

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT IN AND FOR  
PALM-BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AA  
Case No.: 50-2019-CA-014655

JORGE TORRES,

Plaintiff,

v.

TOWER HILL SIGNATURE INSURANCE  
COMPANY,

Defendant.

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**ORDER GRANTING DEFENDANT, TOWER HILL SIGNATURE INSURANCE  
COMPANY'S, MOTION FOR SANCTIONS PURSUANT TO FLORIDA STATUTE 57.105**

THIS CAUSE having come before the Court upon the Defendant's Motion for Sanctions Pursuant to Florida Statute 57.105, wherein Defendant asked the Court to impose sanctions upon Plaintiff and Plaintiff's counsel for perpetuating three years of litigation upon a claim for property insurance proceeds made to Tower Hill Signature Insurance Company not supported by the material facts necessary to establish said claim. The Court conducted an evidentiary hearing on September 30, 2022, and having heard the argument of counsel, reviewed the evidence presented, and otherwise being fully advised in the premises, the Court makes the following findings of fact and law:

1. Tower Hill issued homeowners insurance Policy No. P005144893 to Jorge Torres for the property located at 7880 Monarch Court, Delray Beach, Florida ("Property"), with effective dates of March 3, 2017, through March 3, 2018 ("2017-2018 Policy"). The Policy

period was renewed in 2018, with the same Policy number and effective dates of March 3, 2018 through March 3, 2019 (“2018-2019 Policy”).

2. On January 8, 2019, Plaintiff reported damages to the Property allegedly occurring on January 8, 2019. The claimed damages included a ceiling leak in the front bedroom.

3. Tower Hill investigated Plaintiff’s January 8, 2019 claim through inspection by professional engineer Gregory Loomis on February 14, 2019.

4. On April 24, 2019, Tower Hill denied the January 8, 2019 claim as the alleged damages were not the result of a covered peril, but were from long-term leaking that significantly predated the reported date of loss. Per Mr. Loomis, the damage observed was not windstorm related, but was the product of progressive age-related deterioration.

5. On November 13, 2019, Plaintiff filed the subject lawsuit against Tower Hill, relating to Hurricane Irma, occurring on September 10, 2017. The filing of the Complaint was the first time Tower Hill was placed on notice of a potential Hurricane Irma loss. Plaintiff’s counsel was promptly informed a Hurricane Irma claim was never reported to Tower Hill and a motion to dismiss was filed on January 24, 2020. This motion was granted without prejudice.

6. Despite the Plaintiff never reporting a Hurricane Irma loss to the Defendant, three subsequent Amended Complaints alleging Hurricane Irma damage were filed and met with similar motions to dismiss. Dismissals without prejudice were granted in each instance.

7. During this time period, on March 10, 2020, Defendant’s Corporate Representative, Sam Townsend testified at deposition that Plaintiff provided Tower Hill notice of a January 8, 2019 roof leak. Mr. Townsend further testified Tower Hill was never advised of Hurricane Irma damage prior to filing this lawsuit. Similarly, Defendant’s engineer testified at

deposition to having investigated a January 8, 2019 loss, and not a Hurricane Irma claim, based on the information provided by Tower Hill, as well as the Plaintiff and his representatives.

8. On April 30, 2020, Defendant filed its Notice of Intent to seek sanctions and provided Plaintiff's counsel with the requisite safer harbor letter pursuant to Fla. Stat. 57.105(4), along with a copy of the proposed motion for sanctions pursuant to Fla. Stat. 57.105. Defendant included with its proposed motion the specific facts and evidence delineating why the lawsuit had no basis in law and fact.

9. Notably, in addition to evidence of Plaintiff's complete failure to place Tower Hill on notice of a Hurricane Irma loss prior to filing this lawsuit, Tower Hill provided Plaintiff with a copy of his pre-purchase inspection report prepared by Thomas Boyd of South Florida Home Inspection Services showing the damage alleged in the lawsuit pre-existed both January 8, 2019 and Hurricane Irma.

10. Plaintiff, however, did not dismiss the lawsuit and on May 22, 2020, Tower Hill filed its Motion for Sanctions pursuant to Fla. Stat. 57.105.

11. Thereafter, Plaintiff filed the operative Complaint, its Fifth Amended Complaint, on January 12, 2021—seeking declaratory relief from this Court in two separate counts. In Count I, Plaintiff sought a declaration from this Court that the date of loss is September 10, 2017. In Count II, Plaintiff sought a declaration from this Court that the date of loss is January 8, 2019.

12. Despite the allegations of the Complaint, and through the course of litigation, Plaintiff has not provided any evidence of reporting a Hurricane Irma loss to Tower Hill before filing this lawsuit. This lawsuit premised upon a Hurricane Irma loss was premature at best.

13. The evidence makes abundantly clear, on October 5, 2019 Plaintiff's expert, Alfredo Brizuela, P.E. inspected the Property to determine the cause and origin of the damages.

In his report, Mr. Brizuela opined the claimed interior damages were caused by Hurricane Irma. Mr. Brizuela confirmed at deposition that within a reasonable degree of engineering certainty, the damage to the property was caused by Hurricane Irma. The evidence makes clear this information was not reported or otherwise provided to Tower Hill prior to initiating litigation.

