstances surrounding the loss'""

Universal Property & Casualty Ins. Co. v. Motie

335 So. 3d 205 (Fla. 5th DCA 2022)

Facts:

The trial court entered final judgment after a jury returned a verdict in favor of Homeowner. The Insurer appealed the case based on the trial court erred when it found, as a matter of law, that any breach by Homeowner of the insurance policy conditions was immaterial.

Holding:

The 5th DCA reversed the ruling by the trial court. "A motion for directed verdict shall be granted 'only if no view of the evidence could support a verdict for the nonmoving party and the trial court therefore determines that no reasonable jury could render a verdict for that party.' Upon review, we conclude that the evidence presented was sufficient such that a reasonable jury could have returned a verdict in favor of Universal [insurer]…"

Rainbow Restoration, LLC v. Citizens Property Ins. Corp.

337 So.3d 406 (Fla. 3rd DCA 2021)

Facts:

The case arises out of non-payment by the Insurer to water mitigation services from 2013. The Insurer argued that they never received an invoice or any supporting documentation from the Rainbow Restoration. The trial court entered summary judgment in favor of the Insurer, in which Rainbow brought this appeal stating that Rainbow was in contact with Citizens and that he mailed the invoice on August 14, 2013 – which was corroborated by Rainbow's owner in testimony. The trial court found that the testimony was addressed to general practices, not specifically the sending of the invoice to Citizens. The county court granted the Insurer's motion for summary judgment.

Holding:

The 3rd DCA reversed the trial court's decision. "While [the] deposition testimony is not a model of clarity, he clearly testified that he mailed Rainbow's invoice to Citizens on August 14, 2013. Because [the] affidavit and deposition testimony do not appear to contradict each other, summary judgment is not warranted. We therefore reverse the summary judgment and remand this case to the lower court because there is a disputed issue of material fact as to whether the necessary documentation [was mailed] to Citizens prior to filing suit."

Causation/Coverage

Morales v. Citizens Property Ins. Corp.

2022 WL 790294 (Fla. 3rd DCA 2022)

Facts:

The trial court granted summary judgment in favor of Insurer due to the Homeowner's inspection/affidavit from a general contractor being rejected. The trial court's reasoning was that since he is a general contractor, he is not qualified to give expert testimony as to causation and that he merely "opined that Hurricane Irma's winds were sufficient to lift and crack the property's roof shingles and allow water to enter the property's interior."

Holding:

The 3rd DCA reversed the trial court's decision. "The Homeowners' expert provided sufficient evidence to introduce a genuine issue of material fact regarding the cause of the property damage. The trial court appeared to weigh the evidence rather than determine whether a genuine issue of material fact existed."

Security First Ins. Co. v. Vasquez

336 So. 3d 350 (Fla. 5th DCA 2022)

Facts:

The circuit court ruled in favor of Insureds and subsequently entered final judgment against the Insurer. The Insurer brought the appeal based on the argument that the $10,000 limit of liability provision contained in the policy's Limited Water Damage Endorsement precluded the insureds from recovering additional monies for "tear-out" costs. Based on the language in the contract, Insurer argued that there is a $10,000 limit that applies to both water damage and tear-out costs, while Insureds argue that the $10,000 limit solely applies to the water damage to the Property.

Holding:

The 5th DCA affirmed the circuit court's ruling. "The provision recites that, '[t]he limit of liability for all damage to covered property provided by this endorsement is $10,000 per loss.' Here, it is undisputed that the part of the concrete slab that needs to be removed was not damaged by the discharge or overflow of water. Furthermore, in the Perils Insured Against section of the main policy, tear-out costs are not included in the definition of water damage. Rather, tear-out costs are referenced as an item that can be covered as part of a loss." The language in the contract was ambiguous.

GeoVera Specialty Ins. Co. v. Glasser

337 So. 3d 8 (Fla. 4th DCA 2022)

Facts:

The trial court granted partial summary judgment in favor of the Insured (finding that the policy covered insured's claim), denied Insurer's motion for reconsideration, and entered into final judgment against the Insurer based upon parties' stipulation to damages. The court reasoned that another case (*Cheetham v. Southern Oak Ins. Co.*, 114 So. 3d 257 (Fla. 3d DCA 2013)) was extremely similar in the wording of the policy as to water damage, however the present case there was an endorsement that stated, "water in any form… regardless of the source or cause of the loss ."

