

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA

Case No.: 11-2020-CA-003503-0001-XX

LAURA NITTI,

Plaintiff,

v.

UNITED PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

_____/

ORDER GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the Court on October 14, 2022, upon the Defendant's Motion for Final Summary Judgment, and the Court having considered the record, pleadings, motions, summary judgment evidence, as well as the argument of counsel, and being otherwise advised in the premises it is hereby:

ORDERED AND ADJUDGED that the Defendant's Motion for Final Summary Judgment is GRANTED. The Court finds that Plaintiff failed to provide prompt notice of the loss to United Property & Casualty Insurance Company ("United") as a matter of law. Additionally, the Court finds that United was prejudiced in its investigation as to cause of loss and extent of damages due to the passage of time. The Court also finds that Plaintiff failed to submit a Sworn Proof of Loss in violation of her policy of insurance. The Plaintiff failed to overcome the prejudice to United as a matter of law.

UNDISPUTED FACTS

1. United issued Policy No. UHV 2946271 04 to the insured Laura Nitti, (“Plaintiff”) for the property located at 900 Grand Rapids Blvd., Naples, Florida 34120 (“Property”), for the policy period from March 15, 2017 through March 15, 2018 (the “Policy”).
2. On June 6, 2020, Plaintiff reported a claim for alleged damages as a result of Hurricane Irma, occurring on or about September 10, 2017.
3. On June 6, 2020, United sent Plaintiff a claim acknowledgment letter.
4. On June 25, 2020, United requested that the Plaintiff complete a Sworn Proof of Loss within sixty (60) days from the date of the letter.
5. On July 23, 2020, United sent the Plaintiff a second letter requesting that she complete a Sworn Proof of Loss, recorded statement, and provide any and all estimates or invoices for repairs of damages that are the result of this loss.
6. On August 18, 2020, United sent the Plaintiff a third letter requesting that she complete a Sworn Proof of Loss originally requested on June 25, 2020.
7. On September 6, 2020, United sent a letter informing Plaintiff that it had not received the information necessary to properly evaluate her loss, and were awaiting an attorney estimate, sworn proof of loss, and recorded statement.
8. On October 7, 2020, United sent the Plaintiff an e-mail advising that it had not received the requested Sworn Proof of loss.
9. Following its claim investigation, in correspondence dated October 7, 2020, United advised Plaintiff the claim was being denied based on the prejudice to its investigation due to the Plaintiff’s failure to provide prompt notice of the loss and comply with her duties after loss.

10. Following the claim denial Plaintiff filed this lawsuit for breach of contract on November 4, 2020.

LEGAL STANDARD

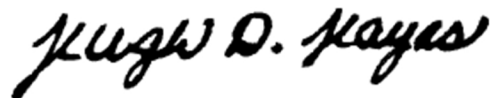
Pursuant to the recent amendment to Florida Rule of Civil Procedure 1.510, the standard for summary judgment now aligns with the federal summary judgment standard. In re Amends To Fla. R. Civ. P. 1.510, No. SC20-1490 (Fla. Dec. 31, 2020). “The Florida and federal rules of civil procedure share the same overarching purpose: to secure the just, speedy and inexpensive determination of every action.” *Id.* “We are persuaded that the federal summary judgment standard better comports with the text and purpose of rule 1.510 and that adopting that standard is in the best interest of our state.” *Id.* at Pg. 6.

Accordingly, the new summary judgment standard is as follows: “whether the evidence is such that a reasonably jury could return a verdict for the nonmoving party.” *Id.* at Pg. 4. Under the new standard, “[a] party opposing summary judgment ‘must do more than simply show that there is some metaphysical doubt as to the material facts.’ (emphasis added) *Id.* at Pg. 4. The new standard “mirrors the standard for a directed verdict.” *Id.* at Pg. 2. The inquiry under both standards (i.e. a motion for summary judgment and directed verdict) are the same: “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at Pg. 3. In practical terms, this means that this Court can consider the validity and efficacy of the evidence offered by the non-movant. “When 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 facts for purposes of ruling on a motion for summary judgment.” *Id.* at Pg. 5. “If the evidence [offered by the nonmoving

party] is merely colorable, or is not significantly probative, summary judgment may be granted.”
(emphasis added) *Id.* at Pg. 4.

CONCLUSIONS OF LAW

1. Defendant’s Motion for Summary Final Judgment is **Granted**.
2. The Court finds that the factual record in this case, as well as the case law cited by the Court on record, *Ajemian v. First Protective Ins. Co. d/b/a Frontline Ins. Co.*, 21-CA-870, *Perez v. Citizens*, 2022 WL 2444681, *PDQ Coolidge Formad, LLC v. Landmark American Ins. Co.*, 566 Fed. Appx. 845 (2014), *De La Rosa v. Florida Peninsula Ins.*, (Fla. 4th DCA 2018), *Yacht Club on the Intracoastal Condominium Assoc. Inc. v. Lexington Ins. Co.*, 599 Fed. Appx. 875 (2015), and *Lehrield v. Liberty Mutual*, 396 Fed. Supp. 3d 1178, supports summary final judgment in United’s favor. As a matter of law Plaintiff failed to provide prompt notice of loss to United. As a matter of law Plaintiff failed to submit a Sworn Proof of Loss before filing the instant lawsuit. As a matter of law United established that it was prejudiced in its investigation as to cause of loss and extent of damages due to the passage of time. The Plaintiff has failed to provide summary judgment evidence to rebut the prejudice established by United.
3. The Court set forth verbal findings that the Court reporter has reduced to writing. *See Exhibit A.*
4. Plaintiff shall recover nothing from United in this action, and United shall go hence without day. This Court reserves jurisdiction to tax costs, to determine United’s entitlement to attorneys’ fees and to award same, and to enter such other orders as may be necessary to enforce this Final Judgment.



eSigned by Hayes, Hugh D in 11-2020-CA-003503-0001-XX 10/27/2022 13:49:23 N6mvlx

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