DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CARLOS GUZMAN,

Appellant,

v.

SOUTHERN FIDELITY
INSURANCE COMPANY,

Appellee.

No. 2D20-2575

December 10, 2021

Appeal from the Circuit Court for Hillsborough County; Martha J. Cook, Judge.

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

Matthew B. Bernstein of Vernis & Bowling of Central Florida, P.A., DeLand, for Appellee.

ROTHSTEIN-YOUAKIM, Judge.

In this homeowner's insurance dispute, Carlos Guzman appeals the entry of final summary judgment in favor of Southern Fidelity Insurance Company (SFIC). Guzman argues that SFIC failed to establish as a matter of law either that his notice of loss

was not "prompt" or that he did not comply with his postloss obligation to "show [SFIC] the damaged property," resulting in prejudice to SFIC. We agree with Guzman and reverse.

Guzman owns residential property that was insured by SFIC for water loss during the pertinent period. On or about March 25, 2016, he noticed "some humidity and some slight discoloration" in one of his bathrooms. Guzman contacted Contender Claims Consultants, which he had contacted the previous week in connection with a leak in his kitchen, and asked it to check out the new leak. Contender apparently called in another company, All Insurance Restoration Services (AIRS), to perform water mitigation in the bathroom.[1]

AIRS began work in the bathroom that same day. The company repaired a water supply line, opened a hole in the wall, and removed baseboards. AIRS's equipment remained on the property for three days. At some point, Contender gave Guzman a written estimate of approximately $21,000 to return the property to its preloss state.

[1] Guzman was not home at the time but authorized his mother to contract with AIRS so that the mitigation work could commence.

Guzman reported the loss to SFIC on April 1, 2016—seven days after he allegedly had first noticed mold in the bathroom. Five days after that, SFIC inspected the property, but by that point, Guzman's wife had thrown away the damaged plumbing part that AIRS had replaced. Although SFIC has repeatedly asserted that the damaged part was discarded before Guzman notified SFIC of the loss, the summary judgment evidence does not establish whether it was discarded before he notified SFIC of the loss or after he notified it of the loss but before it sent out an inspector five days later.

SFIC ultimately denied coverage, and Guzman filed the underlying suit for breach of contract. SFIC moved for summary judgment, arguing that Guzman had failed to comply with his postloss obligation to provide prompt notice of loss. SFIC argued that notice was untimely because despite entering into a contract on March 25 with a company that had the word "Insurance" in its name and agreeing as part of the contract to a limited assignment of benefits to that company, Guzman had failed to notify SFIC of the loss until April 1. SFIC argued further that by April 1, its ability to investigate the loss had been prejudiced because "water mitigation had already been completed"; the "allegedly damaged plumbing part

had been removed, replaced, and discarded"; and "[b]uilding materials had also been removed." In addition, SFIC argued that because the allegedly damaged plumbing part had been discarded, Guzman had failed to comply with his postloss obligation to "show [SFIC] the damaged property."

Guzman responded that he had notified SFIC of the loss within one week of the incident and that the only action he had taken in the meantime was consistent with his obligation under the policy to mitigate further loss. Guzman argued that he had cooperated fully with SFIC and had provided documentation, including photographs that AIRS had taken of the property before performing its mitigation services, to aid in the insurance investigation. He argued further that SFIC could have contacted employees from both AIRS and Contender for additional information concerning the damage and repairs to the property. Finally, Guzman argued that because the policy does not define "damaged property" and did not expressly require him to retain broken plumbing parts, he had not violated any postloss obligation by failing to retain the damaged plumbing part.

At the hearing on SFIC's motion, SFIC argued, with respect to untimeliness:

> It's our position that notice was not prompt due to the underlying circumstances. Namely, they retained a company called Contender Claims Services and then retained another entity on the date of loss with the name insurance in their name. A reasonable and prudent person knew or should have known at the time that they retained both of those entities that an insurance claim had arisen, particularly in light of the fact that they assigned the insurance benefits on that day. We would contend that notice would have been prompt on that day.

SFIC also pointed out that Guzman had another pending lawsuit against SFIC arising out of its denial of coverage for his March 18, 2016, claim of loss for the leak in his kitchen. That lawsuit had been filed two days after the instant lawsuit. SFIC argued that Guzman had retained Contender and AIRS in connection with that leak also, "So to say that he hadn't known that a claim had arisen, quite frankly, is farcical. He clearly knew. This wasn't even his first rodeo. This was not his first claim. This was not the first time retaining these consultants."

At the end of the hearing, the trial court, stating only that SFIC's motion was "well taken," granted the motion and entered

judgment in its favor. Guzman unsuccessfully moved for rehearing, and this appeal followed.

We review de novo the trial court's grant of summary judgment. *Rodriguez v. Avatar Prop. & Cas. Ins. Co.*, 290 So. 3d 560, 562 (Fla. 2d DCA 2020) (citing *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000)). Pursuant to the version of the summary judgment rule applicable here:

> A movant is entitled to summary judgment if the pleadings and the summary judgment evidence show "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c). In reviewing a summary judgment ruling, we must consider the evidence in the light most favorable to the nonmoving party, and if the record raises the slightest doubt that an issue might exist, we must reverse the summary judgment.

Rodriguez, 290 So. 3d at 562 (quoting *Buck-Leiter Palm Ave. Dev., LLC v. City of Sarasota*, 212 So. 3d 1078, 1081 (Fla. 2d DCA 2017)).[2]

[2] Although Florida's new summary judgment standard, *see In re Amends. to Fla. R. Civ. P. 1.510*, 309 So. 3d 192, 194–95 (Fla. 2020) (adopting the federal summary judgment standard), went into effect during the pendency of this appeal, it does not apply to judgments entered before its effective date of May 1, 2021. *See Wilsonart, LLC v. Lopez*, 308 So. 3d 961, 964 (Fla. 2020) (stating that the amendment to rule 1.510 is prospective).

