

**SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA
CASE NO.: 2D24-664**

RICHARD BRITO and PAMELA GARCIA
f/k/a PAMELA TEJEDA,

Appellants,

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION,

Appellee.

On Appeal of a Final Judgment From the 13th Judicial Circuit in
and for Hillsborough County, Florida, Judge Paul Huey

L.T. Case No.: 22-CA-000960

**ANSWER BRIEF OF APPELLEE
CITIZENS PROPERTY INSURANCE CORPORATION**

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INTRODUCTION

In this Brief, Appellee Citizens Property Insurance Corporation is referred to as “Citizens” or “Appellee.” Appellants Richard Brito and Pamela Garcia f/k/a Pamela Tejada are collectively referred to as the “Appellants” or “Insureds.” References to the Record and the consecutively paginated Supplemental Record are “R.”

STATEMENT OF THE CASE AND FACTS

“The purpose of providing a statement of the case and of the facts is not to color the facts in one’s favor . . . but to inform the appellate court of the case’s procedural history and the pertinent record facts underlying the parties’ dispute.” *Sabawi v. Carpentier*, 767 So. 2d 585, 586 (Fla. 5th DCA 2000). The Initial Brief deviates from that purpose, outlining only those facts which Appellant deems relevant to their argument as if they were the only facts which should inform this Court’s evaluation of the trial court’s ruling. Therefore, Appellee submits the following statements for the Court’s information and reference.

A. Factual Background

Appellants purchased a homeowner's insurance policy contract from Appellee bearing policy number 01721701 - 6. [R. 196]. This policy provided coverage to the property located at 6010 Larmon St., Tampa, FL 33634 for the period from December 23, 2020 to December 23, 2021, subject to the policy contract’s terms, limitations, conditions, and exclusions. *Id.*

On June 24, 2021, Appellants reported to Appellee that Appellants’ home sustained damage from a windstorm that occurred

approximately six months earlier on January 15, 2021. *Id.* Appellee assigned a field adjuster to inspect the property, which inspection occurred on June 29, 2021. [R. 197].

Appellee subsequently determined that Appellants' damage was not attributable to a covered cause of loss but rather had been caused by wear and tear, an excluded cause of loss under the policy contract. *Id.* As there was no opening in the property's roof or walls caused by a covered peril through which rainwater entered, Appellants' policy contract did not provide coverage for Appellants' interior damage. *Id.* Appellee informed Appellants that it was denying coverage for their loss via letter dated July 12, 2021. *Id.* This lawsuit followed.

B. Witness Testimony

1. Richard Cannyn, P.E.

Appellants' engineer Richard Cannyn testified at trial on January 23, 2024. [R. 1515 – 1631]. During this testimony, counsel asked the following questions and Mr. Cannyn gave the following answers:

- Q. Based upon the damage that you observed to this roof, if it were to be fixed, could it be repaired or would it need to be replaced?
- A. I mean, based on the amount of damage we found, the Florida Building Code says it needs to be replaced.

[R. 1575].

Q. First off, based on your testimony, you're not claiming that the entire roof was damaged by that December 24, 2020 storm, right?

A. No, just sections of the roof were damaged.

[R. 1583].

Q. [Y]ou didn't test the whole roof, right?

A. We used the 2004 Test Square Methodology to test those -- those 400 square feet. And then from there, we could extrapolate that out over the whole roof.

[R. 1584].

Q. [T]here are 166 unsealed shingles -- it's tough to say -- 166 unsealed shingles, right?

A. Yes, somewhere around there.

Q. Give or take -- 166 unsealed shingles, which you agree, make them more susceptible to damage from wind, right?

A. Correct.

Q. But they didn't sustain any damage from the 70 to 80 mile an hour, 8 to 10 hour Hurricane Ian? That's your opinion?

A. Well, that's why I said earlier that the majority of the shingles we found that were broken seals were from the December event, but not all of them.