Holding:

The 4th DCA reversed the trial court's decision. "The insurer's endorsement language is much broader and excludes damages caused by water in any form, including plumbing system accidents. Although the policy's 'Exception to c.(6)' expressly covers accidental discharges of water from a plumbing system, it is superseded by the endorsement which excludes water loss in any form." … "The mere fact that a provision in an insurance policy could be more clearly drafted does not necessarily mean that the provision is otherwise inconsistent, uncertain or ambiguous.' While this policy may require the reading of multiple policy provisions, it is unambiguous and simply does not cover the water loss suffered by the insured."

Projekt Property Restoration, Inc . v. Citizens Property Ins. Corp.

333 So.3d 365 (Fla. 4th DCA 2022)

Facts:

The trial court granted summary judgment in favor of the Insurer in a claim for insurance benefits under the homeowner's policy. The Insurer argued that there is a policy exclusion for property loss caused by constant or repeated seepage or leakage of water over a period of weeks, months, or years (here, the Insurer's expert and adjuster testified that the leak was for a considerable period of time – in excess of two weeks – whereas the Insureds expert did not find any leak for that period).

Holding:

The 4th DCA affirmed the trial court's decision. "Appellant argues that… the policy should cover losses incurred within the first two weeks of a leak, even if damages caused by a continuous leak may not be covered. However, appellant's complaint here did not allege that its services were for damages incurred within he first two weeks of the leak … and no argument based on *Hicks* was made before the trial court on this issue."

Appraisal

American Coastal Ins. Co. v. South Bay Plantation Condominium Association, Inc.

333 So. 3d 1166 (Fla. 2nd DCA 2022)

Facts:

The trial court granted the Insured's motion to stay and compel appraisal, in which the Insurer filed an appeal stating that the trial court's granting of the motions was an error due to the demand for appraisal not being ripe.

Holdings:

The 2nd DCA reversed the trial court's ruling. "A demand for appraisal is ripe where post loss conditions are met, 'the insurer has a reasonable opportunity to investigate and adjust the claim,' and there is a disagreement regarding the value of the property or the amount of loss. The party seeking appraisal must comply with all post-loss obligations before the right to appraisal can be invoked under the contract." "Because the trial court did not make a preliminary decision on whether South Bay complied with its post loss obligations, South Bay's demand for appraisal was not ripe."

Heritage Property & Casualty Ins. Co. v. Veranda I At Heritage Links Association, Inc.

334 So. 3d 373 (Fla. 2nd DCA 2022)

Facts:

The circuit court entered an order compelling both parties to participate in appraisal where the Insurer agreed to issue payment for Insured's roof replacement but wholly denied coverage for Insured's supplemental windows and door claim. Insurer appealed arguing that the insured was not entitled to appraisal on the windows and door claim.

Holding:

The 2nd DCA reversed the ruling of the circuit court. "When an insurance company wholly denies a claim, the trial court cannot refer that claim to appraisal." "Because Veranda's claim for windows and doors was a supplemental claim for coverage… we must consider that claim separately from the initial roof claim that had been fully adjusted. And since Heritage wholly denied coverage for that supplemental claim… [precedent] precluded the trial court from referring it to appraisal."

Citizens Property Ins. Corp. v. Delgado

337 So. 3d 475 (Fla. 3rd DCA 2022)

Facts:

During the adjustment of the claim, the carrier invoked appraisal. The insured subsequently filed suit and the carrier moved to compel appraisal. After paying the appraisal award, the trial court granted attorney's fees in favor of the insured. The carrier appealed.

Holding:

The 3rd DCA affirmed the trial court's ruling. "It is well settled Florida law that Citizens' payment of the appraisal award constituted a judgment… as shown by the record in this case, the lawsuit was a necessary catalyst to effectuate payment of the claim."

Redlhammer v. ASI Preferred Ins. Corp.

