

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH DELFRATE,

Plaintiff,

CASE NO.

vs.

LIBERTY MUTUAL FIRE
INSURANCE COMPANY,

Defendant.

COMPLAINT

COMES NOW, the Plaintiff, **JOSEPH DELFRATE**, and sues the Defendant, **LIBERTY MUTUAL FIRE INSURANCE COMPANY** (hereinafter "**Liberty Mutual**"), and, in support thereof, would allege:

1. The Federal District Court for the Middle District of Florida has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a). This action was previously filed in Pinellas County Circuit Court in the Sixth Judicial Circuit of the State of Florida. The Defendant gave timely notice as required under 28 U.S.C. §1446(a) and this Court has approved the removal.

2. This is a cause of action for breach of contract seeking civil damages to exceed \$75,000.

3. At all times relevant hereto, the Plaintiff did have a homeowner's policy with the Defendant, **Liberty Mutual**, insuring Plaintiff's home. Attached hereto as Exhibit A is a copy of the **Liberty Mutual** "LibertyGuard Deluxe Homeowners Policy."

Attached hereto as composite Exhibit B are declaratory sheets showing effective coverage for periods of 2004 through 2007.

4. As a result of Hurricane Charlie in August of 2004 and Hurricane Francis in September 2004, the Plaintiff suffered some damage to his roof which included several roof tiles coming off from a valley on his roof. Plaintiff had some minor leaking through the roof at this time.

5. The Plaintiff hired a man to patch the roof which stopped further leaking at this time.

6. Plaintiff's Homeowner's Association put pressure on Plaintiff to clean the roof due to its unsightly nature. In January of 2005, Plaintiff hired a man to pressure clean the roof. Upon inspection the man discovered a large number of roof tiles loose from hurricane damage and would not pressure clean. Shortly thereafter, the Plaintiff called Defendant **Liberty Mutual** to file a claim under his policy.

7. Plaintiff had difficulty in trying to locate a roofing contractor due to demand left from the many hurricanes that season. As a result of condition of the roof, Plaintiff hired people to remove the old roof and replace 30 lb. felt and tarps until a roofing contractor could be located.

8. The Plaintiff saw no evidence of leaks in the roof from time the patch job was done until April of 2005. In April, 2005 there was a period of extensive rain and wind that blew the tarps and felt off the roof resulting in extensive leaking in hours. Plaintiff again called Defendant **Liberty Mutual** to report damages and request payments under the policy to do repairs.

9. At this point in time, there was extensive damage inside the house including presence of black mold in the attic and in the walls. The Defendant sent inspectors out. Plaintiff was advised that Defendant **Liberty Mutual** would not pay for the roof as they felt it was not built to current code and would not pay for mold remediation until the roof was replaced.

Plaintiff's home was an older Rutenburg house presumably built to code when erected.

10. Plaintiff did finally find a roofing contractor, Aluminum Services, Inc., and contracted with them to replace damaged wood and place an aluminum roof system on his house. This contractor was contacted in May, 2005 but could not do the work until July, 2005. Plaintiff agreed to pay \$32,500 for the new roof.

11. While the new roof was not experiencing leaking problems at the time the Plaintiff did notice the contractor had not fully replaced damaged wood nor repaired fascia appropriately. Plaintiff refused to pay the rest under the contract and a law suit ensued. This law suit was initially filed in the middle of 2006 and continued to August, 2008 when Plaintiff had to pay the rest owed under the contract in order to sell his house.

12. During this time the Defendant did not fully investigate to\he claims, but did offer amounts of money to settle the claims that were well below the true vales of the claims. Such tenders were made on December 9, 2005, February 21, 2006, March 16, 2007 and September 9, 2008. These tenders of settlement were rejected by Plaintiff as being inadequate.

13. The Defendant was made aware from time to time that Plaintiff suffered from various disabilities that included, but are not limited to:

- a. visual impairment - Plaintiff requested large print and simple descriptions to allow him to read correspondence and the policy;
- b. he had a diagnosis and was treated for stress and anxiety disorder and bi-polar disorder and was on psychotropic medications;
- c. he had Hepatitis C;
- d. he had a heart condition; and
- e. During the negotiation time, Defendant was made aware Plaintiff and his family were having allergic reactions to the mold in the home.

Throughout these proceedings, and with fully knowledge of Plaintiff's infirmities, the Defendant engaged in a willful and outrageous pattern of delay and withholding of benefits to Plaintiff. Notwithstanding the fact that the Plaintiff was suing the roofer, he was still entitled to be paid for sums he expended on roof repairs. Notwithstanding the immediate danger presented by the increasing mold infestation, the Defendant withheld payments and living expenses which forced Plaintiff to live longer in the mold infested house and aggravated the mold condition. By withholding the benefits knowing Plaintiff's limited resources, the Defendant hoped to force Plaintiff to seriously discount his claim which he had to do in order to be able to sell the home to avoid foreclosure.