Q. [Y]our testimony is now that some of them would've resulted from Hurricane Ian?

A. Could have. I didn't say, all of them. I never said all of them were from one event.

[R. 1600].

Q. [Y]ou're testifying that the damage that you outlined in your report, you do not attribute all that damage to the December 24, 2020 wind event. That's your testimony?

A. Not 100 percent of it.

Q. Okay. But you can't tell us how much you attribute to that wind event?

A. The majority of it was from that wind event.

[R. 1601].

B. Dennis James

Appellants' contractor Dennis James testified at trial on January 23, 2024. [R. 1634 – 1662]. During this testimony, counsel asked the following questions and Mr. James gave the following answers:

Q. You've got your estimate, don't you, Mr. James?

A. I do, yes.

Q. [J]ust to verify that we're looking at the same estimate, what was the actual cash value for the repairs?

MR. LABBE: Objection, Your Honor.

[R. 1641].

MR. LABBE: Your Honor basically ruled on this but just for preservation, this is going to be a new expert opinion we've never heard before as to his opinion of actual cash value to actual damaged property. He's never once said it the entire case.

THE COURT: Okay. We'll see what he says. Overruled for now.

[R. 1642].

Q. [H]ow did you arrive at the actual cash value number?

A. The way that you determine the actual cash value would be the replacement costs, less any depreciation based on the age of finished materials, and that's how you arrive at the ACV value.

[R. 1643].

Q. Can you tell us what the actual cash value would have been in 2021?

A. For the living room?

Q. For the living room.

MR. LABBE: Objection, Your Honor. This is a new opinion. We've never heard this number before -- what she has asked him. It's not part of his estimate.

THE COURT: Overruled.

A. The ACV in 2021 would've been \$2,924.29.

[R. 1644].

THE COURT: I'll give you a standing objection to all of them.

MR. LABBE: Okay. And can I say just one thing? He just said he comes to actual cash value by taking the replacement cost and depreciating it. It is not limited to the actual damaged property, so I want to make sure that's clear.

THE COURT: You're going to cross-examine him. That's something you do as a part of cross.

MR. LABBE: Okay. And I was going to ask for a standing objection, so I don't have to keep jumping up.

THE COURT: Okay. You want a standing objection to all this way that Mr. James is describing actual cash value but do it on your cross.

MR. LABBE: And then just to the extent she's going to keep asking about 2021 depreciation, just a standing objection to that as it's a new opinion we've never heard before.

THE COURT: Sure.

[R. 1645].

Q. [W]hat was the actual cash value of the repairs performed to the roof?

A. The roof's ACV is \$9,255.29.

Q. What was the scope of repairs to the roof that included?

A. That's a replacement of the roof. It's the roof covering itself.

[R. 1647].

Q. Does your estimate include matching?

A. Yes. In some isolated cases, yes, it does.

Q. Are labor, overhead, and profit, content manipulation, and matching parts of repairing specifically damaged property?

A. I mean, all those things go into repairing a home that's been damaged, yes.

[R. 1657].

Q. You testified earlier that you relied in your investigation partially off of the report from Beryl Engineering. My question to you is, do you know how many shingles were damaged?

A. [T]he [engineer's] recommendation was to replace the roof, so I don't know how many individual shingles, if that's what you're asking.

[R. 1658].

C. Motion in Limine and Directed Verdict Hearings

1. Motions in Limine

On January 18, 2024, the trial court heard arguments from the parties regarding their motions in limine. [R. 1441 - 1514]. During this hearing, Appellee argued its “Motion to Limit Evidence of Damages to a Direct Physical Loss and to Preclude Evidence of Matching Costs,” noting that Appellants’ expert Dennis James intended to offer testimony about the cost to replace the entire roof

under a theory that repairing the damaged shingles would damage adjacent undamaged shingles, which would then require repair. [R. 1444 – 1488].

