

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2022-021372-CA-01

SECTION: CA22

JUDGE: Beatrice Butchko Sanchez

GERARDO FRAGA et al

Plaintiff(s)

vs.

CITIZENS PROPERTY INSURANCE CORPORATION

Defendant(s)

_____/

**ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND ENTRY OF DECLARATORY DECREE**

THIS CAUSE, having come before this Court via Zoom on May 3, 2024, on Plaintiffs' Motion for Partial Summary Judgment and Entry of Declaratory Decree, after hearing oral arguments from counsel and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

I. Facts and Procedural History

By virtue of stipulation of the parties, Plaintiffs' home was insured under an all-risk insurance policy issued by Defendant, which was in effect from August 12, 2022, to August 12, 2023. During the policy period, Plaintiffs' home sustained a loss caused by water damage due to a plumbing leak. After receiving notice of the loss, Defendant conducted its investigation and determined that coverage was available under the policy. The policy contains a \$10,000 sublimit for loss caused by "water, including the cost to tear out and repair" the part of the property "necessary to access the system or appliance" (the "\$10k Limit"). The \$10k Limit does not apply however if at Defendant's "option [it] offer[s] and [Plaintiffs] provide written consent to participate in the services" as described under the "MANAGED REPAIR CONTRACTOR NETWORK PROGRAM" endorsement of the policy ("MRC Endorsement" or "MRC Program"). The MRC Endorsement states the following:

MANAGED REPAIR CONTRACTOR NETWORK PROGRAM

At our option, we may offer you the Program described in this “Endorsement”... To participate in the Program and accept our offer, you must sign and return the Program Consent Form provided by us...

...

CONSENT

You must provide written consent to participate in this Program.

Your written consent to participate in this Program can only be provided to us by completing and returning to us, on or after reporting a claim of loss or damage, the Program Consent Form provided to you by Citizens.

Believing that repair costs were going to exceed the \$10k Limit, on September 13 and 14, 2022, Plaintiffs, through their public adjuster, requested participation in the MRC Program. On September 20, 2022, Defendant offered the MRC Program to Plaintiffs and provided Plaintiffs with a Program Consent Form (the “Form”) to sign and return. This was the first time Plaintiffs had seen the Form, as it was not attached to or incorporated into the policy at the time it went into effect. ^[1] The Form, which was two pages of single-spaced text, included nearly a half-page “SUMMARY OF PROGRAM PARTICIPATION AND TERMINATION OF CONSENT” as well as the following language:

I understand I must separately contract with a Program “Contractor” for repairs of covered damage within 10 business days from the date the contract is delivered to me. I understand if I do not sign a contract with the Program “Contractor”, my consent is terminated and if the loss is subject to the \$10,000 limit on coverage described in my Policy, **the \$10,000 limit on coverage applies and is the most Citizens will pay for my covered loss.**

Only this Program Consent Form may be used to acknowledge your consent to participate in the Program. In consenting to participate in the Program, **you acknowledge that Citizens is not a party to the contract between you and the Program “Contractor”.**

When participation in the Program is terminated, the Program “Contractor” will stop repairs, replacement and rebuilding of the property. If the loss is subject to the \$10,000 limit on coverage as described in your Policy, **the \$10,000 limit on coverage applies to the loss.**

If you modify any condition or term in this offer or add terms or conditions to this offer, you will be deemed to have rejected the Program and if the loss is subject to the \$10,000 limit on coverage as described in your Policy, your policy limit applicable to the referenced loss shall be \$10,000.

I HAVE REVIEWED THIS DOCUMENT, AND AFFIRM I UNDERSTAND THE CONTENTS AND TERMS OF THIS PROGRAM CONSENT FORM AND THE CONTENTS AND TERMS OF CITIZENS MANAGED REPAIR CONTRACTOR NETWORK PROGRAM ENDORSEMENT. I AM EXECUTING THIS FORM ON BEHALF OF ALL INSUREDS UNDER MY POLICY.”

