LEAH EVERHART, individually and on behalf of all others similarly situated,

Appellant,

v.

CITIZENS PROPERTY INSURANCE CORPORATION,

Appellee.

_____/

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D11-4532

Opinion filed June 28, 2012.

An appeal from the Circuit Court for Leon County.
Charles A. Francis, Judge.

David S. Farber of the Law Office of David S. Farber, P.A., Coral Gables; Daniel B. Rogers and Alfred J. Saikali of Shook, Hardy & Bacon, LLP, Miami, for Appellant.

Gina G. Smith of Butler, Pappas, Weihmuller, Katz, Craig, LLP, Tallahassee; Farrokh Jhabvala and Ari H. Gerstin of Jorden & Burt, LLP, Miami, for Appellee.

PER CURIAM.

AFFIRMED. See Ceballo v. Citizens Prop. Ins. Corp., 967 So. 2d 811, 815 (Fla. 2007) (holding that proof of entitlement to the face value of the policy "does not affect [the insured's] obligation to show that [she has] incurred an additional

loss in order to recover under the supplemental [law and ordinance] coverage"). See also K.R. Exch. Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL, 48 So. 3d 889, 894 (Fla. 3d DCA 2010) ("It is well settled that the court must consider an exhibit attached to the complaint together with the complaint's allegations, and that the exhibit controls when its language is inconsistent with the complaint's allegations."); Magnum Capital, LLC v. Carter & Assocs., LLC, 905 So. 2d 220, 221 (Fla. 1st DCA 2005).

BENTON, C.J., and CLARK, J., CONCUR; MAKAR, J., SPECIALLY CONCURS WITH OPINION.

Makar, J., specially concurring.

I find no fault in affirming the dismissal of the third-amended complaint with prejudice given its lack of definitive allegations showing that claimant, Leah Everhart, actually took steps to incur the liability (such as by entering a written contract to rebuild her storm-damaged home) necessary to trigger supplemental coverage available under her policy for "law and ordinance" coverage (the amount of which, $29,000, was determined via the policy's appraisal process). I question whether we need even address the issues presented, however. As counsel at oral argument acknowledged, Everhart has sold the property at issue (apparently some time shortly after the trial court's order was issued). That she no longer owns the real property at issue means she will not be rebuilding her former home and thereby is not eligible for the additional law and ordinance coverage that exists to cover the costs of complying with the more stringent building code that now exists. Had she chosen to rebuild the home, she would have entered contracts and incurred the type of liability that would have triggered her entitlement to an award under the law and ordinance portion of her policy; but she never included any such allegation in any of her many complaints. Because it appears she has not, and will not, be rebuilding her former home, the issues presented are moot. See Godwin v. State, 593 So. 2d 211 (Fla. 1992) ("A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist. A moot case generally will be

dismissed.") (internal citations omitted). Dismissal, whether on the merits below or due to mootness on appeal, is appropriate.