

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:26-cv-00618

CHARLENE LYNN ROTONDO,
AS TRUSTEE OF THE
CHARLENE LYNN ROTONDO
TRUST,

Plaintiff(s),

vs.

WRIGHT NATIONAL FLOOD
INSURANCE COMPANY,

Defendant.

**PLAINTIFF'S RESPONSE AND MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND
INCORPORATED MEMORANDUM OF LAW**

Plaintiff, CHARLENE LYNN ROTONDO, AS TRUSTEE OF THE CHARLENE LYNN ROTONDO TRUST ("Plaintiff"), by and through undersigned counsel, pursuant to Local Rule 3.01, hereby respond to Defendant's, WRIGHT NATIONAL FLOOD INSURANCE COMPANY ("Defendant"), Motion to Dismiss and Incorporated Memorandum of Law, as follows:

INTRODUCTION

Defendant improperly asks the Court to review facts beyond the four corners of the Complaint to dismiss this case based on a statute of limitations affirmative defense. Facially, Plaintiff's Complaint and the exhibit attached thereto demonstrates a viable, timely brought cause of action for breach of the flood insurance policy, so the Court should not review any of the extrinsic evidence attached to Defendant's Motion to Dismiss. Because the face of the Complaint states a viable cause of action, the Court must accept those allegations as true and deny Defendant's Motion to Dismiss.

Alternatively, and additionally, Plaintiff puts forth that her supplemental claim tolled the time for filing of the complaint. Plaintiff's undersigned counsel assisted Plaintiff in supplementing her claim to Defendant in September 2025, and received a denial letter in December 2025. Due to the continued negotiations, Plaintiff asserts that the time for filing the complaint was tolled. Or, at the very least, Plaintiff should be able to proceed on her claim for damages for the replacement flooring, as that portion of her claim was part of the September 2025 supplemental claim and was denied in December 2025 and *not* pursuant to the January 17, 2025 Denial Letter. Therefore, as to those damages, Plaintiff's Complaint is timely. Therefore, Defendant's Motion to Dismiss should be denied.

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This standard does not require detailed factual allegations but demands more than an unadorned accusation. *Id.* In considering a Rule 12(b)(6) motion to dismiss, a complaint's factual allegations are accepted as true and construed in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

“Generally, only the four corners of the complaint may be considered in ruling on a motion to dismiss pursuant to Rule 12(b)(6).” *Wittenberg v. Judd*, No. 8:17-CV-467-T-26AEP, 2017 U.S. Dist. LEXIS 59380, at *6 (M.D. Fla. Apr. 19, 2017); *see also Hinds v. Credigy Receivables, Inc.*, No. 6:07-CV-1081-ORL-28-GJK, 2008 U.S. Dist. LEXIS 137759, at *2 (M.D. Fla. Apr. 29, 2008) (“A Rule 12(b)(6) motion to dismiss on statute of limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time barred.”).

ARGUMENT

Holding aside the sufficiency of the facial allegations of the Complaint, Defendant's motion asks the Court to erroneously examine facts outside the four corners of the Complaint through the declaration of Sarah Brandeberry. (D.E. 9-1). As a preliminary matter, Plaintiff objects to the declaration on the

basis that it contains facts and evidence that are outside the four corners of the Complaint, which the Court should not examine to adjudicate Defendant's motion.

To show that Plaintiff filed this case outside the one-year window, Defendant relies on a declaration from its litigation manager. (D.E. 9-1). However, the Court cannot consider such extrinsic evidence. "Generally, only the four corners of the complaint may be considered in ruling on a motion to dismiss pursuant to Rule 12(b)(6)." *Wittenberg*, 2017 U.S. Dist. LEXIS 59380, at *6. There are several exceptions to this rule, but Defendant fails to show (or even argue) that any apply here. Instead, Defendant simply presents the declaration and declares victory. That won't work. *See Herman v. Mr. Cooper Grp. Inc.*, No. 2:23-CV-948-JESKCD, 2024 U.S. Dist. LEXIS 120235, at *2 (M.D. Fla. July 2, 2024) ("In our adversarial system, a claimant must present her case. It is not a court's job to conduct research to provide the proper support for [conclusory] arguments.").