Upon receipt of the Form, Plaintiffs placed redlines through various sections and language contained in the Form, including most of the language identified above (the “Redlined Form”). Notably, Plaintiffs did not place redlines through the following language:

This Program Consent Form acknowledges, for the Claim indicated above, your consent and your acceptance (or your rejection) of our offer to you to participate in a Managed Repair Contractor Network Program (the Program) described in your Policy in an endorsement shown in your Declarations as either form CIT 04 86 or form CIT 05 86 (the Endorsement).

The Program provides a Program "Contractor (as defined in either CIT 04 86 or CIT 05 86) to perform repairs, replacement, or rebuilding of damaged property covered under Coverage A-Dwelling and/or Coverage B - Other Structures for damage or loss from a covered peril as described in your Policy.

Please select your choice below and sign where indicated. If you do not indicate your choice by checking one of the boxes below or do not sign this Program Consent Form, you have not provided your consent and have not accepted the offer so participate in the Program.

I consent and accept the offer to participate in the Managed Repair Contractor Network Program. My consent and participation in the Program is subject to the terms and conditions in the Endorsement and in my Policy.

Refer to the MANAGED REPAIR CONTRACTOR NETWORK PROGRAM in the Endorsement and your policy for specific terms and conditions regarding your deductible and payment.

Plaintiffs made their selection by checking the box next to the language stating “I consent and accept the offer to participate in the Managed Repair Contractor Network Program. My consent and participation in the Program is subject to the terms and conditions in the Endorsement and in my Policy.” Plaintiffs then signed the Redlined Form and returned it to Defendant on September 27, 2022. On September 28, 2022, Defendant advised Plaintiffs that it deemed the Redlined Form “altered and void.” Defendant further stated: “As such we specifically reject this alternated consent form and deem that the insured is still NOT in the Program.” Defendant advised Plaintiffs that to participate in the MRC Program they “MUST sign the Consent Form that we provide in an unaltered state.”

On November 8, 2022, Plaintiffs filed a three-count complaint against Defendant seeking declaratory relief and damages. In Count I, Plaintiffs sought declaratory judgment concerning the parties’ rights and obligations under the policy and the controversy involving the Program Consent Form. On January 23, 2024, the parties filed a Joint Stipulation of Fact and Admissibility of Evidence, which set forth the evidence necessary for a resolution of the controversy at issue and entry of a summary judgment on Count I. On January 29, 2024, Plaintiffs filed a Motion for Partial Summary Judgment and Entry of Declaratory Decree pertaining to Count I of their Complaint. Defendant filed its Response in Opposition on March 22, 2024. Oral arguments were heard before the Court on May 3, 2024.

II. Arguments and Analysis

“When interpreting a contract, the court must first examine the plain language of the contract for evidence of the parties’ intent.” *Perez-Gurri Corp. v. McLeod*, 238 So. 3d 347, 350 (Fla. 3d DCA 2017) (citation omitted). Insurance policies must be construed in accordance with the plain language of the policy as bargained for by the parties. *See Swire Pac. Holdings, Inc. v. Zurich Ins. Co.*, 845 So. 2d 161, 165 (Fla. 2003); *see also Prudential Property and Casualty Ins. Co. v.*

Swindal, 622 So. 2d 467, 470 (Fla. 1993); *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005). “[I]n construing insurance policies, courts should read each policy as a whole, endeavoring to give every provision its full meaning and operative effect.” *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000). “If the language used in an insurance policy is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning of the language used so as to give effect to the policy as it was written.” *Travelers Indem. Co. v. PCR, Inc.*, 889 So. 2d 779, 785 (Fla. 2004) (citations omitted); see also *Emerald Pointe Prop. Owners’ Ass’n v. Commercial Constr. Indus., Inc.*, 978 So. 2d 873, 877 (Fla. 4th DCA 2008). Absent an ambiguity, “the actual language used in the contract is the best evidence of the intent of the parties, and the plain meaning of that language controls.” *Acceleration Nat’l Serv. Corp. v. Brickell Fin. Servs. Motor Club, Inc.*, 541 So.2d 738, 739 (Fla. 3d DCA 1989). If the relevant policy language is susceptible to more than one reasonable interpretation, the insurance policy is considered ambiguous. *Auto-Owners*, 756 So. 2d at 34. Ambiguous policy provisions are interpreted in favor of the insured. *Id.* Courts are not allowed to “rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.” *Deni Assocs. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1138 (Fla. 1998) (citing *State Farm Mutual Automobile Insurance Co. v. Pridgen*, 498 So.2d 1245, 1248 (Fla. 1986))

