

Third District Court of Appeal

State of Florida

Opinion filed March 18, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2440
Lower Tribunal No. 16-5206

Citizens Property Insurance Corporation,
Appellant,

vs.

Olga Tio,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Rodney Smith,
Judge.

Butler Weihmuller Katz Craig LLP, and J. Pablo Cáceres (Tampa), for
appellant.

Best & Menendez, and Virginia M. Best; Law Offices of Anthony Accetta,
P.A., and Anthony Accetta; Law Office of Lazaro Vazquez, P.A., and Lazaro
Vazquez; Eduardo Gomez, P.A., and Eduardo Gomez, for appellee.

Before **SALTER, FERNANDEZ and SCALES, JJ.**

SCALES, J.

Citizens Property Insurance Corporation (“Citizens”), the defendant below, appeals a final judgment entered after a jury verdict in favor of its insured, the plaintiff, Olga Tio. Finding no error by the trial court, we affirm.

Background

In 2015, a residential property owned by Tio and insured by Citizens under a replacement cost policy suffered water damage, caused by a collapsed drain line. After Citizens received timely notice of the claim and conducted its investigation, Citizens denied coverage for the loss. Citizens initially maintained that the damage to Tio’s property was not caused by the collapsed drain line, but rather, was caused by constant water leakage over time, a cause not covered by Tio’s policy of insurance. Tio then sued Citizens for breach of the insurance contract.

During the discovery phase of the litigation, Citizens changed course and advised Tio that it was stipulating that the loss was covered. Two months later, Tio filed a motion for partial summary judgment, seeking to establish that her property sustained a covered loss. Citizens responded to Tio’s motion by advising the trial court that it had conceded coverage. Citizens also filed a cross-motion for summary judgment asserting that it was entitled to final judgment because the actual cash value of Tio’s loss was less than the \$2500 deductible in Tio’s insurance policy.

The trial court denied Tio’s partial summary judgment motion as moot and also denied Citizens’s summary judgment motion, allowing the case to proceed to

trial on damages only. On the same day, the trial court granted Citizens's motion in limine to limit the evidence of damages to actual cash value. Citizens asserted that Tio was not entitled to any consideration of replacement cost value damages because Tio had not undertaken any repairs to the subject property. Tio sought rehearing and reconsideration of this latter order granting Citizen's motion in limine. The trial court granted Tio's rehearing motion, thereby allowing the jury to hear the parties' competing valuations of Tio's loss.

Citizens presented evidence that it characterized as the actual cash value of Tio's loss (valuing the loss at \$2,304.85), while Tio presented what she characterized as the replacement cost value damages (valuing the loss at \$92,381). Notably, Citizens did not object to the jury instructions that described to the jury how it could value the damages sustained by Tio for her loss.

Ultimately, the jury rendered a verdict in favor of Tio, concluding that she had suffered covered losses of \$70,000. After calculating pre-judgment interest, the trial court entered a final judgment for Tio and against Citizens for a total amount of \$78,979.70. Citizens timely appealed the final judgment and the trial court's denial of Citizen's motion for a new trial and, in the alternative, motion for remittitur.

Analysis

Citizens issued Tio a replacement cost property insurance policy. Pursuant to section 627.7011(3) of the Florida Statutes¹ – a statute governing adjustment of losses under a replacement cost policy – when an insurer issues a replacement cost policy, the insurer is required initially to pay to its insured at least the actual cash value of the covered loss, less the deductible. After it meets this statutory obligation, the insurer is required to pay its insured for repairs as the insured incurs repair costs, also known as the replacement cost value.

On appeal and without citation to authority, Citizens makes the rather creative, though unavailing, argument that, when an insurer wrongfully denies coverage of a claim – causing its insured to file suit against the insurer for breaching the insurance contract – section 627.7011(3) limits the breach of contract damages a jury may award, as if the insurer had not breached the insurance contract. Citizens suggests that, after breaching the policy, it may enforce the terms of the policy at its convenience.

¹ Section 627.7011 is incorporated into Tio’s policy and provides, in pertinent part, as follows:

- (3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:
 - (a) For a dwelling, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred.

§627.7011(3), Fla. Stat. (2015).

Section 627.7011(3), however, governs an insurer's post-loss obligations in adjusting and settling claims covered by a replacement cost policy, and does not operate as a limitation on a policyholder's remedies for an insurer's breach of an insurance contract. Citizens contracted with Tio to provide coverage for a direct loss to property covered by the policy. After Citizens breached that contractual obligation, the trial court properly instructed the jury on how to value the insured's relevant damages, and the jury rendered a verdict for Tio that was supported by competent substantial evidence. See Indep. Fire Ins. Co. v. Lugassy, 593 So. 2d 570, 571 (Fla. 3d DCA 1992) (concluding that substantial competent evidence supported a jury verdict in a breach of insurance contract trial).²

The trial court neither erred when it entered the final judgment for Tio nor when it denied Citizens' post-trial motions for a new trial and remittitur.

Affirmed.

² This case presents a different situation from that of Vazquez v. Citizens Property Insurance Corp., Case Nos. 3D18-779, 3D18-769 (Fla. 3d DCA March 18, 2020). In Vazquez, Citizens did not deny coverage for a covered loss, as it did initially in the instant case; rather, in Vazquez, Citizens conceded coverage and paid the insured the amount Citizens deemed to be the actual cash value of the loss. Id. The parties' dispute in Vazquez concerned whether the costs associated with replacing undamaged floor tiles so that they would match the replaced damaged tiles constituted actual cash value under the policy. Id. This issue does not arise in this case. Tio initiated her lawsuit after Citizens erroneously determined Tio's losses were not covered by the policy; and therefore, section 627.7011(3) and the corresponding policy provision are not implicated in the instant case.