Appellee objected to Mr. James’s testimony on the grounds that it improperly included intrinsic conditions like age-related deterioration in the roof value calculation as it contemplated a full replacement rather than the cost to repair only the direct physical loss to the roof caused by the windstorm. *Id.* Appellee further asserted that such testimony was improper as the insurance policy limited Appellants’ recovery to the “actual cash value” necessary to repair or replace the direct physical loss until Appellants incurred expenses exceeding that amount, at which point Appellants could recover up to the difference between “actual cash value” and the full incurred amount, referred to as “replacement cost value.” *Id.*

Appellants responded by claiming that Appellee had waived its ability to enforce the direct physical loss and actual cash value clauses by virtue of its claim denial, relying upon *Citizens Prop. Ins. Corp. v. Tio*, 304 So. 3d 1278 (Fla. 3d DCA 2020) as support for that proposition. [R. 1456]. Appellants further noted that their damages expert arrived at his opinion by “determining the replacement cost

and then using the computer program to depreciate it based on the age of the materials or the roof.” [R. 1478].

Appellee distinguished *Tio* by noting that the Defendant in that case had confessed judgment prior to trial by admitting that it had breached the insurance contract, whereas no such admission had been made in the case at bar. [R. 1457]. Appellee argued that the analysis set forth in *Citizens Prop. Ins. Corp. v. Salazar*, 388 So. 3d 115 (Fla. 3d DCA 2023) and *CMR Constr. & Roofing, LLC v. ASI Preferred Ins. Corp.*, 2021 WL 877560 (M.D. Fla. Mar. 9, 2021) limited Appellants’ initial recovery to the actual cash value of the directly damaged property, and triggered Appellee’s obligation to pay any remaining amounts only when Appellants’ incurred costs exceeded the actual cash value amount. [R. 1458]. The trial court granted Appellee’s motion, limiting Mr. James’ testimony to the actual cash value of the property that sustained direct physical loss as a result of the claimed windstorm. [R. 1487-88].

2. *Directed Verdict Motion*

After the close of Appellants’ case in chief on January 25, 2024, Appellee moved for the entry of a directed verdict based on Appellants’ failure to prove their damages. [R. 1669 – 1711]. Appellee

argued that Mr. James's testimony, which related to the depreciated cost to replace the entire roof, was predicated upon Mr. Cannyn's testimony that the roof needed replacement rather than repair, not as a result of direct physical loss, but rather due to operation of laws and ordinances as well as the potential for undamaged areas to sustain damage during repairs. Appellee argued that the proper measure of damages was the cost to repair or replace only those shingles directly damaged by the storm, if any.

Appellant responded to this argument by relying upon *Tio* for the proposition that Appellee waived its ability to enforce the terms of policy by way of the claim denial. Appellants conceded, however, that the policy does not provide coverage for undamaged property until the "work is performed and expenses are incurred." [R. 1668]. After working through an extensive analysis, the trial court granted Appellee's motion, stating that Mr. James's testimony was insufficient to carry their burden to prove the actual cash value of items that sustained direct physical loss due to a covered peril.

SUMMARY OF ARGUMENT

The trial court correctly excluded Appellants' expert witness Dennis James's estimate under Fla. Stat. as it improperly contained damages which exceeded the scope of the policy's coverage grant. *Vazquez v. Citizens Prop. Ins. Corp.*, 304 So. 3d 1280 (Fla. 3d DCA 2020); *Citizens Prop. Ins. Corp. v. Salazar*, 388 So. 3d 115 (Fla. 3d DCA 2023).

Mr. James's estimate did not value the cost to repair or replace items that sustained direct physical loss caused by the alleged January 15, 2021 windstorm but rather the indirect physical loss that Appellants' property may sustain due to the operation of laws or ordinances such as the Florida Building Code and Fla. Stat. § 626.9744, Florida's "matching statute." *See Vazquez*, 304 So. 3d at 1280; *Universal Prop. & Cas. Ins. Co. v. Qureshi*, 49 Fla. L. Weekly D1575 (Fla. 4th DCA July 24, 2024).