Here, as a condition to participating in the MRC Program, Plaintiffs were required to “provide written consent” to participate “by completing and returning... the Program Consent Form provided to [Plaintiffs] by [Defendant].” The Court agrees with Plaintiffs that, under the plain language of the bargained for terms of the policy, the explicitly limited and singularly unambiguous purpose of the Program Consent Form was to obtain Plaintiffs’ “written consent” to participate in the MRC Program. There is no language, implied or explicit, found anywhere in the policy that suggests the Program Consent Form can be used for any other purpose. The Court also agrees with Plaintiffs that Defendant’s Form well exceeded such limited purpose. The Form used by Defendant required Plaintiffs to verify that they “acknowledge” and “understand” various provisions of the Policy and MRC Endorsement. Defendant argues that this was harmless because the Form was simply restating or quoting what was already in the policy and contained nothing inconsistent with the policy. The Court rejects such an argument for several reasons.

First, the Form included language warning Plaintiffs that if they modified or added terms or conditions to it, then they would be deemed to have rejected participating in the MRC Program. This language cannot be found in the policy. This is also a broad overreach that gives Defendant unrestrained power to include whatever language it so desires in a Program Consent Form. Second, even if the Form did nothing but mirror policy terms, “written consent” to participate in the MRC Program cannot be reasonably interpreted to include acknowledgments and understandings of policy language. The plain language of the policy does not require Plaintiffs to re-sign contract terms or affirmatively acknowledge or understand them simply to participate in the MRC Program. The disputed redlined language contained in the Form is also self-serving for Defendant. Requiring Plaintiffs to sign a Program Consent Form affirming that they “understand” policy terms appears to be nothing more than attempt by Defendant to preclude arguments over possible ambiguities

contained in the MRC Endorsement. Further, while the policy may state that Defendant is not a party to the contract with the program contractor, it does not require that Plaintiffs sign a Program Consent Form acknowledging and agreeing to it. This is also entirely unrelated to “written consent” to participate in the MRC Program and appears to be an attempt by Defendant to insulate itself from liability for the contractor’s action. If Defendant wanted Plaintiffs to sign a Program Consent Form requiring them to “acknowledge” and affirm that they “understand” various language and provisions of the policy, then it could have easily written such requirements into the policy. Alternatively, Defendant could have provided Plaintiffs with a copy of the Program Consent Form at the inception of the policy, so they knew what they were bargaining for. Defendant did neither. Instead, Defendant provided Plaintiffs with a Program Consent Form that changed the contract terms mid-stream by adding language that is wholly unrelated to “written consent” to participate in the MRC Program. Adopting Defendant’s arguments and requiring Plaintiffs to sign the Form Defendant provided would be tantamount to rewriting the policy, adding meaning that is not present, and reaching a result contrary to the intention of the parties, which the Court is prohibited from doing.

Additionally, Plaintiffs were wholly within their right to redline and strike language that was inconsistent and unrelated to the policy requirement and their obligation to provide “written consent” to participate in the MRC Program. Perhaps more importantly, Plaintiffs left unaltered and checked the box next to language which stated: “I consent and accept the offer to participate in the Managed Repair Contractor Network Program. My consent and participation in the Program is subject to the terms and conditions in the Endorsement and in my Policy.” Not only is such language consistent with the policy, but it is exactly what Defendant bargained for under the plain language of the policy it drafted, and Plaintiffs were not required to sign a Program Consent Form containing more. Accordingly, upon signing and returning the Redlined Form to Defendant, Plaintiffs had fully complied with their policy obligation to provide written consent to participate in the MRC Program.

