

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

Case No.: CACE-19-003610

GERMAN ACEVEDO,

Plaintiff,

v.

TOWER HILL PRIME INSURANCE
COMPANY,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT
FOR FRAUD ON THE COURT AND FOR ATTORNEY'S FEES AND COSTS**

THIS CAUSE having come before this Court on Defendant's Motion to Dismiss for Fraud on the Court and for Attorney's Fees and Costs incurred by Defendant ("Motion to Dismiss"), wherein the Defendant asked the Court to dismiss this case for fraud on the court based on material misrepresentations that were made by the Plaintiff in association with a claim for property insurance proceeds made to Tower Hill Prime Insurance Company. The Court conducted an evidentiary hearing on October 1, 2020, and heard live testimony from the Plaintiff, Tower Hill's field adjuster and representatives from Citizens Property Insurance Corporation who previously insured Plaintiff's property, and was able to evaluate the credibility of the witnesses. After reviewing the motions of the parties, the deposition testimony of the Plaintiff, and considering all of the documentary and testimonial evidence submitted in relation to the Defendant's Motion to Dismiss, the Court hereby makes the following findings:

1. On September 21, 2015, Strems Law Firm (“Strems”), on behalf of Plaintiff, reported a bathroom leak that allegedly caused damage to the hallway bathroom and kitchen cabinetry of Plaintiff’s home on September 15, 2015.

2. On October 8, 2015, an independent adjuster on behalf of Tower Hill photographed the subject property, and these photographs were authenticated by the independent adjuster and entered into evidence during the hearing on October 1, 2020.

3. The photographs exhibited damage to the hallway bathroom and kitchen cabinetry that can be observed and described in relation to reference points within the photographs themselves.

4. As part of its claim investigation, Tower Hill obtained a prior claim file from Citizens Property Insurance Corporation (“Citizens”) relating to a 2013 bathroom leak claim brought by the Plaintiff involving the same property.

5. As testified to by Citizens’ field adjuster and corporate representative during the evidentiary hearing, Plaintiff sustained damage to the hallway bathroom and kitchen cabinetry due to a bathroom plumbing leak on September 20, 2013. Notably, Plaintiff was represented by Strems during this prior claim as well.

6. In relation to this prior 2013 plumbing leak loss, Citizens accepted coverage for the damages and initially paid Plaintiff \$10,645.45, after application of the \$2,500 deductible. A portion of the payment was to replace the kitchen cabinetry and bathroom.

7. Thereafter, Plaintiff and Strems filed a lawsuit and claimed the value of the damages were \$33,148.33, seeking the full replacement of the kitchen cabinetry and bathroom remodel. Citizens resolved the lawsuit by issuing an additional payment of \$18,500 (\$13,000 of which was paid to Plaintiff).

8. The evidence presented during the evidentiary hearing established that Plaintiff did not replace the bathroom or kitchen cabinets following the issuance of the insurance proceeds paid by Citizens. As a result, at the time of the 2015 bathroom plumbing leak with Tower Hill, the same bathroom and kitchen cabinets were being claimed.

9. The Court compared the photographs taken by the Citizens' field adjuster on October 1, 2013, which were authenticated by the Citizens' field adjuster and entered into evidence, with the photographs taken during Tower Hill's investigation, and finds that the kitchen cabinetry and bathroom are the same and were not replaced between the damages that were sustained during the 2013 Citizens claim and the 2015 Tower Hill claim.

10. Despite previously being paid to replace the kitchen cabinetry and hallway bathroom, Plaintiff and Strems filed a second lawsuit, again seeking the replacement of the same kitchen cabinetry and hallway bathroom. Plaintiff submitted a sworn proof of loss and damage estimate to Tower Hill for \$43,327.65. The submitted estimate again included a full kitchen cabinetry/countertop replacement and a complete bathroom remodel.

11. The claim investigation, discovery during Tower Hill's defense of this action, and the 2013 Citizens claim materials establish that the Plaintiff engaged in fraudulent conduct relating to the Plaintiff's effort to obtain duplicative recovery of insurance benefits for the same, unrepaired, damages.