337 So. 3d 421 (Fla. 3rd DCA 2021)

Facts:

The trial court entered into a non-final order compelling the parties to participate in the appraisal process outlined in the insurance policy. The Homeowner appeals due to the court compelling appraisal prematurely as the Homeowner argued that there was a crack in the main drain line while the Insurer acknowledged the crack but determined that the Homeowner's adjuster was wrong.

Holding:

The 3rd DCA reversed the trial court's decision. "The record does not demonstrate that the parties have the requisite 'disagreement' informed by reasonable competing estimates on the amount of this covered supplemental claim. In an unbroken line of cases, this Court has held that appraisal is premature when one party has not provided a meaningful exchange of information sufficient to substantiate the existence of a genuine disagreement… Despite acknowledging that the main drain line in insured's home was cracked and in need of repair, and without having obtained and shared its own repair estimate, the carrier simply determined that the adjuster was wrong. Without the benefit of insurer's competing estimate – presumably one that would be relied upon by the insurer in the appraisal process – there is insufficient record evidence that the parties have an informed disagreement on the amount of the loss related to the repair of the main drain line.

First Call 24/7, Inc. v. Citizens Property Ins. Corp.

333 So. 3d 1180 (Fla. 1st DCA 2022)

Facts:

The trial court granted final summary judgment in favor of Insurer based on the findings that claims for mitigation services are subject to the appraisal provision in the Homeowner's insurance policy. First Call performed emergency mitigation services, sending an invoice to Citizens for $40,253.44, in which Citizens paid $8,195.99 and invoked the Policy's appraisal clause to resolve the dispute over the difference of $32,057.45. First Call then filed a motion for entry of final judgment in which Citizens filed a response in opposition and a countermotion for summary judgment based on the argument that Citizens was entitled to resolve the claim by appraisal as a matter of law.

Holding:

The 1st DCA affirmed the trial court's decision. "First Call returns to the general rule of contract interpretation that an 'ambiguous term in a contract is to be construed against the drafter.' But that rule 'is not to be resorted to unless necessary' and if 'satisfactory results can be reached by other rules of analysis and construction, it may not be invoked.'… Reading the policy as a whole and giving the appraisal provision its plain meaning, the provision is unambiguous and applies to the mitigation services at issue… Reading the insurance policy as a whole, considering its overall structure, and giving the appraisal provision its plain meaning, we conclude that the provision is unambiguous and applies to the mitigation services at issue."

Fraud

Vargas v. Safepoint Ins. Co.

333 So.3d 752 (Fla. 3rd DCA 2022)

Facts:

The trial court entered final summary judgment in favor of the Insurer based on the insurance policy's "Concealment or Fraud" provision providing for forfeiture of coverage when an insured makes false statements relating to the claim. The fraud discovered was Insured's denial of making previous similar claims where she had made and been reimbursed for a similar claim from another insurance company. Insured appeals, arguing that the misstatement was unintentional and that she simply had forgotten about the prior claim (from 2013).

Holding:

The 3rd DCA reversed the trial court's decision. "We conclude the term 'false statement' in this post-loss context includes an element of intent to mislead, which, in this case, involves a genuine issue of material fact…This problem is not as serious as it first appears. While 'false' includes both meanings (1. An incorrect statement, or 2. Intentionally incorrect statement), the more common usage of the word… carries the connotation of an intentionally deceptive statement."

Interest

Federated National Ins. Co. v. Bocinsky

334 So.3D 384 (Fla. 5th DCA 2022)

Facts:

The trial court entered final judgment that ordered the Insurer to pay prejudgment interest under section 627.70131(5)(a), FL Statutes (2017). The Insurer appeals as the verdict returned by the jury after trial did not award the Insured a fixed amount of damages, which they argue caused the trial court to err in entering the final judgment awarding interest.

Holding:

The 5th DCA reversed the trial court's decision. "A claim becomes liquidated and susceptible of bearing prejudgment interest when a jury verdict has the effect of fixing the amount of damages."