Appellants' policy excludes damages caused by the operation of laws or ordinances unless Appellants' property first sustains direct physical loss caused by a peril insured against. [R. 238]. Therefore, Mr. James's estimate did not constitute competent evidence of Appellants' damages. *See Vazquez*, 304 So. 3d 1280; *Salazar*, 388

So. 3d 115; *State Farm Fire & Cas. Co. v. Metro. Dade Cnty.*, 639 So. 2d 63 (Fla. 3d DCA 1994); *Qureshi*, 49 Fla. L. Weekly D1575.

While Appellants attempt to argue that Appellee waived its ability to enforce the policy's coverage exclusion for law and ordinance-related damages by virtue of its claim denial, such provisions cannot be waived by an insurer's conduct as Florida law clearly prohibits the creation of coverage by waiver or estoppel. See *Axis Surplus Ins. Co. v. Caribbean Beach Club Ass'n, Inc.*, 164 So. 3d 684 (Fla. 2d DCA 2014); *Qureshi*, 49 Fla. L. Weekly D1575. As a result, Appellee retains its ability to enforce the policy's law and ordinance coverage exclusion against Appellants. *Caribbean Beach*, 164 So. 3d 684.

The trial court properly directed a verdict in Appellee's favor on Appellants' claim for exterior damages, as without testimony regarding the cost to repair or replace items that sustained direct physical loss, there was no competent evidence upon which a reasonable person could have based a verdict regarding the value of Appellants' roof damage, which cannot be based on speculation or guesswork but must instead be presented with reasonable certainty. *Gonzalez v. Barrenechea*, 170 So. 3d 13 (Fla. 3d DCA 2015).

STANDARD OF REVIEW

Appellee agrees that this Court must evaluate the trial court's decisions regarding the admissibility of evidence and the denial of a motion for new trial under an abuse of discretion standard. See *Allstate Ins. Co. v. Wiley*, 954 So. 2d 1273 (Fla. 2d DCA 2007). Appellee also agrees that the trial court's directed verdict is evaluated under a *de novo* standard. See *Owens v. Publix Supermarkets, Inc.*, 802 So.2d 315 (Fla. 2000).

ARGUMENT

I. The Trial Court Properly Excluded Dennis James's Estimate

A. The Estimate Valued Only Loss Caused by the Operation of Laws and Ordinances

Appellants first allege that the trial court improvidently granted Appellee's Motion in Limine to Limit Evidence of Damages to Direct Physical Loss and to Preclude Evidence of Matching Costs, which sought to preclude Appellants' damage expert Dennis James's estimate valuing the cost to replace Appellants' roof from admission into evidence.

The trial court excluded Mr. James's estimate as it did not value the cost to repair or replace the individual roof shingles that sustained direct physical loss during the policy period but rather merely set forth the cost to replace all 1,150 square feet of shingles on the roof as well as all ancillary components, whether damaged or undamaged, due to the operation of laws and ordinances such as the Florida Building Code or Fla. Stat. § 626.9744.

B. Loss Caused by the Operation of Laws and Ordinances Is Not Direct Physical Loss

The trial court’s exclusion of Mr. James’s opinions correctly applies the principles set forth in *Vazquez v. Citizens Prop. Ins. Corp.*, 304 So. 3d 1280 (Fla. 3d DCA 2020), in which the Third District Court of Appeals held that a Citizens’ policy’s “direct physical loss” clause requires “actual” damage to “the insureds’ house or personal property” before it implicates coverage. *See id.* at 1285; *see also Citizens Prop. Ins. Corp. v. Salazar*, 388 So. 3d 115 (Fla. 3d DCA 2023). The trial court’s decision also comports with the principles set forth in *State Farm Fire & Cas. Co. v. Metro. Dade Cnty.*, 639 So. 2d 63, 65 (Fla. 3d DCA 1994) regarding application of this policy’s ordinance and law coverage exclusion.

