

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21324-CIV-JORDAN

DORSET HOUSE CONDOMINIUM)
ASSOCIATION, INC.)
Plaintiffs)
vs.)
QBE INSURANCE CORPORATION)
Defendants)
_____)

ORDER GRANTING MOTION TO REOPEN AND LEAVE TO AMEND

Dorset House filed this action against its insurer, QBE, seeking damages for breach of contract resulting from QBE's alleged failure to pay damages sustained by Dorset House during Hurricane Wilma in October of 2005. On August 1, 2007, I stayed the proceedings and referred the parties to appraisal, further providing that either party could move to reopen this case at any time during this process. *See* Orders [D.E. 13, D.E. 14]. After completing the appraisal process, QBE paid Dorset House damages as determined by the appraisal, but Dorset House now seeks to reopen this case to assert a claim of bad faith against QBE. Because I find that the proposed amended complaint validly states a claim for bad faith under Fla. Stat. § 624.155, Dorset House's motion to reopen this case and amend its complaint [D.E. 18] is GRANTED.

Although Federal Rule of Civil Procedure 15(a)(2) provides that district courts should grant leave to amend "freely," the Eleventh Circuit has held that a district court is within its discretion in denying leave to amend where the proposed amendment would be futile. *See Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007). "Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed or be immediately subject to summary judgment for the defendant." *See id.*

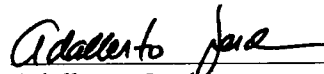
QBE argues that the proposed amendment is futile because it is entitled to judgment as a matter of law based on the fact that it issued payment in the amount of the appraisal. For this proposition, QBE relies on *316, Inc. v. Md. Cas. Co.*, No. 07-528-Civ, 2008 WL 3926863 (N.D. Fla.

2008), in which the district court granted summary judgment to an insurer as to a § 624.155 bad-faith claim where the insurer timely paid the amount of the appraisal to its insured.

Although QBE's payment of the appraisal certainly hinders its insured's bad-faith claim, I agree with Dorset House that denying the proposed amendment as futile would be inappropriate at this juncture, given the scant record. Indeed, there are a wide range of settlement practices which would subject QBE to liability for bad faith under Florida law notwithstanding the eventual payment. *See Fla. Stat. § 626.9541(1)(i)(3)*. I therefore find that the proposed bad-faith claim does not fail as a matter of law based on the record as presently constituted. QBE is free to raise this argument again after Dorset House has had the benefit of discovery.

Dorset House's motion seeking leave to amend [D.E. 18] is GRANTED. The first amended complaint [D.E. 19] shall stand as the operative complaint in this case, QBE shall file its answer on or before May 11, 2009, and the parties shall file their joint scheduling report by no later than May 15, 2009.

DONE and ORDERED in chambers in Miami, Florida, this 27th day of April, 2009.


Adalberto Jordan
United States District Judge

Copy to: All counsel of record