Mitigation/Remediation/AOB

All Ins. Restoration Services, Inc. v. American Integrity Ins. Co. of Florida

336 So. 3d 324 (Fla. 4th DCA 2022)

Facts:

The county court granted the Insurer's motion to dismiss based on the claim that the Insurer has not paid the water mitigation services rendered by All Insurance Restoration Services. The action involved the interplay between homestead property rights and the assignment of post-loss insurance benefits, where the trial court found that assigned insurance benefits are "imbued with the same [homestead protections] as the property itself," thereby requiring compliance with sections 689.01 and 689.111, FL Statutes (2019), for proper sale, alienation or devise.

Holding:

The 4th DCA reversed the trial court's decision. "We hold that Article X, Section 4's restrictions on the sale, devise, or alienation of homestead property are not to be treated as impediments to the assignment of post-loss insurance benefits. Because those homestead protections are inapplicable and do not involve a transfer of real property, we further hold that Appellant's purported noncompliance with sections 689.01 and 689.111 was immaterial. Therefore, the trial court erred in granting insurer's motion to dismiss and in later dismissing the case."

People's Trust Ins. Co. v. Restoration Genie Inc.

336 So. 3d 332 (Fla. 4th DCA 2022)

Facts:

The trial court granted the assignee's motion for summary judgment based on the claim that the Insurer has not paid back the water mitigation services invoice that was sent over to them. The Insurer paid $2,000 of the $5,327.10 invoice, in which the Insurer asserted its obligation was limited to the amount it would have paid insurer's preferred contractor. The original suit was brought to recover the difference, in which the assignee argued that the limitation of its invoice to the amount Insurer's preferred contractor would charge for the same service based upon a service agreement essentially created a policy limit for services for which insureds were provided no notice. The Insurer appealed the granting of the summary judgment in favor of the assignee.

Holding:

The 4th DCA reversed the trial court's decision. "The relevant endorsement provisions set forth an unambiguous remedy in case insureds failed to fulfill their notice obligation. The provisions did not alter the policy limit. Thus, assignee's alternative argument to sustain the final judgment fails. Because disputed issues of material fact remain, we reverse the final summary judgment and remand for further proceedings."

People's Trust Ins. Co. v. First Call 24/7, Inc.

333 So. 3d 1144 (Fla. 4th DCA 2022)

Facts:

The circuit court denied the Insurer's motion for summary judgment and granted assignee's motion for summary judgment. The original claim stems from the assignee (repair contractor) suing Insurer to pay its invoice for restoration services to repair water damage to the property. Insurer appealed the summary judgment in favor of Assignee. Insurer's argument is that they did not need to pay the invoices since the homeowner failed to comply with a preferred contractor endorsement in the insurance policy.

Holding:

The 4th DCA reversed the trial court's decision. "Insurer formed repair contract that bound homeowner and obligated insurer's preferred contractor to perform repairs within reasonable time by timely invoking its option to repair under policy; insured's breach of policy barred contractor from recovering loss payment under policy; and insurer was not obligated to pay contractor amount that insurer would have paid its preferred contractor for repairs." … "Here, the homeowner breached the policy by failing to execute the work authorization form and circumventing the explicit terms of the policy by hiring First Call to perform the non-emergency repairs. To allow the loss payment 'would both (i) upend the insurer's right-to-repair option and (ii) render meaningless the policy endorsement's clear mandate that when People's Trust exercises its right-to-repair option, such repair is in lieu of issuing any loss payment that would otherwise be due under the policy.'"

Expert Inspections, LLC v. United Property and Casualty Ins. Co.

333 So. 3d 200 (Fla. 4th DCA 2022)

Facts:

The original suit was filed based on an action stemming from the assignment of post-loss insurance benefits. In the case, the Assignee sent the Insurer a final request for payment within ten days of an invoice sent to it for $1,995.00, in which the Insurer issued a check for the invoice payable to both the assignee and the insured, mailing the check to the insured's home address. The check was never cashed, in which a year after the check was sent the Assignee brought suit. The Assignee argues that the Insurer breached a contract where the instructions in the AOB stated that the Assignee would receive all payment, not the insureds. The trial court granted summary judgment in favor of the insurer.