In *Vazquez* and *Salazar*, the Court evaluated claims filed against Citizens where the insured’s estimate included “matching” costs for repairs under Fla. Stat. § 626.9744, which requires an insurer to “make reasonable repairs or replacement of items in adjoining areas” when a loss “requires replacement of items and the replaced items do not match [original unreplaced items] in quality, color, or size.” *See Vazquez*, 304 So. 3d at 1285; *Salazar*, 388 So. 3d

at 115. The *Vazquez* court excluded the loss consultant's estimate, while the *Salazar* court allowed the estimate into evidence. Both aggrieved parties appealed that decision as well as a subsequent final judgment entered in the other party's favor.

Upon review, the Third District held that the estimates were inadmissible, confirming that the "insured loss" under the policy is limited to "the property that was actually damaged," not property that may later become damaged, or require replacement, during repairs. Notably, the *Vazquez* court held that matching damages are not even a "replacement cost" of the roof but rather are supplemental payments released by an insurer upon the occurrence of contingencies specified in the statute. *See Vazquez*, 304 So. 3d at 1285.

In *State Farm Fire & Cas. Co. v. Metro. Dade Cnty.*, 639 So. 2d 63 (Fla. 3d DCA 1994), the court evaluated the interplay between a county's requirement that homeowners bring their homes into compliance with the South Florida Building Code and a replacement cost insurance policy's exclusion of losses caused by the operation of ordinances or laws. *See id.*

The County sued State Farm, arguing that replacement-cost homeowners insurance policies should cover the costs associated with mandated code upgrades. State Farm maintained that these upgrades were excluded from its coverage under its policies' "Ordinance or Law" clauses. *Id.* Both parties filed motions for summary judgment, and the trial court ruled in favor of the County. *Id.*

The appellate court reversed the trial court's decision to grant summary judgment for the County, concluding that the "Ordinance or Law" clause plainly excluded coverage for losses resulting from enforcement of construction regulations. *See id.* at 66. While the County argued that the policy's failure to define "enforcement" created ambiguity, the court reviewed enforcement's ordinary meaning and found that the term straightforwardly applied to code compliance requirements such that the policy did not cover such costs. *Id.*

As with the cases analyzed above, Appellants' expert's opinion focuses not on the value of the direct physical loss attributable to a covered peril, but rather on the potential indirect loss after applying factors such as Fla. Stat. § 626.9744 and the Florida Building Code.

These factors do not constitute the “insured loss” contemplated by Appellee’s insurance policy, and the trial court properly excluded the improper expert opinions. *See Vazquez*, 304 So. 3d at 1285; *Salazar*, 388 So. 3d at 115.

Appellants attempt to distinguish the instant case from *Vazquez* by alleging that “neither of the Appellants’ expert[s] testified as to matching costs.” [I.B. 42]. However, Mr. James affirmatively testified at trial that his estimate included “some” matching costs. [R. 1657]. Mr. James also testified that he didn’t determine the value to replace individual shingles on the Appellants’ roof as it would create a “matching issue.” [R. 1660]. Therefore, there is no functional difference between Mr. James’s opinion and the inadmissible expert opinion offered in *Vazquez*. *See Vazquez*, 304 So. 3d at 1285.

C. Law and Ordinance Exclusions Cannot be Waived by an Insurer’s Conduct

While Appellants allege that the trial court’s decision violates the principles set forth in *Citizens Prop. Ins. Corp. v. Tio*, 304 So. 3d 1278 (Fla. 3d DCA 2020), which they assert precludes Appellee’s ability to enforce its policy’s coverage limitations, Florida jurisprudence holds that such provisions are enforceable by insurers