In support of its decision to reject the Redlined Form and refuse to allow Plaintiffs to participate in the MRC Program, Defendant relies on *Citizens Prop. Ins. Corp. v. Casar*, 104 So.3d 384 (Fla. 3d DCA 2013). In *Casar*, the policy required that the parties reach a written agreement in order for appraisal to take place. After the insureds refused to sign the written agreement, they filed suit and filed a motion to compel appraisal, which was granted by the trial court. The appellate court reversed, holding that because there was no written agreement between the parties, the insurer was not required to participate in appraisal. *Casar* is distinguishable. Here, the policy does not require a written agreement. Instead, it requires that Plaintiffs “provide written consent” to participate “by completing and returning... the Program Consent Form provided to [Plaintiffs] by [Defendant].” Plaintiffs did exactly that. The Redlined Form was wholly consistent with the bargained for terms of the policy. Nevertheless, Defendant deemed the Redlined Form “void” and rejected it. Because of this unilateral determination, Defendant further deemed that Plaintiffs were still not in the MRC Program. The Court agrees with Plaintiffs that Defendant’s rejection of the Redlined Form and Plaintiffs’ participation in the MRC Program was wholly improper and

unsupported by the policy. Defendant did not have the right void Plaintiffs' written consent to participate that complied with the bargained for terms of the policy.

III. Conclusion

Based upon the foregoing and the reasons stated on the record,

Plaintiffs' Motion for Partial Summary Judgment is hereby GRANTED and the Court hereby issues Declaratory Decree and Judgment as follows on Count I of Plaintiffs' Complaint as follows:

- i. Under the clear and unambiguous terms of the subject policy, the explicitly limited and singularly unambiguous purpose of the Program Consent Form was to obtain Plaintiffs' "written consent" to participate in the MRC Program.
- ii. The Program Consent Form provided to Plaintiffs by Defendant well-exceeded such singular purpose and changed the bargained for terms of the policy mid-stream.
- iii. Consequently, Plaintiffs were not required to sign the Program Consent Form provided by Defendant in an unaltered state in order to comply with their policy obligation to provide written consent to participate in the MRC Program.
- iv. Plaintiffs had the right to place redlines through language in the Program Consent Form that was inconsistent and unrelated to their limited contractual obligation to "provide written consent" to participate in the MRC Program.
- v. The version of the Program Consent Form that was signed and returned to Defendant was wholly consistent with the bargained for terms of the Policy, and as such Plaintiffs fully complied with their obligations under the policy to participate in the MRC Program.

vi. Defendant's refusal to accept the version of the Program Consent Form signed and returned by Plaintiffs and its rejection of Plaintiffs' participation in the MRC Program was improper and without support under the policy.

[1] Both parties agreed at hearing that the "Program Consent Form" was not provided to Plaintiffs or attached to the policy at the time it was issued.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 24th day of May, 2024.



2022-021372-CA-01 05-24-2024 11:03 AM

Hon. Beatrice Butchko Sanchez

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Allison Hayley McNeill, amcneill@pdmplaw.com

Allison Hayley McNeill, apenderleith@pdmplaw.com

Allison Hayley McNeill, bmorales@pdmplaw.com

Matthew A Barket, mbservice@bf.legal

Matthew A Barket, service@bf.legal

Physically Served:



Program Consent Form

Date of Offer: _____

Claim Number: _____

Policy Number: _____

Date of Loss: _____

Insured's Name: _____

CONSENT TO PARTICIPATE IN CITIZENS PROPERTY INSURANCE CORPORATION'S MANAGED REPAIR CONTRACTOR NETWORK PROGRAM

This Program Consent Form acknowledges, for the Claim indicated above, your consent and your acceptance (or your rejection) of our offer to you to participate in a Managed Repair Contractor Network Program (the Program) described in your Policy in an endorsement shown in your Declarations as either form **CIT 04 86** or form **CIT 05 86** (the Endorsement).

The Program provides a Program "Contractor" (as defined in either **CIT 04 86** or **CIT 05 86**) to perform repairs, replacement, or rebuilding of damaged property covered under Coverage **A** – Dwelling and/or Coverage **B** - Other Structures for damage or loss from a covered peril as described in your Policy.

Please select your choice below and sign where indicated. **If you do not indicate your choice by** checking one of the boxes below or do not sign this Program Consent Form, you have not provided your consent and have not accepted the offer to participate in the Program.