Holding:

The 4th DCA affirmed the trial court's decision. "The Insurer cannot breach an agreement to which it has no privity. While the AOB agreement grants the assignee the qualified right to enforce the insurance policy, it does not grant the assignee the right to enforce against the insurer terms from the AOB agreement that are extraneous to the insurance policy itself… Moreover, Section 679.4061(1) (before the newest amendment – 2022 Fla. Sess. Law Serv. Ch. 2022-119) provides protection for "an account debtor on an account, chattel paper, or a payment intangible" when a debtor pays an assignee directly as it discharges the payor's obligation."

Accord and Satisfaction

Quintana v. People's Trust Ins. Co.

335 So.3d 131 (Fla. 4th DCA 2022)

Facts:

The Circuit Court granted Insurer's motion to dismiss and entered final judgment in favor of Insurer based on accord and satisfaction due to the Insureds' alleged presuit settlement with the Insurer. The Insureds' argue that the court erred by considering the Insurer's accord and satisfaction affirmative defense on a motion to dismiss where allegations supporting the affirmative defense did not appear within the writing of the complaint.

Holding:

The 4th DCA reversed the circuit court's decision. "When considering a motion to dismiss, a [circuit] court is limited to the four corners of the complaint." "The accord and satisfaction defense 'requires proof that the parties mutually intended to effect a settlement of an existing dispute by entering into a superseding agreement… and … actual performance with satisfaction of the new agreement." "Contrary to the Insurer's assertion, the Insureds' complaint did not 'impliedly incorporate' accord and satisfaction by simply referring to the parties' 'dispute.'"

Lemon v. People's Trust Ins. Co.

2022 WL 1814128 (Fla. 5th DCA 2022)

Facts:

The Circuit Court granted final judgment in favor of the Insurer. The Insured argues that they were wrongfully denied their supplemental claim on basis of accord and satisfaction after they had cashed a check received from insurer for repairs. The claim stemmed from the Insured finding additional damage to their home and sought supplement for their damage claim.

Holding:

The 5th DCA reversed the circuit court's decision. "Because of the language of the check tendered in satisfaction of the original damage claim is susceptible of only one interpretation – that it was offered (and accepted) in settlement of only the damages claimed and adjusted as of that date – and there was no evidence whatsoever of the parties' intent to preclude supplemental claims, it was error to deny the Lemons' motion for directed verdict and subsequent motion for judgment notwithstanding the verdict on PTI's affirmative defense of accord and satisfaction."

Right to Repair

People's Trust Ins. Co. v. Chen

33 So.3d 208 (Fla. 4th DCA 2022)

Facts:

The Circuit Court denied Insurer's motion to compel its right to repair after appraisal and entered summary judgment in favor of the Insureds. Insureds brought action against Insurer after Insurer sent second letter describing work which the Insurer's preferred contractor intended to perform and material which preferred contractor intended to use to repair hurricane damage. The Insurer argues that the circuit court erred in finding the Insurer had breached the insurance policy by initially proposing to undertake repairs to the insureds' home which would not have restored the home to its pre-loss condition. The Insurer argues no breach occurred because "in the event of disagreement between the parties over the scope of repairs, the policy provided that an appraisal panel would determine the scope of repairs, and the Insurer had agreed to perform the scope of repairs outlined in the appraisal award." The circuit court found that the Insurer breached the policy because it provided the insureds with an initial estimate which was later overridden by the appraisal award.

Holding:

The 4th DCA reversed the circuit court's decision. "The Insureds alleged the Insurer had breached the policy merely by providing an initial estimate with which the insureds did not agree. However, the policy did not confer upon the Insureds, in the event of such a disagreement, the immediate right to sue the Insurer for breach of contract. Rather, the policy included an endorsement which provided the insureds with a lower premium and, in exchange, designated an appraisal panel to resolve any dispute as to the scope of repairs and gave the insurer the contractual right to have its preferred contractor repair any covered damage to the insureds' home in lieu of issuing a loss payment… The policy provided that upon receipt of the appraisal award, the Insurer would be given the opportunity to continue forward with repairs based upon the scope outlined in the appraisal award… In the face of prematurely-filed suit, the insurer properly sought to enforce the policy-designated appraisal process by filing a motion to compel appraisal…"

Our conclusion… should not be construed to suggest the insureds may never be able to pursue a breach of contract action against the insurer. For example, if the insurer fails to continue forward with repairs based upon the scope outlined in the appraisal award, or if the repairs are defective, then the insureds' ability to pursue a breach of contract action may ripen, provided the insureds have complied with all other required conditions precedent under the contract before filing suit."

