

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Martin A Alvarez

Case No.

Plaintiff,

vs.

Citizens Property Insurance Corporation

Defendant.

COMPLAINT

Plaintiff, Martin A Alvarez, by and through undersigned counsel, hereby files this Complaint against Defendant, CITIZENS PROPERTY INSURANCE CORPORATION, and in support thereof, would allege:

JURISDICTION AND VENUE

1. This is an action for monetary damages in the amount of 82,805.56 exclusive of prejudgment interest, costs, and attorneys' fees.
2. Venue is proper in HILLSBOROUGH COUNTY, Florida pursuant to Florida Statute 47.011, because the cause of action upon which these allegations are based accrued in HILLSBOROUGH COUNTY, Florida, and the property at issue is located in HILLSBOROUGH COUNTY, Florida.

PARTIES

3. Plaintiff, Martin A Alvarez ("Plaintiff"), is a natural person residing in HILLSBOROUGH COUNTY, Florida.
4. Defendant, Citizens Property Insurance Corporation ("Citizens"), is an entity doing business in the State of Florida and specifically, HILLSBOROUGH COUNTY, Florida.
5. Defendant is an authorized insurance carrier by the State of Florida to engage in the

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business of insurance with Florida citizens, and is duly authorized to, and does in fact, issue, or otherwise causes to be issued, policies of insurance in HILLSBOROUGH COUNTY, Florida, and throughout the State of Florida.

COUNT I – DECLARATORY RELIEF

6. This is an action for Declaratory Relief under Fla. Stat. 86.011 et seq.
7. Plaintiff purchased a homeowner's policy of insurance from Defendant, which insured the property owned by the Plaintiff located at 3415 Oak Trail Ct Tampa, Florida 33614 (the "Property").
8. In consideration for the payment of a premium, Defendant issued an insurance policy insuring to the benefit of Plaintiff ("Policy").
9. The Plaintiff does not have a copy of the foregoing insurance policy and/or the same is in the possession of the Defendant and will be obtained via discovery.
10. The foregoing insurance policy was in full force and effect at all material times hereto and during the subject date of loss.
11. At all times material hereto, the Policy, among other things, provided insurance coverage for direct physical losses to the property.
12. On or about October 9, 2024, the Property suffered a loss resulting from a peril that is covered under the Policy; and timely reported the damage to Defendant.
13. In response to the Plaintiff's reported claim, Defendant acknowledged the loss and assigned an adjuster and the claim number 00100596772 for same.
14. Thereafter, Defendant conducted and completed an investigation of the loss.
15. All conditions precedent and post-loss obligations to obtaining payment of said benefits under the Policy and Florida Statutes have been complied with, met, or waived.
16. Any conditions precedent and post-loss obligations not met or complied with, have not caused any prejudice to the Defendant.

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17. Plaintiff and Defendant had a binding contract that insured the property during the aforementioned period.

18. Section 86.011, Florida Statutes, gives the court jurisdiction to render a declaratory judgment on the existence or nonexistence of (1) a right under the insurance contract or (2) a fact upon which the existence or nonexistence of such right under the insurance contract depends. *See Higgins v. State Farm Fire & Cas. Co.*, 894 So. 2d 5, 12 (Fla. 2004) (declaratory action allowed to decide disputes in respect to insurance policy indemnity and defense obligations).

19. Further, “[f]ollowing *Higgins*, it is clear—even if it was not before—that a declaratory-relief action may proceed based on an unambiguous insurance policy.” *Ocean’s 11 Bar & Grill, Inc. v. Indemnity Ins. Corp. of DC*, 2011 WL 3843931 at *2 (S.D. Fla. 2011).

20. Pursuant to Chapter 86 of the Florida Statutes, the Plaintiff requests this Court to take jurisdiction over this action and determine the Plaintiff’s rights under the contract.

21. Within the policy, Defendant has added a clause requiring DOAH Arbitration pursuant to the insurance contract and Fla. Stat. §627.351(6)(11).

22. Plaintiff filed a notice of intent to litigate required by Fla. Stat. §627.70152, and Defendant invoked the DOAH arbitration.

23. The claim is currently pending in DOAH arbitration and has been assigned case number 25-003159PIC.

24. The insurance contract contains the arbitration provision, but the provision was not bargained for, nor is the arbitration voluntary. Once arbitration is invoked, the Plaintiff is required to either accept an offer of judgment or withdraw the claim, which results in an arbitration award. Once the arbitration award is entered, the Defendant then seeks attorney’s fees based upon their offer of judgment.

25. It is Plaintiff’s understanding that the policy provision and statute results in a violation of

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Article 1, Section 21 of the Florida Constitution and violates the due process rights of the Plaintiff.

25. Plaintiff is in doubt as to the validity of the arbitration statute and policy provisions.

26. This has created a bona fide, actual, present practical need for the requested declarations as it deals with a present, ascertained or ascertainable state of facts or present controversy as to the above state of facts.

27. As a direct and proximate result of Defendant's position, the Plaintiff has been required to retain the services of the undersigned attorneys to represent and protect the interests of the Plaintiff and the Plaintiff has become obligated to pay them a reasonable fee for their services in bringing this action.

28. In the event that the Plaintiff prevails in this action, Plaintiff is entitled to an award of attorneys' fees and costs pursuant to Florida Law.

WHEREFORE, the Plaintiff respectfully requests:

- a. Entry of a declaratory judgment pursuant to Chapter 86 of the Florida Statutes declaring that Section 627.351(6)(II), Florida Statutes (2024) and the provisions of the policy are invalid;
- b. An award of attorneys' fees pursuant to Florida Statutes, along with an award of taxable costs; and
- c. Any other relief the Court deems just and proper under the circumstances.

WHEREFORE, Plaintiff demands a judgment against Defendant, Citizens Property Insurance Corporation, for damages, attorney's fees, prejudgment interest, costs, and all other relief deemed just and proper by this Court.

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