

IN THE COUNTY COURT OF THE FIRST
JUDICIAL CIRCUIT IN AND FOR SANTA
ROSA COUNTY FLORIDA

Case No.: 2022-SC-000014

THE KIDWELL GROUP LLC DBA AIR
QUALITY ASSESSORS OF FLORIDA,
A/A/O JAMES HUTTER,

Plaintiff,

v.

FIRST PROTECTIVE INSURANCE
COMPANY D/B/A FRONTLINE
INSURANCE COMPANY,

Defendant.

THIS CAUSE came to be heard on:

- (1) Defendant's *MOTION TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE FOR FAILURE TO COMPLY WITH FL. STAT. §627.7152 AND INCORPORATED MEMORANDUM OF LAW*, filed February 28, 2022; and
- (2) Defendant's *MOTION TO STAY DISCOVERY*, filed February 28, 2022.

A hearing was conducted on both motions July 18, 2022. The Court, having heard the argument of counsel, having reviewed the court file and being otherwise advised in the premises, finds as follows:

1. This is a breach of contract action stemming from a first-party property homeowners insurance claim dispute wherein the Plaintiff claimed to be the assignee of the homeowners/insureds pursuant to a purported assignment of benefits ("AOB") attached to Plaintiff's Statement of Claim ("Complaint").

2. When considering a motion to dismiss, the Court must accept the allegations of the complaint as true and then determine if it states a valid claim for relief. *Russell v. Sherwin-Williams Co.*, 767 So.2d 592 (Fla. 4th DCA 2000). Moreover, the Court is also required to consider the exhibits attached to and made a part of the complaint in ruling on a motion to dismiss. *Hitt v. North Broward Hospital District*, 387 So.2d 482, 484 (Fla. 4th DCA 1980); Fla. R. Civ. P. 1.130. If there are conflicting allegations between the exhibits and the pleading, the exhibits control. *K.R. Exch. Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So.3d 889, 894 (Fla. 3d DCA 2010) ("It is well settled that the court must consider an exhibit attached to the complaint together with the

complaint’s allegations, and that the exhibit controls when its language is inconsistent with the complaint’s allegations.”)

3. Furthermore, under Florida law, “[w]here a contract violates state law [or some statute], the Florida Supreme Court has said that such a contract is void.” *Gables Insurance Recovery, Inc. v. Citizens Prop. Ins. Corp.*, 261 So.3d 613, 626 (Fla. 3d DCA 2018), citing *Citizens Nat’l Bank & Tr. Co. v. Stockwell*, 675 So.2d 584, 587 (Fla. 1996).

4. The documents attached as exhibits to Plaintiff’s Complaint include: (1) the Plaintiff’s AOB; and (2) an “Invoice” purportedly written by Plaintiff pertaining to an “Engineering Report” and showing a “Balance Due” of \$3,500.00.

5. This Court finds that Plaintiff’s AOB is an “assignment agreement” as defined by Fla. Stat. §627.7152(1)(b). Therefore, Plaintiff’s AOB must be fully compliant with the requirements set forth under Fla. Stat. §627.7152(2) in order for Plaintiff to have standing to bring the instant Action against Defendant.

6. Furthermore, after reviewing Plaintiff’s AOB, it is clear that the AOB itself does not “[c]ontain a written, itemized, per-unit cost estimate of the services to be performed by” Plaintiff as required under Fla. Stat. §627.7152(2)(a)4.

7. The invoice attached to Plaintiff’s Complaint clearly presents itself to be a document that is demanding payment for services *already performed*, not providing an estimated cost of prospective “services *to be performed* by” Plaintiff. Fla. Stat. §627.7152(2)(a)4 (emphasis added).

8. Furthermore, the invoice bears a generation date of “November 16, 2020,” fourteen days *after* the purported execution date displayed on Plaintiff’s AOB.

9. Therefore, the AOB attached to Plaintiff’s Complaint fails to comply with Fla. Stat. §627.7152(2)(a)4, rendering it “invalid and unenforceable” under Fl. Stat. §627.7152(2)(d).

10. As such, Plaintiff does not have standing to bring the instant Action against Defendant for breach of the underlying insurance policy entered into by Defendant and the named insured. *Gables*, 261 So.3d at 616.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** that:

- Defendant’s *MOTION TO DISMISS PLAINTIFF’S COMPLAINT WITH PREJUDICE FOR FAILURE TO COMPLY WITH FL. STAT. §627.7152 AND INCORPORATED MEMORANDUM OF LAW* is **GRANTED with prejudice**.
- Defendant’s *MOTION TO STAY DISCOVERY* is rendered **MOOT**.
- The Court hereby dismisses Plaintiff’s Complaint with prejudice and instructs the clerk to close this file. Plaintiff shall take nothing in this action, and the Defendant may go hence without day. The court reserves jurisdiction on Defendant’s entitlement to

recover its reasonable attorney fees and costs from and against the Plaintiff, pursuant to applicable Florida law.

DONE and ORDERED in Chambers, at Santa Rosa County, Florida.



eSigned by JOSE GIRAUD in 22000014SCMXAX
on 08/02/2022 16:40:24 BYVu15Hr

Jose A. Giraud
County Judge

cc: Kurt M. Ciell, Esq. (kciell@kelleykronenberg.com)
Robert Gonzalez, Esq. (pleadings@flinslaw.com)