

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017AP000131CAXXMB
L.T. NO.: 502016CC011275XXXMB

JEAN JOSEPH,
Appellant,

v.

CITIZENS PROPERTY
INSURANCE COMPANY,
Appellee.

Opinion filed: **SEP 06 2018**

Appeal from the County Court in and for Palm Beach County,
Judge Frank S. Castor.

For Appellant: Gerald T. Salerno, Esq.
Gerald Salerno Law, PA
P.O. Box 19116
West Palm Beach, Florida 33416
geraldsalerno@ymail.com

For Appellee: Maureen G. Percy, Esq.
Hinshaw & Culbertson LLP
2525 Ponce de Leon Boulevard, 4th Floor
Coral Gables, Florida 33134
mpercy@hinshawlaw.com

PER CURIAM:

REVERSED AND REMANDED.

Jean Joseph ("Joseph") appeals an "Order Denying Plaintiff's Motion to Enforce Settlement and for Interest and for Attorney's Fees and Costs and Sanctions." The issue on appeal is whether interest is owed on the payment of settlement to Joseph where Citizens Property Insurance Company ("Citizens Property") first issued a check with a scrivener's error

during the 20-day period prescribed by section 627.4265, Florida Statutes (2017), and the Full and Final Release (“Release”), but did not satisfy the payment of settlement until after the 20-day period when it reissued the check correcting the scrivener’s error. We hold that the trial court erred in finding that Citizens Property did not owe interest and did not have to pay attorney’s fees and costs, and reverse and remand for further proceedings.

Section 627.4265 provides:

In any case in which a person and an insurer have agreed in writing to the settlement of a claim, the insurer shall tender payment according to the terms of the agreement no later than 20 days after such settlement is reached. The tender of payment may be conditioned upon execution by such person of a release mutually agreeable to the insurer and the claimant, but if the payment is not tendered within 20 days, or such other date as the agreement may provide, it shall bear interest at a rate of 12 percent per year from the date of the agreement; however, if the tender of payment is conditioned upon the execution of a release, the interest shall not begin to accrue until the executed release is tendered to the insurer.

Pursuant to the Release, which contained the entire terms of the settlement, Citizens Property was to make the following payments as part of the negotiated settlement agreement: \$7,000.00 to “Jean Joseph and Claimpros, LLC,” and \$12,250.00 to “Law Office of Linda M. Knoerr, PA and Jean Joseph.”¹ Further, the Release provided that payment is conditioned upon the execution of the Release and that the payment will be issued within twenty (20) days of receipt of all fully and properly executed settlement documents, including the Release.

Citizens Property received the executed Release on July 5, 2017. On July 14, 2017, Citizens Property issued two checks in the amounts delineated in the Release. There was no issue with the \$7,000.00 check. However, the \$12,250.00 check was incorrectly made payable to “Knoerr Ratcliff Law Group, P.A. and Jean Joseph,” rather than the correct payees, “Law Office

¹Joseph takes issue with Citizens Property having issued the \$12,250.00 check to the attorney and the client jointly; however, the Release, signed by the client, provides that the \$12,250.00 check is to be issued to the attorney and the client jointly, so this argument is without merit.

of Linda M. Knoerr, PA and Jean Joseph.” On August 22, 2017, Citizens Property reissued the \$12,250.00 check, which corrected the scrivener’s error.

The Release provided for the complete terms of the agreement, including to whom the checks should be made payable and the correct spelling of the payees’ names, as well as the requirement that Citizens Property issue payment within twenty (20) days of receiving the Release. In accordance with section 627.4265, because payment was not tendered within the time period prescribed by the agreement, Citizens Property owes interest at a rate of 12 percent per year from the date the executed Release was tendered to Citizens Property. Neither the Release nor section 627.4265 excuses Citizens Property’s late payment due to a scrivener’s error, for which the fault is attributable to Citizens Property. As such, we find that Citizens Property owes interest at a rate of 12 percent per year on the \$12,250.00 check from July 5, 2017 to August 22, 2017. We further find the trial court erred in denying Joseph’s Motion to Enforce Settlement and for Interest and for Attorney’s Fees and Costs and Sanctions, with regard to the trial court’s determination on the interest, attorney’s fees, and costs.

Accordingly, we **REVERSE** the Order Denying Plaintiff’s Motion to Enforce Settlement and for Interest and for Attorney’s Fees and Costs and Sanctions, and **REMAND** to the trial court to award the statutory rate of interest owed from July 5, 2017 to August 22, 2017, as well as attorney’s fees and costs.

SASSER, GOODMAN, and CURLEY, JJ., concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017AP000131CAXXMB
L.T. NO.: 502016CC011275XXXMB

JEAN JOSEPH,
Appellant,

Opinion/Decision filed: **SEP 06 2018**

v.

Appeal from Palm Beach County Court
Judge Frank Castor

CITIZENS PROPERTY
INSURANCE COMPANY,
Appellee.

Date of Appeal: October 26, 2017

DATE OF PANEL: August 20, 2018

PANEL JUDGES: SASSER, GOODMAN, CURLEY

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
<u>Mena 9/5/18</u>)))
DATE: J.)))
<u>[Signature] 9/5/18</u>)))
DATE: J.)))
<u>[Signature] 9/6/18</u>)))
DATE: J.)))