

IN THE COUNTY COURT OF THE FOURTH JUDICIAL CIRCUIT IN AND FOR DUVAL
COUNTY, FLORIDA

ALL-STAR SERVICING WEST, INC A/A/O
TAUNYA PATTERSON

Case No.: 16-2022-SC-002180

,

Plaintiff,

v.

UNITED PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

_____ /

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This lawsuit was initiated by Plaintiff under a purported assignment of benefits (“AOB”) contract from Taunya Patterson, who is insured by the Defendant. The homeowner’s insurance policy at issue is identified as Policy number UHF2855852 02 (the “Policy”) issued by Defendant to TAUNYA D. PATTERSON (the “Insured”) for the property located at 1920 W. 30th Street, Jacksonville, FL 32209 (the “Property”), for the relevant Policy period of April 18, 2021 through April 18, 2022 (the “Policy”).

Plaintiff attached to its Complaint the following exhibits:

- a. a contract between itself and Defendant’s Insured dated August 28, 2019;
- b. an invoice or estimate for services to be performed; and
- c. a notice of intent to initiate litigation.

The AOB contract contains the following language related to Payments, Terms, and Interest: *“I agree that any portion of work, deductibles, betterment, depreciation, or additional*

work requested by myself, not covered under the insurance policy or claim, must be paid by myself on or before its completion.”

UPC inspected and adjusted this loss with its Insured, and with total assessed damages under the deductible, UPC closed its file on October 12, 2021. The only estimate for damages written regarding this homeowner, property, and claim was in the amount of \$397.50 (replacement cost value) and \$344.46 for actual cash value. No supplemental claim or other claim for damages was made after UPC closed its file on October 12, 2021.

The amount of monetary damages sought by this Plaintiff for work it allegedly performed at the subject property is \$2,060.00, according to Plaintiff’s Complaint and the exhibits thereto. Based on Plaintiff’s principal’s sworn testimony, the amount sought in this lawsuit by Plaintiff is \$2,060.00, which constitutes an admission:

“Q. I’m going to go back to the first page. Does this look like the Notice of Intent that was sent on your behalf to UPC?”

A. Yes.

Q. Okay. So do you see on the first page the amount of damages sought?”

A. Yes.

Q. And does \$2,060 accurately reflect the amount of damages All-Star Servicing is seeking related to Ms. Patterson’s claim?”

A. I’ll retrieve the invoice right now. Hang on. Yes.”

[Videotaped Deposition of Andres Belen taken on June 14, 2022 at P. 41, Ln. 18 – P. 42, Ln. 4.]

The applicable deductible for this loss is \$2,500.00 based on the Policy declarations pages. Based on the amount of funds Plaintiff seeks to recover from Defendant, the lack of a competing estimate, the applicable Policy terms, and the terms of Plaintiff’s AOB contract, the deductible must be paid by the Insured, which will fully compensate Plaintiff for its sought damages.

Florida law is clear that an insured must satisfy the deductible requirement of a policy prior to an insurance carrier’s duty to pay arises. *General Star Indemnity Co. v. West Fla. Village Inn,*

Inc., 874 So. 2d 26 (Fla. 2d DCA 2004). Therefore, judgment is entered in favor of Defendant as no justiciable controversy exists against Defendant in light of the Insured's deductible obligation.

The Court rejects Plaintiff's argument that additional discovery needs to be undertaken to ascertain the true amount in controversy based on the following findings:

- a. This lawsuit has been pending since January 27, 2022.
- b. Plaintiff has never amended its Complaint to add additional parties to the lawsuit.
- c. The \$2,060.00 amount in controversy for this lawsuit is clear from all documents in the record.
- d. The undisputed estimate of damages at the Insured's property is \$397.50 for replacement cost value and \$344.46 for actual cash value.
- e. Depositions were taken of both Defendant's corporate representative and Plaintiff's co-owner/corporate representative in this case, based on representations of both parties' counsel.
- f. Plaintiff's alleged representation of Escore Investments¹, an unrelated entity which is not a party to this lawsuit, has no impact on the amount of controversy in *this* action, particularly where Plaintiff could have amended the Complaint to add another party, and where record evidence shows that Escore failed to make a supplemental claim against UPC and failed to file a separate lawsuit against UPC.²

¹ Counsel asserted for the first time at the 8/10/22 hearing on Defendant's motion for summary judgment that counsel also represents Escore Investments. There is no record evidence supporting this assertion by counsel.

