

IN THE COUNTY COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR PASCO
COUNTY FLORIDA

Case No.: 2021-CC-002671

THE KIDWELL GROUP, LLC, D/B/A AIR
QUALITY ASSESSORS OF FLORIDA,
A/A/O STEPHEN BIGORA,

Plaintiff,

v.

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

Defendant.

ORDERS ON MOTIONS

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 23, 2022; and
- (2) Defendant's *MOTION TO STAY DISCOVERY*, filed February 23, 2022.

A hearing was conducted on both motions June 17, 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 which comprise “Exhibit A” of Plaintiff’s Complaint include, among other items: (1) the Plaintiff’s AOB; (2) an “Invoice” purportedly written by Plaintiff pertaining to an “Engineering Report” and showing a “Balance Due” of \$3,500.00; and (3) a “Forensic Engineering Report” purportedly authored by Plaintiff pertaining to the subject property and the loss alleged in Plaintiff’s Complaint.

5. After reviewing Plaintiff’s “Forensic Engineering Report” and evaluating its contents under the applicable standard for a motion to dismiss, it is clear that the services purportedly performed by Plaintiff under the AOB were “services to protect, repair, restore, or replace property or to mitigate against further damage to the property” pursuant to 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. 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. Although the invoice attached to Plaintiff’s Complaint bears the same generation date as the date the AOB was purportedly signed by the insured, the terms on its face clearly present the invoice 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. 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).

9. 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 Pasco County, Florida on this _____ day of
June, 2022.

Electronically Conformed 6/23/2022

Dustin Anderson

Hon. Dustin Anderson
COUNTY JUDGE

cc: Kurt M. Ciell, Esq. (kciell@kelleykronenberg.com)
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