Guzman's policy does not define what constitutes "prompt" notice, but "[i]t is well settled . . . that 'prompt' and other comparable phrases . . . do not require instantaneous notice." *Laquer v. Citizens Prop. Ins. Corp.*, 167 So. 3d 470, 474 (Fla. 3d DCA 2015) (quoting *Cont'l Cas. Co. v. Shoffstall*, 198 So. 2d 654, 656 (Fla. 2d DCA 1967)). Rather, "[n]otice is said to be prompt when it is provided 'with reasonable dispatch and within a reasonable time in view of all of the facts and circumstances of the particular case.' " *Rodriguez*, 290 So. 3d at 564 (quoting *Himmel v. Avatar Prop. & Cas. Ins. Co.*, 257 So. 3d 488, 492 (Fla. 4th DCA 2018)).

Moreover, whether an insured has given "prompt" notice is generally a question of fact for the jury. *See LoBello v. State Farm Fla. Ins. Co.*, 152 So. 3d 595, 599–600 (Fla. 2d DCA 2014) ("All of the Florida cases bearing upon the question of the requirement of notice being given to the insurer seem to be uniform in the proposition that what is a reasonable time depends upon the surrounding circumstances and is ordinarily a question of fact for the jury." (quoting *Renuart-Bailey-Cheely Lumber & Supply Co. v. Phoenix of Hartford Ins. Co.*, 474 F.2d 555, 557 (5th Cir. 1972))); *see*

also Rodriguez, 290 So. 3d at 564 ("Accordingly, whether the insured provided 'prompt notice' generally presents an issue of fact." (quoting *Himmel*, 257 So. 3d at 492)). And although there are exceptions, they typically involve the passage of a time period far greater than the one week at issue here, as SFIC acknowledges. *See, e.g.*, *Morton v. Indem. Ins. Co. of N. Am.*, 137 So. 2d 618, 620 (Fla. 2d DCA 1962) ("Six and one-half months, under the circumstances, does not fall within the 'as soon as practicable' provision of the policy."), *overruled in part on other grounds by Am. Fire & Cas. Co. v. Collura*, 163 So. 2d 784 (Fla. 2d DCA 1964); *State Farm Mut. Auto. Ins. Co. v. Ranson*, 121 So. 2d 175, 182–83 (Fla. 2d DCA 1960) (reversing entry of summary judgment in favor of plaintiff and directing entry of summary judgment in favor of insurance company when plaintiff failed to notify insurance company of claim for more than thirteen months), *overruled in part on other grounds by Collura*, 163 So. 2d at 784; *1500 Coral Towers Condo. Ass'n v. Citizens Prop. Ins.*, 112 So. 3d 541, 543–44 (Fla. 3d DCA 2013) (concluding that notice provided five years after damaging hurricane was untimely as a matter of law).

Our sister court's recent decision in *Restoration Construction, LLC v. SafePoint Insurance Co.*, 308 So. 3d 649, 652 (Fla. 4th DCA 2020), underscores that this exception does not apply here. In that case, on nearly identical core facts and in light of nearly identical arguments, *see id.* at 650–51, the Fourth District reversed the trial court's entry of summary judgment in favor of the insurance company. The court explained:

> Here, the trial court found that the insureds' notice to the insurer five days after they discovered a water leak was not prompt as a matter of law. It made this finding despite the fact that the insurer waited another five days before sending an adjuster out to see the premises and then waited almost two additional weeks before engaging a third-party inspector to help assess the claim. Under these facts, the question of whether the insureds' notice to the insurer was untimely and caused prejudice to the insurer is a question of fact for the jury to resolve in view of "all of the facts and circumstances surrounding the loss."

Id. at 652 (quoting *Himmel*, 257 So. 3d at 492). The same is true here: notwithstanding that Guzman waited seven days rather than five, we are persuaded that the two cases are not materially distinguishable. The extent to which additional facts such as the names of the companies that Guzman hired and the earlier leak in

a different room are relevant to the issues of timeliness and prejudice—if at all—is a question more appropriately left to the jury.

SFIC argues that summary judgment was nonetheless appropriate because Guzman failed to comply with his postloss obligation to show SFIC the "damaged property."[3] We agree with Guzman that "property," as used in the policy, does not include the broken plumbing part: the policy repeatedly uses the word "property" to refer to what is insured against loss, but the broken plumbing part is what has given rise to the loss; in and of itself, it would not give rise to a claim.

Finally, SFIC argues that Guzman failed to comply with that postloss obligation because by the time SFIC came out to inspect the property, remediation was complete and the damaged property was therefore no longer available for inspection. Especially given that Guzman had a postloss obligation to "make reasonable and necessary repairs to protect the property," however, this argument

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[3] Although the insurance company in *Restoration Construction* also raised this argument as grounds for summary judgment, the trial court in that case limited its ruling to the notice issue; therefore, contrary to Guzman's contention, the Fourth District did not address this argument on appeal, let alone resolve it in Guzman's favor. *See* 308 So. 3d at 652.

appears to simply be a twist on the prompt-notice argument addressed above.

Accordingly, we reverse the summary judgment entered in favor of SFIC and remand for further proceedings.

Reversed and remanded for further proceedings.

CASANUEVA and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.