

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

Case No.: 2021SC007218

THE KIDWELL GROUP LLC DBA AIR
QUALITY ASSESSORS OF FLORIDA
A/A/O ALAN ALVAREZ

Plaintiff,

v.

STATE FARM FLORIDA INSURANCE
COMPANY,

Defendant

ORDER ON MOTION

THIS CAUSE came to be heard on 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 March 23, 2022. A hearing was conducted June 16, 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. As stated in case law cited in the instant Motion, 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).

3. The AOB attached to Plaintiff's Complaint provides that the insured who executed it intended to "assign[] any and all insurance rights, benefits, and proceeds under [the insured's] property insurance policy" to Plaintiff and clearly purports to have been executed by the relevant parties after July 1, 2019. Therefore, the AOB's validity depends upon its compliance with the statutory requirements set forth by Fla. Stat. §627.7152. See *Total Care Restoration, LLC a/a/o Annie Griffiths v. Citizens Property Insurance Corporation*, 337 So.3d 74 (Fla. 4th DCA

2022)(holding that Fla. Stat. §627.7152 applies to all assignment agreements executed after July 1, 2019).

4. Furthermore, nothing in Plaintiff's Complaint or the exhibits attached to it allege that the AOB executed between Plaintiff and the insured was of a nature related to any of the three exceptions listed under Fla. Stat. §627.7152(11). "It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole." *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452 (Fla. 1992). Therefore, when evaluating Plaintiff's AOB with respect to the instant Motion, the Court must apply Fla. Stat. §627.7152.

5. Upon review of Plaintiff's Complaint and the exhibits attached to it, the Court finds that the AOB attached to Plaintiff's Complaint fails to comply with all of the requirements set forth under Fl. Stat. §627.7152, rendering it "invalid and unenforceable" under Fl. Stat. §627.7152(2)(d).

6. 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 the 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**. The Court hereby dismisses Plaintiff's Complaint **with prejudice** for violating Fla. Stat. §627.7152 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 6/17/2022
Kent Compton

Hon. Kent Compton
COUNTY JUDGE

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