

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

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

JUAN SAAVEDRA,

Appellant,

v.

Case No. 5D19-2176

UNIVERSAL PROPERTY &  
CASUALTY INSURANCE COMPANY,

Appellee.

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Opinion filed February 19, 2021

Appeal from the Circuit Court  
for Orange County,  
Kevin B. Weiss, Judge.

Erin M. Berger, and Melissa A. Giasi, of  
Giasi Law, P.A., Tampa, for Appellant.

Michael T. Tomlin, and Maria Alvarez, of  
TorresVictor, Miami, for Appellee.

HARRIS, J.

Juan Saavedra appeals the trial court's entry of summary judgment in favor of Universal Property & Casualty Insurance Company ("Universal"), arguing, in part, that Universal did not properly plead Saavedra's failure to comply with conditions precedent.

We agree and reverse.

The underlying case involves a breach of contract suit initiated by Saavedra after Universal, his homeowner's insurance carrier, failed to cover his claim for property damage caused by a leak in his air conditioning drain line. In his complaint, Saavedra alleged that: (1) his insurance policy provided coverage for direct physical loss to his property; (2) his unpaid damages of approximately \$30,000 were a covered loss under the terms of his policy; and (3) Universal failed or refused to honor its contractual obligations. He demanded that Universal honor its contractual obligation and pay for the unpaid damages.

In its answer to Saavedra's complaint, Universal alleged as an affirmative defense that "[Saavedra] failed to satisfy all conditions precedent to recover pursuant to the terms of the Policy." Ultimately, Universal filed a motion for summary judgment, arguing, in part, that Saavedra did not comply with the terms of the policy. Specifically, Saavedra failed to promptly report the loss, failed to show the damage before making repairs, and failed to provide any records or documents sought by Universal in order to investigate the claim.

In his response in opposition to Universal's motion for summary judgment, Saavedra argued that genuine issues of material fact existed as to whether Universal's reliance on a defense of conditions precedent had been waived. According to Saavedra, the summary judgment motion should have been denied in part because Universal failed to plead non-compliance with conditions precedent with specificity as required by Florida Rule of Civil Procedure 1.120(c), thereby waiving this particular defense. The trial court disagreed and entered its order granting Universal's motion, explaining that Saavedra's argument must fail because he did not move to strike or seek a more definite statement as to Universal's affirmative defenses.

In this appeal, Saavedra again argues that Universal did not specifically plead failure to comply with conditions precedent in its answer or affirmative defense as required by rule 1.120(c). Pursuant to rule 1.120(c), in denying that conditions precedent were met, a defendant is required to “identify both the nature of the condition precedent and the nature of the alleged noncompliance or nonoccurrence.” Deutsche Bank Nat. Tr. Co. v. Quinion, 198 So. 3d 701, 703–04 (Fla. 2d DCA 2016); see also Godshalk v. Countrywide Home Loans Serv., L.P., 81 So. 3d 626 (Fla. 5th DCA 2012). The purpose of the rule is to put the burden on the defendant to identify the specific condition that the plaintiff failed to perform so that the plaintiff may cure the omission. Godshalk, 81 So. 3d at 626. If satisfaction of the condition precedent is not denied with specificity, it is waived. Schoeck v. Allstate Ins. Co., 235 So. 3d 953, 956 (Fla. 2d DCA 2017); Griffin v. Am. Gen. Life & Acc. Ins. Co., 752 So. 2d 621, 623 n.1 (Fla. 2d DCA 1999).

Here, the policy required that before Saavedra could bring suit against Universal, he must have complied with all provisions of the policy. It also contained a provision that stated: “[Universal] will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy,” suggesting that, in order to receive coverage, compliance with such provisions must be met. In denying Saavedra’s allegation that he had satisfied conditions precedent, Universal only stated: “[d]enied and strict proof demanded thereof.” Similarly, in its affirmative defenses, Universal merely stated that “[Saavedra] failed to satisfy all conditions precedent to recover pursuant to the terms of the Policy.” At no point did Universal identify the nature of the conditions precedent or the nature of the noncompliance, such as the specific post-loss duties with which Saavedra failed to comply, or where exactly in the policy such

conditions could be found. See Colon v. JP Morgan Chase Bank, NA, 162 So. 3d 195, 197–98 (Fla. 5th DCA 2015) (finding that affirmative defense denying compliance with condition precedent was sufficient where defendant alleged plaintiff failed to comply with notice requirement in paragraphs 15 and 22 of the mortgage).

As a result, we conclude that by not alleging with specificity the manner in which Saavedra failed to satisfy conditions precedent, Universal failed to comply with the requirements of rule 1.1.20(c), thereby waiving its defense that Saavedra failed to comply with conditions precedent. See Don Facciobene, Inc. v. Hough Roofing, Inc., 225 So. 3d 323 (Fla. 5th DCA 2017). Because the failure to satisfy conditions precedent—specifically, the failure to comply with all post-loss duties—was the basis for summary judgment, we reverse and remand for further proceedings.

REVERSED and REMANDED

COHEN and LAMBERT, JJ., concur.