- I consent and accept the offer to participate in the Managed Repair Contractor Network Program. My consent and participation in the Program is subject to the terms and conditions in the Endorsement and in my Policy. I understand I must separately contract with a Program "Contractor" for repairs of covered damage within **10** business days from the date the contract is delivered to me. I understand if I do not sign a contract with the Program "Contractor", my consent is terminated and if the loss is subject to the \$10,000 limit on coverage described in my Policy, **the \$10,000 limit on coverage applies and is the most Citizens will pay for my covered loss.**
- I do **not** provide my consent and **decline** this offer to participate in the Managed Repair Contractor Network Program. I understand if the loss is subject to the \$10,000 limit on coverage described in my Policy, **the \$10,000 limit on coverage applies and is the most Citizens will pay for my covered loss.**

Only this Program Consent Form may be used to acknowledge your consent to participate in the Program. In consenting to participate in the Program, **you acknowledge that Citizens is not a party to the contract between you and the Program "Contractor"**.

SUMMARY OF PROGRAM PARTICIPATION AND TERMINATION OF CONSENT

Participation in the Program is terminated if you or your representative:

- Request that the Program "Contractor" stop providing or completing repairs.
- Prevent the Program "Contractor" from providing or completing repairs.
- Fail to execute the contract provided by the Program "Contractor" within **10** business days from the date the contract is delivered to you.

You are not eligible to participate in the Program if you or your representative:

- Request participation after you have incurred any costs for repairs or start any repairs, replacement or rebuilding of property covered under Coverage **A** or **B**.
- Incur any costs for repairs or start any repairs, replacement or rebuilding of property covered under Coverage **A** or **B** prior to our receipt of your written consent and the execution of the contract between you and the Program "Contractor".

Participation in the Program is contingent upon the property, prior to or at the time of the loss, being in a condition that does not impair or prevent the Program "Contractor's" ability to repair the covered loss. Participation in the Program is terminated if we or the Program "Contractor" determine:

- The property is in a condition that impairs or prevents the Program "Contractor's" ability to repair the covered loss.
- Conditions are present that prevent repair, replacement or rebuilding of the property from starting or being completed.

Citizens Property Insurance Corporation

Date of Offer: _____

Claim Number: _____

Policy Number: _____

Date of Loss: _____

Insured's Name: _____

When participation in the Program is terminated, the Program "Contractor" will stop repairs, replacement and rebuilding of the property. If the loss is subject to the \$10,000 limit on coverage as described in your Policy, **the \$10,000 limit on coverage applies to the loss.**

Refer to the MANAGED REPAIR CONTRACTOR NETWORK PROGRAM in the Endorsement and your policy for specific terms and conditions regarding your deductible and payment.

If you modify any condition or term in this offer or add terms or conditions to this offer, you will be deemed to have rejected the Program and if the loss is subject to the \$10,000 limit on coverage as described in your Policy, your policy limit applicable to the referenced loss shall be \$10,000.

DISCLAIMER

The provisions in this Program Consent Form and its summary provide an overview of the Managed Repair Contractor Network Program and certain rights and responsibilities under the Program and the Endorsement. The information in this Program Consent Form does not replace, revise or amend any provision in the MANAGED REPAIR CONTRACTOR NETWORK PROGRAM, the Endorsement, or any provisions in your insurance policy.

INSURED'S AGREEMENT

I HAVE REVIEWED THIS DOCUMENT, AND AFFIRM I UNDERSTAND THE CONTENTS AND TERMS OF THIS PROGRAM CONSENT FORM AND THE CONTENTS AND TERMS OF CITIZENS MANAGED REPAIR CONTRACTOR NETWORK PROGRAM ENDORSEMENT. I AM EXECUTING THIS FORM ON BEHALF OF ALL INSUREDS UNDER MYPOLICY.

Insured's Name: _____

Signature: _____

Date _____

CITIZENS REPRESENTATIVE

- The insured has made their choice as indicated above and has signed this Program Consent Form.
- The insured has declined to select a choice above and/or refused to sign this Program Consent Form.

Citizens Adjuster (Or Citizens Authorized Representative) Name: _____

Representative's Company Name (If Not Citizens): _____

Position/Job Title (If Citizens Authorized Representative): _____

Signature: _____

Date: _____