12. As if the reporting of the second claim, and submission of a sworn proof of loss and damage estimate seeking duplicative insurance proceeds were not enough, on August 22, 2019, the Plaintiff's deposition was taken under oath wherein he continuously provided materially inconsistent testimony and lied about replacing the kitchen and bathroom prior to the subject Tower Hill loss.

13. Specifically, during Plaintiff's deposition, Plaintiff testified:

Q. Mr. Acevedo, tell me everything you did at your house after the first loss with Citizens, but before the second loss with Tower Hill.

A. All the plumbing pipes got changed, the bathroom was rebuilt. The floors were changed out and cabinets.

Q. What about the cabinets?

A. The cabinets in the kitchen.

Q. You replaced those?

A. Yes. They were replaced.

See Deposition Transcript of Plaintiff dated August 22, 2019, attached to Defendant's Motion to Dismiss as Exhibit "G", p. 29, lines 15-24.

14. The deposition continued:

Q. So you put in new plumbing; you rebuilt the original bathroom; you put in new cabinets; and you installed new floors throughout the house?

A. Yes.

Q. Anything else?

A. No, not that I recall.

Q. And this was done after the first loss in the bathroom that you reported to Citizens, but before the second loss in the bathroom that you reported to Tower Hill for why we're here today, correct?

A. Correct.

Q. And you understand you're under oath, and you're able to remember that you did all of this work in between these two losses, correct?

A. Correct. The thing is, I have a minor doubt as to whether it was done on the floor on that first claim.

Q. Okay, but with respect to the kitchen cabinets, remodeling the bathroom, and putting in new pipes, you're 100 percent certain that it occurred – that you made the repairs and replaced those items in between these two losses, correct?

A. Yes, correct.

See Deposition Transcript of Plaintiff dated August 22, 2019, attached to Defendant's Motion to Dismiss as Exhibit "G", pp. 40-41, lines 21-25; 1-17.

15. The Court finds that Plaintiff's testimony during his deposition demonstrates a flagrant disregard for the truth that rises to the level of perpetuating fraud upon this Court.

16. During the evidentiary hearing on October 1, 2020 before this Court and with the assistance of a Spanish interpreter, the Plaintiff admitted that he filed this lawsuit and submitted a sworn proof of loss seeking the recovery of the same damages from the prior 2013 loss that he was paid by Citizens.

17. The records reflect that Plaintiff was served with a §57.105, Fla. Stat. Motion for Sanctions, which was filed on June 4, 2019. This motion outlined the exact issue before the Court on Defendant's Motion to Dismiss; namely, Plaintiff and Strems efforts to obtain duplicative insurance proceeds for the same damages. At no point prior to the evidentiary hearing did Plaintiff or his former counsel, despite both parties involvement in the prior claim and lawsuit, dismiss the action.

18. Based on the record before the Court, it has become undeniably evident, through clear and convincing evidence, that the Plaintiff and Strems filed this claim and lawsuit in order to collect additional funds for damages which Plaintiff has already been compensated for by Citizens, and is keen to willfully deceive and defraud this Court in order to get said funds.

19. This Court had the ability to assess the credibility of the Plaintiff and witnesses, as well as evaluate the evidence submitted in support of Defendant's Motion to Dismiss. The Court finds that the record establishes that the misrepresentations during the course of litigation were done willfully, and in an attempt to obtain duplicative insurance proceeds. It was not until Plaintiff

was shown photographs at the end of his August 22, 2019 deposition, that he changed his testimony and admitted he was seeking the same damages from the prior 2013 loss with Citizens. *Id.* at pp. 72-73; lines 8-25, 1-2. Despite this admission, Plaintiff and Strems continued to prosecute this case.