Discovery

People's Trust Ins. Co. v. Foster

333 So. 3d 773 (Fla. 1st DCA 2022)

Facts:

The trial court granted a request for the Insurer's underwriting manual(s) in effect at the time of issuance or renewal of his policy, in which the Insurer objected to overturning the manuals and Foster filed a motion to compel their production. Insurer argues that granting this motion to compel production of the underwriting manual(s) is categorically prohibited in breach of contract cases, until and unless bad faith litigation commences. The Insurer filed a Writ of Certiorari petition.

Holding:

The 1st DCA denied the petition for writ of certiorari. "Foster claims that some scope-of-inspection-related information in Peoples Trust's underwriting manual(s) may be relevant to contesting the insurer's affirmative defense that Foster's pipe damage predated the inception of his policy. On this record, we have no basis for rejecting the merits of Foster's assertion that the underwriting manual(s) are relevant… Petitioner (Insurer) has not shown a violation of a clearly established principle of law. Also, because there is no evidence that Insurer presented its alternative trade secrets-based argument to the circuit court, we have no cause for quashing the order on that basis."

Sacramento v. Citizens Property Ins. Corp.

2022 WL 2231772 (Fla. 3rd DCA 2022)

Facts:

The trial court granted summary judgment in favor of the Insurer while discovery pertaining to key issues were pending. The Insurer had a notice and cross-notice of deposition of Mitigation Co.'s representative scheduled to occur on December 1, 2020, despite the Summary Judgment being granted on August 18, 2020.

Holding:

The 1st DCA reverses the trial court's decision. "While it would have been better practice for the Sacramentos' attorney to file a written motion for continuance, we find his response to the summary judgment motion and phone call to opposing counsel asking to reset the hearing while the deposition of a key witness had already been noticed during the Covid-19 pandemic sufficient to find entry of summary judgment was premature before the deposition was conducted. Citizens itself defeated its own summary judgment motion by subsequently filing a notice and cross-notice of deposition of a key witness, a witness whose testimony would most likely raise a genuine issue of material fact, eight days prior to the summary judgment hearing… Florida District Courts agree that if there is a pending deposition that would most likely raise a genuine issue of material fact, discovery is considered ongoing and summary judgment is premature; this is especially the case if the deposition is noticed."

Bad Faith

Gooden v. People's Trust Ins. Co.

336 So. 3d 331 (Fla. 4th DCA 2022)

Facts:

The Circuit Court dismissed an action brought by Insureds against Insurer to recover for bad faith on the basis of failure of civil remedy notice to meet specificity requirements. Insureds argue that Insurer acted in bad faith by violating nine provisions of sections 624.155 and 626.9541, FL Statutes (2018). The Insureds stated that People's Trust must "tender all insurance proceeds owed to [her], as set forth in the Appraisal Award, for damages to [her] home, including interest, for the loss described herein." Due to Insurer not curing in the manner demanded, Insureds filed suit.

Holding:

The 4th DCA reversed the trial court's decision. "While People's Trust raises multiple arguments in opposition to the merits of Gooden's bad-faith claim, those arguments are best left for consideration on a motion for summary judgment. Those arguments do not support dismissing Gooden's claim for failure to satisfy section 624.155'2 specificity requirements. Gooden's notice facially satisfied section 624.155's specificity requirements."

Williams v. State Farm Fla. Ins. Co.

2022 WL 790443 (Fla. 2nd DCA 2022)

Facts:

The trial court granted final summary judgment in favor of the Insurer in a bad faith action. The Insured filed suit after there was a dispute between Insurer and Insured on the amount of loss. The Insurer filed a motion requesting that the court either dismiss the complaint or enter final summary judgment and argued (1) that the sixty-day cure period under Section 624.155 was tolled pending the filing of the appraisal award because there was no amount owed under the policy at the time the CRN was filed, (2) the payment of the appraisal award within sixty days of the award's issuance cured the alleged bad faith allegations, and (3) the CRN was legally deficient. After the hearing on the motion, the trial court entered an order granting final summary judgment in favor of Insurer.