14. On or around October 22, 2019, Plaintiff's public adjuster, Robert Rosado, inspected the Property and prepared an estimate detailing the alleged scope and value of the damages, dated November 1, 2019. On Mr. Rosado's estimate, the date of loss is listed as September 13, 2017, and the file number on the estimate is "Torres Hurricane." Mr. Rosado testified at deposition the loss was related to Hurricane Irma. The evidence makes clear this information was not reported or otherwise provided to Tower Hill prior to filing this lawsuit.

15. The evidence presented is overwhelmingly clear Plaintiff never reported to Tower Hill a claim for a date of loss related to Hurricane Irma. Accordingly, Plaintiff and Plaintiff's counsel Font & Nelson PLLC knew or should have known that when initially presented to the Court, and at all times thereafter, the Hurricane Irma claim was not supported by the material facts necessary to support the claim.

16. It follows, as Plaintiff and his experts testified the damage alleged in this litigation was solely related to Hurricane Irma, and as all evidence presented pertained to a Hurricane Irma loss, Plaintiff and Plaintiff's counsel Font & Nelson PLLC knew or should have known that when initially presented to the Court, and at all times thereafter, the January 8, 2019 claim was not supported by the material facts necessary to support the claim.

17. Despite being placed on notice of the foregoing early on in the litigation, rather than dismissing the case and properly reporting a Hurricane Irma loss to Tower Hill, Plaintiff

“doubled down” and filed not one, but five different complaints and engaged in years of litigation, ultimately filing a voluntary dismissal at 4:10 P.M. the day before trial.

### ANALYSIS

18. Defendant’s Motion for Sanctions pursuant to Fla. Stat. 57.105 is GRANTED and Defendant is entitled to reasonable attorneys’ fees.

19. Florida Statute Section 57.105 authorizes a court to award fees when

the losing party or the losing party’s attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts.

20. Substantial and competent evidence presented to this Court reflects there is no dispute as to whether or not a Hurricane Irma claim had been presented to Tower Hill prior to initiating this litigation. Plaintiff failed to present any evidence to indicate such a claim was reported before filing suit.

21. As it relates to the reported roof leak on January 8th, 2019, in review of the evidence presented, there was no actual loss on this date. All evidence presented by Plaintiff suggests the damage was related to Irma, but again, there was no claim made to Tower Hill for Hurricane Irma damage. The Plaintiff was clearly on notice of this deficiency, yet took no steps to remedy and rather, proceeded forward to the eve of trial before dismissing the lawsuit.

22. In addition, Plaintiff filed this action claiming damages which occurred prior to his purchase of the property which were by all accounts clearly known to him at the closing. Once more, there is nothing in the record which would dispute that fact. By all accounts, it

appears that this was in fact a claim that was made for damages which occurred prior to the time that the homeowner purchased the property.

23. As such, Plaintiff and Plaintiff's counsel knew or should have known, before this lawsuit was filed, that Plaintiff's claims were frivolous in nature.

24. This Court finds that there were no justiciable issues of law or fact and that the Plaintiff's attorney did not act in good faith based on the representations of his or her client. *Siegel v. Rowe*, 71 So. 3d 205, 211 (Fla. 2d DCA 2011) (quoting *Weatherby Assocs., Inc. v. Ballack*, 783 So. 2d 1138, 1143 (Fla. 4th DCA 2001)).

25. The Court further finds that based on the facts and evidence presented, the Plaintiff's action is so clearly devoid of merit both on the facts and the law, the same is completely untenable. *MC Liberty Express, Inc. v. All Points Services, Inc.*, 252 So. 3d 397, 403 (Fla. 3d DCA 2018).

26. As the Court finds the standard set forth in Fla. Stat. § 57.105 has been met as described above, Fla. Stat. § 57.105 mandates an award for attorney's fees to Defendant (including prejudgment interest) to be paid by the Plaintiff and Plaintiff's attorneys equally for those fees incurred by Defendant during the entire pendency of this lawsuit. *Morton v. Heathcock*, 913 So.2d 662 (Fla. 3rd DCA 2005).

**THEREFORE**, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion for Sanctions pursuant to Fla. Stat. 57.105 is **GRANTED**.
2. Defendant shall recover its reasonable attorney's fees incurred in this action from the inception of this case, to be paid equally by Plaintiff and Plaintiff's counsel, Font & Nelson, PLLC, pursuant to sections 57.105(1)(b) and 57.105(3)(c), Florida Statutes.
3. If the parties cannot reach an agreement as to the amount of Defendant's reasonable attorney's fees to be reduced to judgment, the court will hold an evidentiary

hearing to determine such amount and a judgment will be entered by this Court after such hearing.

4. Jurisdiction is retained for all purposes relating to Defendant's attorney's fees granted in this Order and Defendant's costs under section 57.041 and 57.071, Florida Statutes, which were awarded by separate order.

**DONE AND ORDERED** this 20th day of October, 2022, in Palm Beach County, Florida.



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Honorable Judge Richard L. Oftedal  
Circuit Court Judge

Copies Furnished to:  
Alison J. Trejo, Esq.  
Todd A. Schwartz, Esq.  
Jeffrey M. Wank, Esq.  
Malcolm Pedraza, Esq.  
Jose Font, Esq.