This conduct by Defendant was outrageous and deliberate and, knowing Plaintiff's infirmities, designed to force Plaintiff to discount the full value of his claim.

During this entire time, the Plaintiff was forced to live in this house that had extensive interior damage including the increasing presence of mold. In the Spring of 2007, Plaintiff was forced to vacate the house due to the mold affecting his health.

14. The Plaintiff had minimal resources and income during this point in time. He had to pay out of his pocket for the initial patch-up, the removal of the old roof and the new roof. He could not afford to make further repairs or afford to live outside the house or even make mortgage payments.

15. In August of 2008, the Plaintiff was facing bankruptcy and foreclosure. In order to avoid complete financial ruin, the Plaintiff was forced to sell the house for \$319,000, which was substantially below market value.

16. At all times material hereto, Defendant **Liberty Mutual** knew of Plaintiff's mental and physical condition. Defendant was aware of the presence of damage to the house, presence of mold and the complete inability of the Plaintiff to resolve these problems without the timely payments under the policy. Rather than assist the Plaintiff under the policy, the Defendant intentionally and willfully frustrated all attempts by Plaintiff to mitigate his losses and to retain and preserve his home and his health.

COUNT I

COMES NOW, the Plaintiff, **JOSEPH DELFRATE**, and further sues the Defendant, **LIBERTY MUTUAL INSURANCE COMPANY**, and realleges the allegations in paragraphs 1 through 16 above, and would further state:

17. This is a cause of action for breach of contract.

18. At all times relevant hereto, the Plaintiff had a deluxe homeowner's insurance policy in effect with Defendant **Liberty Mutual**, see attached Exhibits A and B.

19. Defendant breached said contract by, but not limited to, the following:

- a. failing to pay or mitigate claims for damages incurred by Plaintiff on his home covered by said policy;
- b. failing to timely pay or advance monies to allow mitigation of damages;
- c. denying claims for damages that were covered under the policy;
- d. withholding payments for living expenses; and
- e. generally obstructing and delaying the handling of claims.

20. As a direct and proximate result of Defendant's breach of contract, the Plaintiff suffered damages that include non-payment for losses covered under the policy and due to the complete failure of the Defendant to pay under the policy the Plaintiff was forced to sell his home at a loss in order to avoid foreclosure and bankruptcy. He, therefore, lost the reasonable value of his home.

21. The Defendant has had to hire the services of an attorney to enforce his claims under the policy of insurance and is entitled to reasonable attorney's fees by law and under the contract.

WHEREFORE, Plaintiff demands a judgment for damages for all claims for damages covered under the policy or the difference between the fair market value of his home at the time of sale and the amount he actually received.

COUNT II

COMES NOW, the Plaintiff, **JOSEPH DELFRATE**, and further sues Defendant **LIBERTY MUTUAL INSURANCE COMPANY**, and realleges the allegations in paragraphs 1 through 16 above, and would further state:

22. This is a cause of action for intentional infliction of emotional distress.

23. The Defendant carrier had a duty to timely process Plaintiff's claims and to timely pay out on said claims as provided under the contract of insurance in order to assist the Plaintiff in repairing his home and to mitigate his losses. More importantly, the Defendant had a duty to pay out under the policy to insure the safety and well-being of the Plaintiff if and when his home became unlivable or hazardous to his health.

24. From the point of the first claim, the Defendant was put on notice of the condition of the leaking roof and shortly thereafter learned of the pervasive mold problem throughout the house.

25. Through the process of investigating the claims, the Defendant became aware of Plaintiff's many health and disability issues and Plaintiff's very limited resources available to address the repair and mold issues on his own.

26. A dispute soon arose over what monies Defendant would provide under the policy to repair the roof and subsequent interior and mold issues and withheld payments accordingly.

27. When it became apparent that mold was pervasive throughout the house, the Defendant would not pay for living expenses provided under the policy. Because of

Plaintiff's limited resources, he was forced to remain in the mold infected house long after it was affecting his health.

28. Defendant's actions in withholding payments under the policy were intentional and willful and calculated to delay and avoid making payments under the policy knowing that because Plaintiff's disabilities and financial limitation, there was not much he would do.

29. The actions of Defendant resulted in direct and significant physical injury to include various respiratory problems directly related to prolonged exposure to mold and an aggravation of his heart conditions and aggravation of his mental condition.

30. As a direct result and proximate result of the intentional and willful acts of Defendant, the Plaintiff was injured and suffered damages to include, but not limited to, past and future medical bills, past and future pain and suffering, permanent aggravation of existing conditions and loss of enjoyment of life.

WHEREFORE, Plaintiff demands a judgment for damages and costs and a trial by jury.

DATED this 7th day of May, 2010.

/s/ Peter O. Brick
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