

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA

Case No.: 11-2021-CA-001139-0001-XX

ANGEL A. RODRIGUEZ AND ALINA
RODRIGUEZ,

Plaintiffs,

v.

UNITED PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

**ORDER ON DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT AND
ENTRY OF FINAL JUDGMENT IN FAVOR OF THE DEFENDANT**

THIS CAUSE, wherein, the Honorable Court having heard each Parties' arguments on Defendant's Motion for Final Summary Judgment on November 7, 2022, it is hereby **ORDERED and ADJUDGED** that:

1. Defendant's Motion for Final Summary Judgment filed on September 16, 2022, is hereby **GRANTED**.

2. The Court makes the following findings of fact:

3. The Plaintiffs were aware of the passing of Hurricane Irma on the date of loss of September 10, 2017, and immediately thereafter became aware of damages to their property, including but not limited to the roof, lanai, and garage.

4. Instead of promptly reporting the claim, the Plaintiffs from September 10, 2017 to May 18, 2020 (when the claim was finally reported to United) conducted a series of repairs to the same claimed damages in this Action.

5. Prior repairs include but not limited to the garage, lanai, roof, and the interior, such as the master bedroom and hallway.

6. These prior repairs were performed by but not limited to a local roofer who conducted repairs soon after the passing of Hurricane Irma and prior to the year 2017 ending. Also, prior repairs were performed by Double G Construction and interior repairs coordinated by Premier Property Management Company.

7. The Plaintiffs' Response to Defendant's Motion for Final Summary Judgment included an affidavit from Plaintiffs' engineer, Freddy Andrade.

8. The Court finds Mr. Andrade's brief affidavit to be wholly conclusionary, not adequately supported, and does not take into account the series of prior repairs to the claimed damages.

9. The Court additionally finds that the Defendant has met their directed verdict standard, and that the evidence is not reasonable for a Jury to return in favor of the non-movant.

10. The Defendant has submitted evidence of prejudice, and the Plaintiffs have failed to rebut Defendant's prejudice.

11. The Court makes the following conclusions of law:

12. Under Florida's summary judgment standard, the inquiry before the Court in ruling on Defendant's instant *Motion* is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986).

13. Plaintiffs' engineer's affidavit was insufficient to create a genuine issue of material fact to overcome the prejudice to the Defendant from the Insureds' delay of more than two years before reporting loss and after making repairs without keeping records and, thus, did not preclude

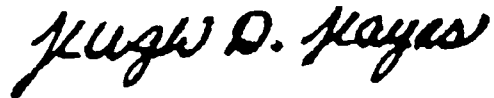
summary judgment in favor of Insurer in Insureds' action for breach of contract. *See Perez v. Citizens Prop. Ins. Corp.*, 343 So.3d 140 (Fla. 3d DCA July 6, 2022).

14. The Plaintiffs' lack of prompt notice is not excused because the Plaintiffs may have not been fully aware of the full extent of the damages, if the damages will exceed the deductible, or if their insurance premium would increase. *See The Yacht Club on the Intercoastal Condo. Ass'n, Inc. v. Lexington Ins. Co., et al.*, No. 11-15683 (11th Cir. 2013).

15. As such, the Defendant is the prevailing party and the Plaintiffs' shall go hence forth without day.

16. Further, the Defendant is entitled to costs pursuant to Florida Statute §57.041.

17. The Court retains jurisdiction to consider Defendant's entitlement to reasonable attorney's fees.



eSigned by Hayes, Hugh D in 11-2021-CA-001139-0001-XX 11/14/2022 14:19:02 LBPJOreM

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