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

ROBERT and MARTA COBURN,

Plaintiffs,

vs. CASE NO. **10-CA-5677**

STATE FARM FLORIDA
INSURANCE COMPANY,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND DENYING DEFENDANT'S RENEWED MOTION FOR SUMMARY JUDGEMENT

This is a first-party action for bad faith under Florida Statute, Section 624.155 ("bad faith statute").

State Farm Florida Insurance Company ("State Farm") issued a policy of property casualty insurance for a residence owned by the plaintiffs ("Coburns"). The residence sustained damages from Hurricane Wilma on October 24, 2005. There is no dispute that the loss was covered under the State Farm policy and that the Coburns gave timely notice of the loss to State Farm.

For purposes of this opinion, it is not necessary to review all the facts relating to the attempted adjustment of this loss over the next 30 months. Ultimately, there was no final agreement between State Farm and the Coburns as to the amount of the covered loss. On April 16, 2008, the Coburns demanded an appraisal of the loss as they were entitled to do under the provisions of the policy. On June 12, 2008, the Coburns filed a civil remedy notice (CRN) pursuant to Section 624.155(3). The CRN was accepted by the Florida Department of Financial Services ("Department"). The CRN was not rejected by the Department due to any failure to provide the specific information required by the bad faith statute. Nor did the Department indicate any specific deficiencies in the notice.

On May 18, 2010, more than two years after the Coburns demanded an appraisal, a final award was rendered in the amount of $138,867.75. On June 8, 2010, State Farm paid the award in full--less the applicable deductible.

On September 20, 2010, this bad faith action was filed.

State Farm argues that this action should be dismissed because there was never a judicial determination that State Farm breached the policy. However, the Second District Court of Appeal recently held in Hunt v. State Farm Florida Insurance Company, ____ So.3d _____, WL 1352471 (Fla. 2d DCA, April 5, 2013) that a breach of contract action resulting in a favorable judgment for an insured is not a condition precedent to the commencement of a statutory bad faith claim. The Second District held that the entry of an appraisal award was the functional equivalent of a confession of judgment (citing Goff v. State Farm Fla. Ins. Co., 999 So.2d 684, 688 (Fla. 2d DCA 2008)).

The only apparent distinction between Hunt and the instant case is that before entry of an appraisal award Hunt filed a lawsuit against State Farm for breach of contract and the Coburns did not. While in some cases it may be necessary to file a breach of contract action to determine coverage or the amount of the loss, there is no logical reason to require a breach of contract action as a condition precedent to the filing of a claim for bad faith when the contractual issues have already been resolved. Such a requirement would only serve to further clog our courts, increase the costs of litigation, and delay resolution of disputes. See Brookins v. Goodson, 640 So. 2d 110, 114 (Fla. 4th DCA 1994). In this case neither a lawsuit for breach of contract nor a judgment in favor of the insured is required. There only need be a "determination of liability and extent of damages." The Second District clearly stated in Hunt that the appraisal award satisfies this condition precedent. (citing Vest v. Travelers Ins. Co., 753 So.2d 1270, 1276 (Fla. 2000) and Trafalgar at Greenacres, Ltd. v. Zurich Am. Ins. Co., 100 So. 3d 1155, 1158 (Fla. 4th DCA 2012)).

Notwithstanding that per curiam affirmances without an opinion have no value as binding precedent and have no relevance for any purpose, the circuit court decisions from Hillsborough and Pinellas Counties cited by State Farm do not specifically hold that a breach of contract action is a condition precedent to a bad faith action. See Department of Legal Affairs v. District Court of Appeal, 5th District, 434 So. 2d 310 (Fla 1983).

Next, State Farm argues that the CRN notice is legally defective because the notice does not contain a "cure amount." In other words, State Farm contends that the CRN must state a dollar amount to be paid by the insurer in order to "cure." This proposition was rejected by the Second District in Hunt because the bad faith statute "does not require a specific cure amount." In counsel's letter to the Court dated April 11, 2013, State Farm cites Talat Enterprises, Inc. v. Aetna Casualty & Surety Co., 753 So. 2d 1278 (Fla. 2000) for the

proposition that a cure amount is required, not withstanding that the Second District in Hunt rejected that very same proposition by holding Talet is no longer "clear legal precedent. "

The Court notes that the bad faith statute provides numerous grounds for a violation by an insurer including the failure "in good faith to settle claims when, under all the circumstances, it (the insurer) could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests." See Florida Statute, Section 624.155(1)(b). The CRN clearly alleges acts by State Farm which, if proven, come within the provisions of this section of the bad faith statute.

Having thoroughly reviewed all of the filings and submissions by counsel, the Court finds that the issues of whether State Farm acted in bad faith, and if so, whether the Coburns sustained any damages as a result, are proper questions for the trier of fact.

Upon the foregoing, it is:

ORDERED that the Defendant's Motion to Dismiss dated October 25, 2010 is DENIED. Defendant, State Farm Florida Insurance Company, shall file an Answer to the Complaint within 20 days of this Order, and it is further:

ORDERED that the Defendant's Renewed Motion for Summary Judge is DENIED.

DONE AND ORDERED in Chambers at Naples, Collier County, Florida, on this the 30th day of April, 2013.

FREDERICK R. HARDT, CIRCUIT JUDGE

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