Holding:

The 2nd DCA reversed the trial court's decision. "An insurer's statutorily required sixty-day response to the CRN is not dependent on the determination of damages following appraisal and that 'section 624.155(3)(d) does not toll the cure period until an appraisal is completed.'" "With respect to paying claims, insurers have two independent duties, one contractual and one statutory. First, they have a contractual duty to 'timely evaluate and pay benefits owed on the insurance policy… This includes determining coverage, liability, and the amounts due under the policy. Second, they have a statutory duty to act reasonably and in good faith in evaluating claim." "State Farm's invocation of the appraisal process and payment of the appraisal award after the cure period did not, as a matter of law, cure the alleged bad faith claim."

APEX Roofing and Restoration, LLC v. State Farm Ins. Co.

2022 WL 2374108 (Fla. 5th DCA 2022)

Facts:

The trial court entered final judgment in favor of the Insurer on Insureds first-party bad faith action. The trial court granted summary judgment on two distinct grounds/bases: (1) the sixty-day cure period under section 624.155(3)(d) was "necessarily" tolled once State Farm invoked the appraisal provision in the contract so as "to allow the appraisal to conclude." And (2) Section 624.155 requires that a CRN state, with specificity, the facts and circumstances giving rise to the statutory violations.

Holding:

The 5th DCA reversed the trial court's decision. "Simply put, there is no language contained in section 624.155 that invoking the appraisal process after a CRN is filed tolls the running of the sixty-day cure period. Notably, after the filing of the CRN and State Farm's initiation of the appraisal process in this case, the Florida Legislature amended section 624.155 to add sub-section (3)(f) to specifically preclude a CRN from being filed within sixty days after the appraisal process is invoked by any party in a residential property insurance claim." ; "Apex's CRN related that State Farm had, among other things, suggested numerous "half-cures" to resolving the damage claim, including pricing for labor and materials that was inconsistent with marketplace pricing, made "lowball" offers as a precursor to invoking the appraisal process in order to cause additional delay, and received an invoice from Apex that detailed the actual work performed, with a specific amount necessary to resolve the claim. We hold that these allegations sufficiently complied with the requirements of section 624.155(3)(b)(2)."

Firtell v. USAA Cas. Ins. Co.

332 So. 3d 537 (Fla. 4th DCA 2022)

Facts:

The Circuit Court entered summary judgment in favor of the Insurer based on a claim that the acted in bad faith through the adjustment period despite the invocation of the appraisal process and payment of the award.

Holding:

The 4th DCA reversed the circuit court's decision. "Typically, the question of whether an insurer acted in good faith toward its insured in resolving a claim is an issue of fact for the jury. Given the different inferences that each party argues must be drawn from the facts at hand, this case is no exception."

Fees/PFS

Tower Hill Signature Ins. Co. v. Kushch

335 So.3d 743 (Fla. 4th DCA 2022)

Facts:

The trial court entered final judgment in favor of the Insurer and denied the Insurer's motion for entitlement to fees and costs. The proposal for settlement contained a provision that stated "[i]n further consideration for the above payment, PLAINTIFF instructs his attorney to file a dismissal, with prejudice, of his claims in the action against Tower Hill in the Litigation… with the Court to retain jurisdiction for the limited purposes of determining (1) entitlement to attorney fees and costs; and if determined, (2) amount of reasonable attorney fees and costs." After going to trial and rendering final judgment in favor of the Insurer, the Insurer filed a motion for attorney's fees and costs pursuant to the offer of judgment and prevailing party statutes. This motion was denied "because of the ambiguities and statutory deficiencies."

Holding:

The 4th DCA reversed the trial court's denial of the Insurer's motion for entitlement to fees and costs. "We agree with the Insurer that these statements (the provision stated above) did not create an ambiguity. Proposals for settlement must be reviewed as whole. When read as whole, the Homeowner was required to release all claims against the insurer arising out of this claim and litigation, except for those relating to attorney's fees and costs… When read as a whole, the proposal extinguished any claim that was not a resulting attorney's fee claim… To read this proposal as being inclusive of attorney's fees would render meaningless the statements in both the proposal and release reserving jurisdiction to determine entitlement to attorney's fees and costs. Thus, the proposal was not ambiguous by making the proposal exclusive of attorney's fees and costs."

