

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION DIV: "AF"
CASE NO.: 2020CA009557AXX

FLORENCE MOTOLA,

Plaintiff,

vs.

UNITED PROPERTY CASUALTY
INSURANCE COMPANY,

Defendant.

_____ /

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE came before the Court on April 6, 2021 on Defendant's Motion to Dismiss Plaintiff's Complaint. The Court, having carefully reviewed the Motion, the Plaintiff's Response in Opposition, having reviewed the court file and record, having heard argument of counsel, and after being otherwise duly advised in the premises, finds as follows:

A. Background.

Plaintiff, Florence Motola initiated this action on September 4, 2020, bringing a one-count cause of action against Defendant, United Property & Casualty Insurance Company ("United") for bad faith violations of Fla. Stat. §624.155. Defendant issued a policy of insurance to Plaintiff, covering her real property, for the period of August 8, 2017 to August 8, 2018. On or about August 20, 2019, Plaintiff, through her public adjuster, reported a loss to United related to Hurricane Irma on September 10, 2017. United promptly acknowledged the loss and investigated Plaintiff's claim through a field adjuster and engineer. On November 14, 2019, United afforded coverage for the loss, for repairs to the roof and interior, and payment was issued to Plaintiff. Due to a disagreement

in the valuation of the loss, the following day, Plaintiff requested, and United agreed to, appraisal under the insurance policy.

Plaintiff and Defendant assigned their respective appraisers and an inspection of the property was conducted on January 13, 2020. As the appraisers could not reach an agreement, pursuant to the terms of the policy, a mutually agreed upon neutral umpire was appointed to act as arbiter. The panel (appraisers and umpire) inspected the property on March 9, 2020. On May 28, 2020, Plaintiff filed a Civil Remedy Notice (“CRN”) alleging delay on the part of the umpire in rendering his determination. The appraisal award was then signed on July 17, 2020, inclusive of roof and interior repairs, and United issued a supplemental payment on August 2, 2020.

Defendant argues that dismissal of this action is warranted as Plaintiff failed to comply with the requirements of Fla. Stat. § 624.155(3)(b), which is a condition precedent to bringing an action for statutory bad faith under Fla. Stat. § 624.155.

B. Analysis.

Before filing a lawsuit seeking bad faith damages under Fla. Stat. § 624.155, a policyholder must file a Civil Remedy Notice with the Department of Financial Services and the Insurer. *See, Talat Enters., Inc. v. Aetna Cas. & Sur. Co.*, 753 So. 2d 1278, 1283 (Fla. 2000). The CRN provides a sixty (60) day window, “...designed to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation.” *Id.* at 1282. A statutory bad faith claim becomes ripe for litigation when there has been (1) determination of the insurer's liability for coverage; (2) determination of the extent of the insured's damages; and (3) the required civil remedy notice has been filed under section 624.155(3)(a). *See, Cammarata v. State Farm Fla. Ins. Co.*, 152 So. 3d 606, 612 (Fla. 4th DCA 2014).

Florida Statute § 624.155(3)(b) further provides the Civil Remedy Notice prerequisite to a bad faith suit “...shall be on a form provided by the department and shall state with specificity the following information...”

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated.
2. The facts and circumstances giving rise to the violation.
3. The name of any individual involved in the violation.
4. Reference to specific policy language that is relevant to the violation, if any...
5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

Fla. Stat. § 624.155(3)(b).

As the civil remedy was not available prior to the adoption of Fla. Stat. § 624.155, and as the statute is in derogation of the common law, it must be strictly construed. *See, Talat* 753 So. 2d at 1283. Accordingly, a statutory bad faith case cannot proceed absent strict compliance with all statutory requirements. Herein, Defendant argues Plaintiff’s Civil Remedy Notice is deficient based on several reasons, each of which renders the CRN defective, leaving Plaintiff without a valid basis to pursue a bad faith cause of action. Plaintiff argues the appraisal award determined Defendant’s liability for coverage and the extent of damages, and Defendant failed to cure the allegations in the CRN within the sixty (60) day cure window.

This Court agrees with Defendant and finds the Civil Remedy Notice did not meet the specificity requirements of Fla. Stat. § 624.155. The CRN filed by Plaintiff lists six (6) statutory provisions allegedly violated by United, yet fails to provide specific facts and circumstances giving rise to the violations as is required. A reading of the CRN finds the same to be vague and ambiguous, as well as replete with allegations of shortcomings by the third-party umpire, who is

neither an employee nor an agent of United. The allegations contained in the CRN do not pertain to specific actions or inactions on the part of United, and failed to place Defendant on notice of any alleged wrongdoing, along with an opportunity to cure. Claims included in the CRN that the mutually agreed upon umpire failed to inspect the roof, refused to provide his report timely, or delayed causing prejudice to the Plaintiff, do not meet the specificity requirements of Fla. Stat. § 624.155(3)(b), and the same must be strictly construed.

It follows, as Plaintiff has failed to set forth specific statutory violations by United or the specific facts and circumstances on the part of United giving rise to these statutory violations as required by Fla. Stat. §§ 624.155(3)(b)(1) and (2), the CRN is invalid on its face. Likewise, this Court finds the CRN is devoid of “[r]eference to specific policy language that is relevant to the violation, if any...” *See*, Fla. Stat. § 624.155(3)(b)(4). In an attempt to comply with this statutory requirement, the Plaintiff listed in the CRN, “loss Settlement Provision and appraisal provision.” This language is vague and does not meet the specificity requirements of the governing statute. Moreover, the broad language failed to put Defendant on notice of any specific violation, and afford an opportunity to cure. It is noted, Fla. Stat. § 624.155(3)(b)(4) contains the language “if any,” suggesting the particular section may not be mandatory. However, it is clear, where Plaintiff opts to include policy provisions as a part of the CRN filing, the same must be stated with specificity.

C. Conclusion.

For the reasons stated above, and based strictly on a review within the four corners of the Complaint and attached exhibits, the Court finds Plaintiff did not comply with the specificity standard of Fla. Stat. § 624.155. The recent holding in *Julien v. United Prop. & Cas. Ins. Co.*, No. 4D19-2763, 2021 WL 824438, at *3 (Fla. 4th DCA Mar. 3, 2021) is controlling and the facts are

consistent herein. This Court finds Plaintiff failed to satisfy the requirement that the insured identify the specific statute(s), facts or circumstances, and specific policy provision(s) relevant to United's alleged violations. **WHEREFORE**, it is hereby

ORDERED and ADJUDGED as follows:

1) Defendant's Motion to Dismiss Plaintiff's Complaint is **GRANTED WITHOUT PREJUDICE**.

2) Plaintiff has leave to amend the Complaint within twenty (20) days of the entry of this Order.

DONE and ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 09 day of April, 2021.



502020CA009557XXXXMB 04/09/2021
John S. Kastrenakes Circuit Judge

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John S. Kastrenakes
Circuit Judge

COPIES FURNISHED:

All Counsel of Record