

IN THE COUNTY COURT OF THE 6TH  
JUDICIAL CIRCUIT IN AND FOR PASCO  
COUNTY, FLORIDA

Case No.: 2021-SC-006974

THE KIDWELL GROUP, LLC D/B/A AIR  
QUALITY ASSESSORS OF FLORIDA a/a/o  
LAUREN DIAL,

Plaintiff,

v.

FAMILY SECURITY INSURANCE  
COMPANY, INC.,

Defendant.

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### **ORDER ON MOTION**

THIS CAUSE came to be heard on Defendant's *MOTION FOR RECONSIDERATION OF COURT'S ORDER ON DEFENDANT'S MOTION TO DISMISS* filed March 11, 2022. A hearing was conducted June 9, 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. In response to Plaintiff's Complaint, Defendant filed a motion to dismiss on January 26, 2022, arguing that the AOB attached to Plaintiff's Complaint, and upon which Plaintiff's legal standing relies, was invalid, unenforceable, and void as a matter of law for violating Fla. Stat. §627.7152(2)(a)4 & 5.

3. Defendant subsequently submitted its motion to dismiss to be ruled upon without a hearing pursuant to Administrative Order No. 2020-012 PA/PI-CIR, and on March 3, 2022, this Court entered an order denying said motion but without providing any explanation for the Court's decision.

4. On March 11, 2022, Defendant filed the instant motion for reconsideration of the Court's March 3, 2022 Order, which is well-founded. Therefore, the Court grants Defendant's motion as such, and the Court hereby vacates the March 3, 2022 order and replaces such with the instant Order, for the reasons outlined herein. *See, Silvestrone v. Edell*, 721 So.2d 1173 (Fla. 1998);

*Seigler v. Bell*, 148 So.3d 473, 478-79 (Fla. 5th DCA 2014) (“Motions for reconsideration [] are based on a trial court’s inherent authority to reconsider and, if deemed appropriate, alter or retract any of its [] rulings prior to [] terminating an action.”) (citing *Francisco v. Victoria Marine Shipping, Inc.*, 486 So.2d 1386 (Fla. 3d DCA 1986)); *VLX Properties, Inc. v. Southern States Utilities, Inc.*, 792 So.2d 504, 509 (Fla. 5th DCA 2001) (“If, indeed, a court has rendered an erroneous ruling, ideally the court should embrace the opportunity to make the right decision.”).

5. As stated in case law cited in Defendant’s previous motion to dismiss, 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).

6. 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 (2019). See *Total Care Restoration, LLC a/a/o Annie Griffiths v. Citizens Property Insurance Corporation*, 2022 WL 1160756 (Fla. 4<sup>th</sup> DCA April 20, 2022)(holding that Fla. Stat. §627.7152 applies to all assignment agreements executed after July 1, 2019).

7. Those requirements include, but are not limited to, the following:

***Fl. Stat. §627.7152 Assignment agreements. -***

...

*(2)(a) An assignment agreement must:*

...

*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.*

8. Upon review of Plaintiff’s Complaint and the exhibits attached to it, Plaintiff’s AOB clearly does not “[c]ontain a written, itemized, per-unit cost estimate of the services to be performed by the assignee,” in violation of Fla. Stat. §627.7152(2)(a)4.

9. 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, the Court must apply Fla. Stat. §627.7152 (2019) when evaluating Plaintiff’s AOB with respect to Defendant’s previous motion to dismiss.

10. The AOB attached to Plaintiff's Complaint contains a provision stating that Plaintiff's services are "in no way meant to protect, repair, restore, or replace damaged property or to mitigate against further damage to the property as defined by Florida Statutes section 627.7152." Taken as true while evaluating Defendant's motion to dismiss, this provision must be interpreted as an admission that Plaintiff's AOB fails to comply with the requirement set forth under Fla. Stat. §627.7152(2)(a)5.

11. Therefore, the AOB attached to Plaintiff's Complaint is "invalid and unenforceable" pursuant to Fla. Stat. §627.7152(2)(d) due to Plaintiff's failure to comply with Fla. Stat. §627.7152(2)(a)4 & 5.

12. 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 FOR RECONSIDERATION OF COURT'S ORDER ON DEFENDANT'S MOTION TO DISMISS* is **GRANTED**. The Court hereby vacates the order entered on March 3, 2022, and the Court hereby dismisses Plaintiff's Complaint **with prejudice** for violating Fla. Stat. §627.7152 (2019) 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 \_\_\_\_\_, 2022.

Electronically Conformed 6/19/2022  
Kent Compton

\_\_\_\_\_  
Hon. Kent Compton  
COUNTY JUDGE

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