

**IN THE COUNTY COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR OSCEOLA COUNTY, FLORIDA**

**CASE NO. 2020-CC- 003338 CL**

ELR RESTORATION, INC. A/A/O

DIV: 60-G

CARLOS BERMUDEZ

PLAINTIFF

VS.

OLYMPUS INSURANCE COMPANY

DEFENDANT

**ORDER ON RESPONDENT, OLYMPUS INSURANCE COMPANY'S MOTION TO  
DISMISS PETITION**

This Matter came before the Court on Respondent's Motion on June 2, 2021 via Microsoft Teams video conference. The Court having heard arguments from both parties, reviewed the court file, and being fully advised in the premises finds the following:

1. The contract at issue is a homeowner's insurance policy, number OL30125636-07 (the "Policy), that Olympus issued to Carlos Bermudez (the "Insured") for property located at 3993 Blossom Dew Drive, Kissimmee, Florida 34746 (the "Property"), for the relevant Policy period of July 27, 2020 to July 27, 2021 (the "Policy").
2. On or about December 31, 2020, the Petitioner filed this action alleging a loss occurring on or about September 1, 2020 and is relying on three (3) alleged assignments of benefits entered into on September 8, 2020.

3. Respondent argues Petitioner lacks standing to bring forth this suit because the assignment agreements fails to comply with the requirements imposed by Florida Statute Section 627.7152 (2019) [the “new statute”] making it invalid and unenforceable.
4. Here, the contracts between Petitioner and Defendant are entitled “Assignment of Insurance Benefits and Direction to pay for Cleaning Service,” “Assignment of Insurance Benefits and Direction to Pay for Content Cleaning Service and Assignment of Insurance Benefits and Direction to Pay for Dry Out Service.”
5. The Court having reviewed section 627.7152, which regulates assignment agreement, finds that the new statute mandates that an assignment agreement like Petitioner must include several provisions in order for the same to be enforceable. Specifically, Petitioner’s assignment agreement must:

1. *Be in writing and executed by and between the assignor and the assignee.*
2. *Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the agreement, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.*
3. *Contain a provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer within three business days after the date on which the assignment agreement is executed or the date on which work begins whichever is earlier.*
4. *Contain a written, itemized, per-unit cost estimate of the services to be performed by the assignee.*
5. *Relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling or structure or to mitigate against further damage to such property.*
6. *Contain the following notice in 180point uppercase and boldfaced type:*

**YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE EXECUTION OF THE AGREEEMNT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER THE PROPERTY INSURANCE POLICY.**

*7. Contain a provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.*

6. The Court finds that the Petitioner's assignment agreements is devoid of, itemized, per-unit cost estimate of the services to be performed which is a violation of subsection 627.7152(2)(a)(4). The assignment agreements did not provide an estimate, total cost or potential cost, or detailed line item of work to be performed or intended to be performed; therefore, the assignment fails to place the Defendant on notice of his potential financial obligation. The new statute makes it clear that an assignment agreement that does not comply with the aforementioned requirements it is "invalid and unenforceable". Fla. Stat. Section 627.152(2). As a result, of Petitioner's assignment agreements being invalid and unenforceable, the Court finds that Petitioner does not have standing to file this lawsuit.

**WHEREFORE IT IS ORDERED AND ADJUDGED that: RESPONDENT, OLYMPUS INSURANCE COMPANY'S MOTION TO DISMISS PETITION IS GRANTED.**

**DONE AND ORDERED** at Kissimmee, Osceola County, Florida this \_\_\_\_\_ day of \_\_\_\_\_ 2021.



eSigned by Gabrielle N. Sanders-Morency in 2020 CC 003338 CL  
on 06/10/2021 17:20:05 WW9KyVyy

**Gabrielle Sanders-Morency**  
County Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 10th day of June, 2021 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Olga Melendez, Judicial Assistant to Judge GABRIELLE SANDERS-MORENCY