² The Affidavit of Deborah Spooner, UPC's corporate representative, dated 7/24/22 asserts that "Neither the Insured nor Escore disputed the rejection of the Escore AOB contract" and "Neither the insured nor Escore has filed suit against UPC." [Filing #154013441 E-Filed 7/25/22.] This evidence has never been disputed by Plaintiff.

Under Florida's new standard for summary judgment the correct test for the existence of a genuine factual dispute is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Under Florida's new rule, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). In Florida, it will no longer be plausible to maintain that "the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* §1.510:5 (2020 ed.) (describing Florida's pre-amendment summary judgment standard).

Because no justiciable case or controversy exists which would require adjudication, based on record facts and Florida law, the Court grants summary judgment on the basis that no remedy can be had by Plaintiff against Defendant.

Additionally, Plaintiff is not entitled to a declaratory judgment action because (i) it is not a party to the contract (Policy of insurance), (ii) Plaintiff lacks privity of contract with the Defendant-insurer, UPC, and (iii) the record reflects no reason to adjudicate this case where the amount in controversy does not exceed the insured's deductible amount. *See, e.g., Treasure Chest Poker, LLC v. DBPR, Div. of ABT*, 238 So.3d 338 (Fla. 2d DCA 2017).

Plaintiff's claims also fail because the Court finds that the AOB contract between Plaintiff and Defendant's Insured (Taunya Patterson) is invalid as a matter of law because it fails to meet the legal requirements of §627.7152, Florida Statutes.

An assignment agreement cannot contain an administrative fee. Fla. Stat. §627.7152(2)(b)(4). Plaintiff's AOB, however, contains an administrative fee – wherein Plaintiff is entitled to recover costs of collections, including fees and court costs, plus a finance charge of 1.5% per month. (emphasis added). An assignment agreement that does not comply with the statutory requirements is invalid and unenforceable. Fla. Stat. § 627.7152(2)(d). Plaintiff cannot retroactively cure this impermissible administrative fee.

Without a valid AOB, Plaintiff lacks standing and the case must be dismissed. *See Gables Ins. Recovery, Inc. v. Citizens Prop. Ins. Corp.*, 261 So. 3d 613, 616 (Fla. 3d DCA 2018); *Venture Holdings & Acquisitions Grp., LLC v. A.I.M. Funding Grp., LLC*, 75 So. 3d 773 (Fla. 4th DCA 2011); *Boyd v. Wells Fargo Bank, N.A.*, 143 So.3d 1128 (Fla. 4th DCA 2014); *Hall v. REO Asset Acquisitions, LLC*, 84 So.3d 388 (Fla. 4th DCA 2012).

Declaratory Judgment

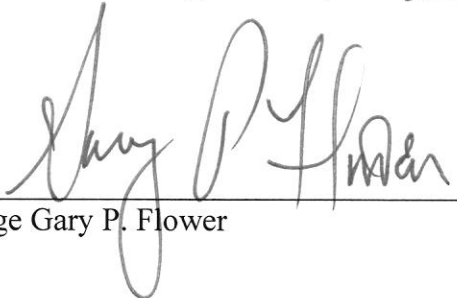
Plaintiff is not insured by the Policy. Absent privity of contract with Defendant, Plaintiff is not entitled to the court's interpretation of the Policy in a declaratory judgment action. Plaintiff's inability to retroactively cure its standing issue as to Count I, the Court lacks jurisdiction to adjudicate Count II because a bona fide need for a declaration based on present, ascertainable facts, has not been shown. *Treasure Chest Poker, LLC v. DBPR, Div. of ABT*, 238 So.3d 338, 341 (Fla. 2d DCA 2017); *see also Bryant v. Gray*, 70 So.2d 581, 584–85 (Fla. 1954).

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Therefore, it is hereby, **ORDERED AND ADJUDGED:**

For the reasons stated above, Defendant's Motion for Final Summary Judgment is hereby GRANTED. This is a final judgment. Plaintiff shall take nothing from this action and Defendant shall go hence without day.

DONE AND ORDERED in Chambers at Duval County, Florida, this 27th day of October, 2022.



Judge Gary P. Flower

Copies furnished to:

All Counsel of Record