against insureds even if the insurer denies the insured's claim, as coverage grants are treated differently than forfeiture clauses. See *Doe on Behalf of Doe v. Allstate Ins. Co.*, 653 So. 2d 371 (Fla. 1995) (“For many years the law in Florida has been well established that the doctrine of waiver and estoppel based upon the conduct or the action of the insurer (or an agent) is *not* applicable to matters of *coverage* as distinguished from grounds for *forfeiture*.”) (emphasis in original); *Six L's Packing Co. v. Fla. Farm Bureau Mut. Ins. Co.*, 268 So. 2d at 563 (“while an insurer may be estopped by its conduct from seeking a *forfeiture* of a policy, the insurer's *coverage* or restrictions on the *coverage* cannot be extended by the doctrine of waiver and estoppel.”) (emphasis in original).

In fact, this Court has already adopted this view in *Axis Surplus Ins. Co. v. Caribbean Beach Club Ass'n, Inc.*, 164 So. 3d 684 (Fla. 2d DCA 2014) when it held that coverage cannot be created through waiver. In *Caribbean Beach*, the Court evaluated the effect of Axis Surplus Ins. Co.'s conduct on its ability to enforce a contract provision forfeiting coverage for the increased cost of repairs associated with the insured's compliance with ordinances or laws governing construction unless the repairs were performed within two

years after the date of loss. *Id.* The trial court entered judgment in favor of Caribbean Beach, holding that the increased cost of construction provision was a forfeiture clause that Axis Surplus had waived rather than a coverage clause which it could not waive. *Id.*

The *Caribbean Beach* Court began by noting the difference between coverage clauses and forfeiture clauses; it defined coverage clauses as those which “are inclusionary or exclusionary, ***that outline the scope of coverage***, or that delineate the dollar amount of liability,” while forfeiture clauses “are invoked to avoid liability for existing coverage.” *Id.* The Court then noted that while forfeiture clauses can be waived due to an insurer’s conduct, “[w]aiver cannot create coverage.” *Id.* The Court concluded that Axis’s knowledge that Caribbean Beach was about to lose its increased cost of construction coverage through reliance upon Axis’s actions, combined with Axis’s failure to notify Caribbean Beach of that issue, waived Axis’s ability to enforce the provision against Caribbean Beach. *See Caribbean Beach*, 164 So. 3d at 687.

Therefore, Citizens cannot be said to have waived compliance with the direct physical loss provision unless it first is deemed to be a forfeiture provision. However, this Court has already held that

clauses requiring “direct physical loss” are considered coverage clauses. *See id.*; *see also Weber v. New Hampshire Ins. Co.*, 480 So. 2d 672, 673 (Fla. 2d DCA 1985). As a result, Appellee’s claim denial does not waive its ability to enforce such provisions against Appellants.

D. Recent Disagreement with Tio

A split recently arose between the Third and Fourth District Courts of Appeal regarding *Tio*’s application following *Qureshi*, in which the Court states as follows:

Tio [is] seemingly at odds with our supreme court's precedent....As our supreme court explained, for many years the law in Florida has been well established that the doctrine of waiver and estoppel based upon the conduct or the action of the insurer (or an agent) is not applicable to matters of coverage as distinguished from grounds for forfeiture. In other words, while an insurer may be estopped by its conduct from seeking a forfeiture of a policy, the insurer's coverage or restrictions on the coverage cannot be extended by the doctrine of waiver and estoppel.

* * * * *

Furthermore, insurance contracts are construed according to their plain meaning. Thus, when the language of an insurance policy is plain and unambiguous, a court must interpret the policy in accordance with its plain meaning in order to give effect to the policy as written.

As this court has explained, courts, without dispute, are not authorized to rewrite clear and unambiguous contracts. When construing an insurance policy, as with any other contract, we are required to consider its plain language and take care not to give the contract any meaning beyond that expressed. In other words, courts are not to rewrite insurance contracts and should bear in mind that if a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision.

Qureshi, 49 Fla. L. Weekly at D1576-77 (internal citations and quotations omitted).