Garrido v. SafePoint Ins. Co.

2022 WL 107606 (Fla. 3rd DCA 2022)

Facts:

The trial court struck and denied the Insureds motion for prevailing party attorney's fees against Insurer on the basis that Insureds motion was untimely under Florida Rule of Civil Procedure 1.525. The Insureds filed motion for final judgment and entitlement to attorneys' fees and costs seven months after the filing of Insurer's Confession Filing. Under Rule 1.525, "any party seeking a judgment taxing costs, attorneys' fees, or both, shall serve a motion no later than 30 days after filing of the judgment…"

Holding:

The 3rd DCA dismissed the appeal. "Ironically, Garrido's prevailing on the merits of her appeal results in us having to dismiss her appeal for lack of jurisdiction. Consistent with SafePoint's Confession Filing, Garrido's Fees Motion sought both (i) entry of a final judgment, and (ii) a determination that Garrido was entitled to Section 627.428 attorney's fees. Rather than entering a final judgment in Garrido's favor and striking Garrido's attorney's fees request as untimely – which would have resulted in a final, appealable order – the trial court both struck, as untimely, Garrido's request for attorney's fees and denied Garrido's request for entry of a final judgment. There being no final judgment entered by the trial court and in light of our determination that SafePoint's Confession Filing is not a 'judgment' as contemplated y Rule 1.525, the challenged order is interlocutory and may therefore be reconsidered by the trial court."

"Section 627.428 is a substantive statute that prescribes an insured's right to prevailing party attorney's fees against an insurer upon the rendition of a judgment in the insured's favor."

Pre-Suit Notice

Water Damage Express, LLC v. First Protective Ins. Co.

336 So.3d 310 (Fla. 4th DCA 2022)

Facts:

The trial court granted the Insurer's motion to strike assignee's motion for attorney's fees. The Assignee argues that because the legislature never intended for Section 627.7152(10), FL Stat (2019) to apply retroactively, the trial court erred in finding that the statute barred Assignee from recovering attorney's fees. The Assignee contends that its right to attorney's fees was governed by Section 627.428(1), FL Stat (2018), the controlling statute for attorney's fees in an assignment of benefits actions at the time when the Insured entered into AOB. The trial court determined that Section 627.7152(10)'s plain language "clearly states" the statute applies to the date the suit is filed – not the date that the AOB is entered.

Holding:

The 4th DCA reversed the trial court's decision. "The trial court's interpretation of Section 627.7152(13) states, '[t]his section applies to an assignment agreement executed on or after July 1, 2019.'" "The statutory right to attorney's fees is substantive, and accordingly statutes limiting the right to recover attorney's fees do not apply retroactively." "In the instant case, Insurer issued a property insurance policy to the homeowners at some point before August 12, 2018, the date of the covered loss. The homeowners and Assignee signed an AOB on August 27 2018… These pertinent events occurred before May 24, 2019, the effective date of Section 627.7152(10)."

Total Care Restoration, LLC v. Citizens Property Ins. Corp.

337 So.3d 74 (Fla. 4th DCA 2022)

Facts:

The trial court granted summary judgment in favor of the Insurer based on the failure to provide 10 days of pre-suit notice by the Insured's Assignee. The Insureds argue that the 10-day notice requirement of Section 627.7152(9)(a), FL Statutes (2019), does not apply to an assignment of insurance benefits executed after the effective date of the statute, specifically where the underlying policy was issued before that effective date.

Holding:

The 4th DCA affirmed the trial court's decision. "The statute provides that it applies to assignment agreements 'executed on or after July 1, 2019.' Contrary to Total Care's argument, the statute was not applied retroactively – the trial court applied it to an assignment executed after the effective date of the statute (July 16, 2019)." The assignment agreement is viewed as a subsequent contract, therefore it was after the implementation of FL Stat. Section 627.7152.

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