

IN THE COUNTY COURT OF THE 5TH  
JUDICIAL CIRCUIT IN AND FOR LAKE  
COUNTY FLORIDA

Case No.: 2020-SC-004964

THE KIDWELL GROUP LLC DBA AIR  
QUALITY ASSESSORS OF FLORIDA,  
a/a/o JIMMY AND MARY ROTH,

Plaintiff,

v.

AMERICAN INTEGRITY INSURANCE  
COMPANY OF FLORIDA,

Defendant.

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**ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

THIS CAUSE came to be heard on Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA's ("American Integrity"), Motion for Summary Judgment filed May 5, 2021. A hearing was conducted on August 4, 2021. The Court, having heard the argument of counsel, having reviewed the court file and being otherwise advised in the premises, finds as follows:

**FACTS:**

1. On November 23, 2020, THE KIDWELL GROUP LLC DBA AIR QUALITY ASSESSORS OF FLORIDA ("AQA"), filed this suit seeking to recover \$3,500.00 for an engineering report prepared for American Integrity's Insureds, JIMMY AND MARY ROTH.
2. American Integrity argues that AQA's invoice for its Forensic Engineering Report does not come within the terms of the Policy.
3. The evidence offered by American Integrity in support of its Motion for Summary Judgment includes the Insureds' insurance Policy issued to them by American Integrity.
4. In opposition, AQA also provided the insurance Policy and, additionally, the Affidavit of the actual report at issue by the records custodian.

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ANALYSIS:

1. On a motion for summary judgment, the initial burden is on the party moving for summary judgment to establish that there is no genuine issue of material fact. *Vitelli v. Hagger*, 268 So.3d 246, 246-48 (Fla. 5<sup>th</sup> DCA 2019). Once the movant makes such a showing, the burden shifts to the opposing party to present evidence of a genuine issue of material fact. *Id.* at 248. American Integrity's claim that there is no genuine issue of material fact is supported by the insurance Policy. The Court finds that American Integrity met its initial burden of demonstrating that there is no genuine issue of material fact, and the burden shifted to AQA to demonstrate that genuine issue of material fact exists. AQA failed to meet its burden.

2. AQA argues that American Integrity's policy is an "all-risk" policy and there is no specific exclusion excluding the engineering report from payment under the Policy. AQA provided: (1) the Affidavit of the actual report at issue by the records custodian; and (2) the insurance Policy.

3. First, as to AQA's argument that the Policy does not exclude its engineering report from payment, AQA failed to meet the threshold to come "apparently within the terms of the Policy." *Jones v. Federated National Ins. Co.*, 235 So.3d 936, 940 (Fla. 4<sup>th</sup> DCA 2018). AQA does not dispute that the engineering report is not a "direct loss" or "physical loss" to property. Nor does AQA dispute that the invoice for the engineering report is not a "repair" or "replacement cost" under the subject Policy. Rather, AQA argues that its engineering report is "related" to repairs and/or replacement. Notably, there is no summary judgment evidence before this Court that AQA's engineering report was required to effectuate repairs at the Insureds' Property. Thus, because the report is not direct physical loss or damage to the Property, nor is it required to repair or replace the damaged Property, it does not fall within the Policy. *Id.*

4. Since AQA's engineering report does not mitigate, repair or replace physical loss of any type, nor is it required to effectuate repairs to the damaged Property, the Policy, on its face, does not contemplate AQA's engineering report. AQA's reliance on *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433 (Fla. 2013), is misplaced because the Florida Supreme Court recognized the general contractor was a replacement cost because "the insured would be required to pay costs for a general contractor's overhead and profit for the completion of repairs in the same way the insured would have to pay other replacement costs he or she is reasonably likely to incur in repairing the property." *Id.* at 435-36. There is no evidence here that the Insureds were required to obtain AQA's report to repair their property.

It is therefore **ORDERED AND ADJUDGED** that Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA's Motion for Summary Judgment is granted.

The Court hereby enters Final Judgment in favor of Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA.

Plaintiff, THE KIDWELL GROUP LLC DBA AIR QUALITY ASSESSORS OF FLORIDA, a/a/o JIMMY AND MARY ROTH, shall take nothing by this action and Defendant shall go hence without day.

The Court reserves jurisdiction on attorney fees and costs.

**DONE** and **ORDERED** in Chambers at Lake County, Florida on this 31<sup>st</sup> day of August, 2021.

*Aug 31-21*

*Carla Pepperman*  
Hon. Carla Pepperman  
County Court Judge

Copies furnished to: **SERVICE VIA E-PORTAL**

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