

IN THE CIRCUIT COURT OF THE 20TH
JUDICIAL CIRCUIT IN AND FOR LEE
COUNTY, FLORIDA CIVIL DIVISION

Case No.: 19-CA-006035

FELIPE ALAMO,

Plaintiff,

v.

UNITED PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

_____ /

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come on to be heard on the Defendant's Motion for Summary Judgment (the "Motion"), and the Court having considered the record, the argument of counsel at the March 30, 2021 hearing as to said Motion and being otherwise advised in the Premises it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion is **GRANTED** and the Plaintiff shall go hence forth without day.

The Court makes this ruling based on the following:

Undisputed facts

1. Defendant issued consecutive homeowners policies of insurance bearing number UHC38724250601 ("Policy"), for the property located at 903 E. 9th St., Lehigh Acres, FL 33972 ("Property") consecutively dated June 9, 2012 through June 9, 2016, to Felipe Alamo ("Insured" or "Plaintiff"). *Please see ¶ 5 of Defendant's Affidavit attached to the Motion as Exhibit A.*

2. Defendant first received notice of an alleged sinkhole loss at the subject property on March 13, 2012. *Id. at* ¶ 7.
3. Florida Statute §627.707(1) requires that upon receipt of a sinkhole claim, the Defendant must “inspect the policyholder’s premises to determine if there is structural damage that may be the result of sinkhole activity.”
4. The Florida Statutory definition of “structural damage” is governed by the application of 5 tests based on standards found in the American Concrete Institute literature or the Florida Building Code. *See Fla.Stat. §627.706(2)(k)(1-5).*
5. Defendant retained SDII Global Corporation on April 23, 2012 to perform a statutorily compliant structural damage investigation of the reported sinkhole loss. *See Defendant’s Affidavit attached to the Motion as Exhibit A at* ¶8.
6. Prior to SDII being allowed to perform an investigation of the property, the Insured withdrew his claim on May 16, 2012, because “he didn’t have time” to allow an inspection. *See Deposition Transcript of Felipe Alamo Pg 17: 1-25 attached to the Motion as Exhibit B.*
7. The Plaintiff’s Policy requires cooperation with Defendant in its investigation of the claim. Specifically, the Policy provides, in pertinent part, as follows:

SECTION I- CONDITIONS

C. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

- 5.Cooperate with us in the investigation of a claim;
- 7.As often as we reasonably require:
 - a. Show the damaged property;

Please see a copy of the Policy to the Motion as Exhibit C.

8. Additionally, the Policy prohibits suit unless all Conditions have been complied with as follows:

H. Suits Against Us

No Action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within two years after the date of loss.

Id.

9. On January 9, 2016, the insured again reported the sinkhole loss to the Defendant. *See Exhibit A attached to the Motion at ¶10.*
10. The Insured admits that the damages reported in 2016 were the same damages reported in 2012, but that these same damages had gotten worse. *See Exhibit B attached to the Motion at Pg16: 1 – 25.*
11. The Defendant again retained SDII to perform a statutorily compliant sinkhole investigation. *See Exhibit A attached to the Motion at ¶11.*
12. SDII made multiple attempts to schedule the structural damage inspection, but the Insured failed to respond. *Id. at ¶12-13.*
13. On March 10, 2016, SDII issued correspondence to the Insured, wherein it indicated it had been unsuccessful in reaching the Insured and requested the Insured contact SDII to set up the inspection. *See correspondence from SDII attached to the Motion as Exhibit D.*
14. On May 5, 2016, Defendant issued correspondence to the Insured wherein it indicated if it did not hear from the Insured in 10 days, it would assume the Insured was

- voluntarily withdrawing the claim and would conclude the handling of the claim. *See Exhibit A attached to the Motion at ¶14.*
15. After over four (4) years since this loss was initially reported and over four (4) months since the claim was re-reported, the claim was then closed as the Insured failed to allow an inspection. *Id. at ¶15.*
16. Then, on January 16, 2018, over five (5) years after the report of the 2012 sinkhole claim and over one and a half (1.5) years after the 2016 re-report of this sinkhole claim, Defendant received a letter of representation from Strems Law, wherein it indicated it represented the insured for the sinkhole claim. *Id. at ¶17.*
17. Over six (6) years after the report of the 2012 claim, over two (2) years after the 2016 re-report of this sinkhole claim, and after the damages had gotten worse, SDII Global was allowed to inspect the insured property on behalf of Defendant. *Please see Exhibit B attached to the Motion at Pg16: 1 – 25 and SDII Report attached to the Motion as Exhibit E.*
18. In 2018, SDII found structural damage at the Insured property pursuant to Fla.Stat. §627.706(2)(k). *See Exhibit E attached to the Motion pg. iv.*
19. However, this structural damage was limited to the pool deck of the property. *Id.*
20. Further, this was the same damage identified by the Plaintiff as the damage that worsened between 2012 and 2016. *See Exhibit B attached to the Motion at Pg20: 12 – 25.*
21. Because structural damage was verified in 2018, the Defendant was statutorily required to retain a professional engineer or professional geologist to conduct subsurface testing pursuant to Fla.Stat. §627.707(2).

22. The subsurface testing at the Insured property cost \$9,585.50 in excess of the fee already paid for the structural damage evaluation. *See SDII Invoice attached to the Motion as Exhibit F.*

23. The Plaintiff has offered no summary judgment evidence in opposition.

Legal Standard

24. In considering a Motion for Summary Judgment, pursuant to Florida Rule of Civil Procedure 1.510, "if there is no triable issue, the court shall summarily enter an appropriate order or judgment." A motion for summary judgment shall be granted if the "pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Fla. R. Civ. P. 1.510; see also *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); see also *Collections, USA, Inc. v. City of Homestead*, 816 So. 2d 1225, 1227 (Fla. 3d DCA 2002); Fla. R. Civ. P. Rule 1.510(c).

25. A movant for summary judgment has the initial burden of demonstrating the nonexistence of any genuine issue of material fact. But once he tenders competent evidence to support his motion, the opposing party must come forward with counter evidence sufficient to reveal a genuine issue. It is not enough for the opposing party merely to assert that an issue does exist. *Landers v. Milton*, 370 So.2d 368, 370 (Fla. 1979).

Conclusions of Law

26. The Plaintiff's conduct in failing to cooperate in the investigation of the claim and exhibit the damaged property between 2012-2016 was a material breach of the terms of the Policy and substantially prejudiced the Defendant's claim investigation. *Hunt v. State Farm*

Fla. Ins. Co., 145 So.3d 210, 212 (Fla. 4th DCA 2014); *Amica Mut. Ins. Co. v. Drummond*, 970 So. 2d at 460; *Starling v. Allstate Floridian Ins. Co.*, 956 So. 2d at 513 (“[A] *material* breach of an insured's duty to comply with a policy's condition precedent relieves the insurer of its obligations under the contract.”).

27. The Plaintiff's citation to *Castro v. Homeowners Choice*, 228 So.3d 596 (2nd DCA 2017) is inapplicable to the case at bar as the *Castro* case involves non-compliance with Condition requests made by the carrier *after* the coverage decision had been rendered. The case at bar features violations of the Condition Section of the Policy prior to the coverage decision being made.

Conclusion

For the forgoing reasons, it is **ORDERED and ADJUDGED** that the Defendant's Motion is **GRANTED** and the Plaintiff shall go hence forth without day.

DONE AND ORDERED in Lee County, Florida, on this 8th day of April, 2021.



eSigned by Alane Laboda 04/08/2021 16:00:55 hOyF8Wfk

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