Also notable is *Tio*'s procedural posture; near the time of trial, the insurer "changed course" to admit coverage, thereby confessing its breach of the insurance contract. *See Tio*, 304 So. 3d at 1279. By contrast, there has been no such confession in the case at bar.

II. The Trial Court Properly Directed the Verdict on Appellants' Exterior Damage in Appellee's Favor as Appellants Failed to Satisfy their Burden of Proof Regarding Exterior Damages

The three elements of a breach-of-contract action are: (1) a valid contract; (2) a material breach; and (3) damages. *Friedman v. New York Life Ins. Co.*, 985 So. 2d 56, 58 (Fla. 4th DCA 2008). The burden of proof rests squarely upon Appellants to prove all elements of their prima facie case, including damages. *Carpenter Contractors of Am., Inc. v. Fastener Corp. of Am., Inc.*, 611 So. 2d 564, 565 (Fla. 4th DCA 1992). "Under Florida law, the plaintiff must present evidence

regarding a reasonable certainty as to its amount of damages, and a plaintiff's claim cannot be based upon speculation or guesswork.” *Gonzalez v. Barrenechea*, 170 So. 3d 13, 16 (Fla. 3d DCA 2015) (citations omitted).

Here, Mr. James’s testimony did not prove the cost to repair or replace items that sustained direct physical loss due to the alleged windstorm, but rather the cost to replace Appellants’ roof due to the operation of laws and ordinances such as the Florida Building Code and/or Fla. Stat. § 626.9744. While it is possible that a jury could have interpreted Mr. James’s testimony to arrive at a damages number, the jury’s determination would then be impermissibly “based upon speculation or guesswork.” *Barrenechea*, 170 So. 3d at 16. As such, the trial court correctly directed the verdict on Appellants’ exterior damages in Appellee’s favor.

CONCLUSION

The trial court correctly excluded Appellants' expert witness Dennis James's estimate as it was based upon the indirect physical loss that Appellants' property may sustain due to the operation of laws or ordinances such as the Florida Building Code and Fla. Stat. § 626.9744. Estimates predicated upon such damages do not prove the "direct physical loss" necessary to trigger coverage under Appellants' policy. *Vazquez*, 304 So. 3d 1280; *Salazar*, 388 So. 3d at 115; *Metro. Dade Cnty.*, 639 So. 2d 63.

Appellee did not waive its ability to enforce the law and ordinance exclusion by way of its claim denial, as the language contained in this specific policy's exclusion renders it a non-waivable coverage clause rather than a waivable forfeiture clause. *Caribbean Beach*, 164 So. 3d 684; *Qureshi*, 49 Fla. L. Weekly D1575.

As neither Mr. James's estimate nor his trial testimony provided information to the jury regarding the cost to repair or replace roof-related items that sustained direct physical loss, there was no competent evidence upon which a reasonable person could have based a verdict regarding the value of Appellants' roof damage. *Vazquez*, 304 So. 3d 1280; *Salazar*, 388 So. 3d at 115; *Qureshi*, 49

Fla. L. Weekly D1575. The trial court therefore properly directed a verdict on Appellants' exterior damage in Appellee's favor, as damages cannot be based on speculation or guesswork but must be presented with reasonable certainty. *Barrenechea*, 170 So. 3d 13.

For the reasons set forth herein, Appellee respectfully requests that this Honorable Court affirm the Final Judgment entered against Appellants in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed on November 8, 2024 with the Clerk of the Court via the Florida Electronic Filing Portal, which will send transmissions of Notices of Electronic Filing to Barbara Hernando, Esq. and Dean Makris, Esq., 908 W. Horatio Street, Tampa, FL 33606 Telephone: 813-485-7700, Attorneys for Appellants.

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CERTIFICATE OF COMPLIANCE

I **HEREBY CERTIFY** that this computer-generated Answer Brief is submitted in Bookman Old Style 14-point font in compliance with Rule 9.210(a)(2), Fla. R. App. P.

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