As mentioned, the one-year limitations period on a flood claim begins to run when the notice of denial is sent to the insured. The pleadings do not provide when that happened here, so the Court cannot determine if Plaintiff's claim is untimely. Specifically, Plaintiff's Complaint states only that "Plaintiff reported their claim to Defendant in a timely manner in accordance with the Policy." (D.E. 1 ¶ 19). Therefore, based on the facial allegations of the

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Complaint, no argument based on the statute of limitations can be raised. *See Hinds*, 2008 U.S. Dist. LEXIS 137759, at *2 (“A Rule 12(b)(6) motion to dismiss on statute of limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time barred.”).

Alternatively, and additionally, if the Court does consider the January 17, 2025 Letter in ruling on Defendant’s Motion to Dismiss, an argument can be made that Plaintiff’s claim is not barred, as Plaintiff made a supplemental claim, which tolled the time for Plaintiff to file suit. The January 17, 2025 denial letter specifically denied Plaintiff’s claim as to the upper kitchen cabinets of Plaintiff’s claim for damages. Thereafter, in approximately September 2025, Plaintiff hired the undersigned counsel, who then assisted in submitting a supplemental claim on September 26, 2025. The supplemental claim specifically dealt with the flooring damages by the flooding from Hurricane Helena. Pursuant to that supplemental claim, Plaintiff received a denial letter on December 15, 2025, denying Plaintiff’s request for replacement of the tile flooring. (See **Exhibit “A,”** Plaintiff’s Affidavit). At that time Plaintiff’s claim for the replacement of the tile flooring was denied, and, as per the argument set forth by Defendant, Plaintiff would have been required to bring suit within one year of that December 2025 denial. Thus, at least to the tile flooring, Plaintiff has timely brought suit against Defendant, and on this basis Plaintiff’s lawsuit should proceed.

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In fact, there is support for the proposition that an insurer's re-investigation of a flood policy claim may toll the one year limitation period for bringing suit. Construing the facts in the light most favorable to Plaintiff, it is plausible that Plaintiff reasonably relied on the December 15, 2025 second denial letter, in measuring the SFIP's one-year statute of limitations. *See House v. Bankers Ins. Co.*, 43 F. Supp. 2d 1329, 1334 (M.D. Fla. 1999) ("Plaintiffs could not be expected to file suit during the period that Defendant represented the claim remained open and resolvable."); *see also Horeftis v. Nat'l Flood Insurers Ass'n*, 437 F. Supp. 794, 796 (E.D. Mich. 1977) (finding that insurance company re-opened plaintiff's claim based upon adjuster's assurances to re-open and an intermediate letter suggesting reconsideration and that a second denial letter began running of limitations period anew); *Wagner v. Dir., Fed. Emergency Mgmt. Agency*, 847 F.2d 515, 521 (9th Cir. 1988) (suggesting that the statute of limitations may run from the date a claim is formally reopened). Therefore, an argument can be made that the one year statute of limitations was tolled due to the supplemental claim and the second denial letter sent on December 15, 2025. Further, at the very least, Plaintiff should be able to proceed with her lawsuit based on the denial of coverage in the December 15, 2025 Letter for the replacement of the flooring since the lawsuit was filed less than one year after the December 2025 denial letter.

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Either way, the facts of the Complaint (and if the Court is compelled to review the extrinsic evidence), demonstrate Plaintiff timely brought this action, so Defendant's motion to dismiss must be denied.

CONCLUSION

Based on the facial allegations of the Complaint, Plaintiff stated a timely action for breach of contract against Defendant, and Defendant's motion must be denied.

WHEREFORE, Plaintiff respectfully asks the Court to deny Defendant's Motion to Dismiss, require Defendant to answer Plaintiff's Complaint within ten (10) days of the Court's order, and for any other relief the Court deems just and proper.

Dated: May 29, 2026

Respectfully submitted,

By: /s/ Elizabeth Hernandez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 29, 2026, a true and correct copy of the foregoing was electronically filed using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

By: /s/ Elizabeth Hernandez
ELIZABETH HERNANDEZ, ESQ.
Bar No. 1034517