20. There was no credible explanation provided by the Plaintiff as to bringing and maintaining this action, other than his attempt to misrepresent the facts in order to defraud Tower Hill and obtain insurance proceeds which he is not entitled. The misrepresentations relates to the central issue in the case and go to the heart of the matter. This is further supported by the Plaintiff's submission of a Sworn Proof of Loss, swearing under oath that he was entitled to \$43,327.65 from Tower Hill. In the Sworn Proof of Loss, the Plaintiff swore under oath that \$43,327.65 of damages were sustained on September 15, 2015. The Court finds that the Plaintiff's sworn statement was false, as at least a portion of the claimed damage occurred in 2013 and was unrepaired prior to September 15, 2015.

21. Based on the entire record before the Court on the Defendant's Motion to Dismiss, there is clear and convincing evidence that the Plaintiff misrepresented his claimed damages and prior repairs, as well as show Plaintiff's efforts to obtain insurance proceeds for the same damages he was previously paid for by Citizens in the 2013 loss.

22. This Court finds that Plaintiff has intentionally set in motion an unconscionable scheme calculated to interfere with the judicial system's ability to adjudicate this matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's defense. *Aoude v. Mobil Oil Corp.*, 892 F. 2d 1115 (1st Cir. 1989); *Bryant v. Mezo*, 226 So. 3d 254 (Fla. 4th DCA 2017).

23. As the claim in this case involves the same damages claimed in the prior claim, Plaintiff's misrepresentation about his claimed damages, repairs and payment of insurance proceeds is directly related to the central issue in this case. *Gilbert v. Eckerd Corp. of Fla., Inc.*, 34 So. 3d 773 (Fla. 4th DCA 2010); *Cox. V. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998) ("The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.").

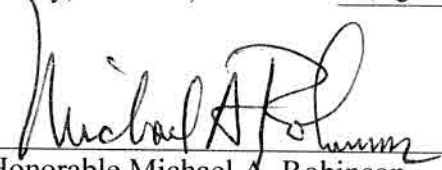
24. Given the totality of the circumstances, weighing all factors, and evaluating the witnesses credibility and evidence submitted, this Court finds that lesser sanctions would be ineffective or unjust. *Aoude*, 892 F. 3d at 1118; *Cox*, 706 So. 2d at 46. The Plaintiff's willful and deliberate actions warrant the severe sanction of dismissal for fraud upon the Court. *Sky Dev., Inc. v. Vistaview Dev., Inc.*, 41 So. 3d 918, 920 (Fla. 3d DCA 2010) (affirming dismissal with prejudice and award of defendant's attorney's fees because the plaintiff's conduct was certainly a "blatant showing of fraud, pretense, collusion or other similar wrongdoing."); *Pena v. Citizens Prop. Ins. Co.*, 88 So.3d 965, 968 (Fla. 2d DCA 2012) (awarding fees and costs expended by defendant insurer from the filing of the complaint because of the plaintiffs' fraud on the court, which necessitated efforts by the defendant insurer to expose the plaintiffs' fraud).

25. It is therefore, **ORDERED** and **ADJUDGED**, that the Defendant's Motion to Dismiss for Fraud Upon the Court is **GRANTED** and the instant case is **DISMISSED WITH PREJUDICE**.

26. This Court further reviewed Defendant's Motion for Sanctions pursuant to §57.105, Fla. Stat., and determined that the basis for Motion to Dismiss is related to identical issues raised by the §57.105, Fla. Stat., Motion for Sanctions. Therefore, no additional argument is required for

this Court to adjudicate the relief sought in Defendant's §57.105, Fla. Stat., Motion for Sanctions. This Court finds that Plaintiff and Plaintiff's former counsel knew that the claim and lawsuit was not supported by the material facts necessary to establish the claim. Since Defendant is the prevailing party in this action, this Court further awards sanctions against Plaintiff for payment of Defendant's reasonable attorney's fees and costs incurred in defending Plaintiff's claim, to be paid by Plaintiff. This Court reserves jurisdiction solely for the purpose of determining the amount of Defendant's reasonable attorney's fees and costs.

DONE AND ORDERED in Broward County, Florida, on this 16th day of October, 2020.


Honorable Michael A. Robinson
Circuit Court Judge

MICHAELA. ROBINSON
Circuit Court Judge

OCT 16 2020

TRUE COPY

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