

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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MASSEY CONSTRUCTION GROUP, INC. a/a/o JOSEPH JAFFE,

Appellant,

v.

EDISON INSURANCE COMPANY,

Appellee.

No. 2D20-2362

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April 20, 2022

Appeal from the Circuit Court for Collier County; Hugh D. Hayes,  
Judge.

Alex Finch and Mark Fromang of Fromang & Finch, P.A., Orlando  
(withdrew after briefing); Susan Z. Ayers of Ayers Law Firm, Fort  
Myers (substituted as counsel of record), for Appellant.

Thomas A. Valdez and Vilma Martinez of Quintairos, Prieto, Wood &  
Boyer, P.A., Tampa, for Appellee.

SMITH, Judge.

Massey Construction Group, Inc., brought suit against Edison  
Insurance Company under an Assignment of Benefits (AOB)

contract from an insured homeowner who suffered roof damage during Hurricane Irma.<sup>1</sup> Edison moved to dismiss for various reasons, and initially the trial court granted the motion to dismiss without prejudice following a hearing for which there is no transcript. Ultimately, and at the behest of Massey via a posthearing motion seeking an order with sufficient finality on which it could appeal, the trial court entered an order dismissing Massey's complaint. This dismissal purported to be with prejudice based on a lack of standing due to the terms of the AOB on which Massey asserted standing at the time it filed the complaint. However, the express scope of the with-prejudice language was applied only to the instant complaint filed by Massey in the underlying action—which was based on its claimed standing to bring the action on its own behalf under the AOB prior to the determination of a covered claim. The remaining portions of this order of dismissal were without prejudice to the assertion of any

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<sup>1</sup> The policy was issued to a married couple, but the wife died prior to the AOB at issue. Therefore, only Mr. Joseph Jaffe signed the AOB. It is not clear whether the wife's estate retained any other interest, but that is not ultimately relevant to the narrow issue on appeal.

claim related to the preliminary determination of coverage and, presumably, any action to recover under the AOB once such coverage was determined and the standing for it to bring a cause of action under the AOB accrued. Massey appealed from that order, and we affirm it.

On the face of the AOB, Massey lacks standing to bring a claim to recover benefits under the AOB on its own behalf until such time as coverage is determined.<sup>2</sup> See *Progressive Express Ins. Co. v. McGrath Cmty. Chiropractic*, 913 So. 2d 1281, 1285 (Fla. 2d DCA 2005) ("Thus the assignment of . . . benefits is not merely a condition precedent to maintain an action on a claim held by the person or entity who filed the lawsuit. Rather, it is the basis of the claimant's standing to invoke the processes of the court in the first place."); *Brown v. Omega Ins. Co.*, 322 So. 3d 98, 102 (Fla. 4th DCA 2021) ("This contract clearly contemplates work being performed in order for the assignment to be given. . . . [W]hen the entire contract

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<sup>2</sup> The AOB was contingent upon the damages being covered under the insurance policy and provided for the assignment of "any and all insurance rights, benefits, proceeds, and any causes of action under any applicable insurance policies solely and exclusively to Massey Construction Group, Inc. for services rendered or to be rendered by Massey Construction Group, Inc."

is reviewed together with its purpose, we conclude that this AOB did not deprive the insureds of standing to assert their claim for breach of contract and the right to sue for damages."); *see also One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749, 755 (Fla. 4th DCA 2015) ("The fact that a right is unaccrued does not necessarily prevent its assignment before the right accrues.").

Under *Brown*, any standing that was not conferred to the third party under a similarly contingent AOB contract remained with the insured.<sup>3</sup> *Brown*, 322 So. 3d at 102; *see also Nikon Constr., Inc. v. Homeowners Choice Prop. & Cas. Ins. Co.*, 249 So. 3d 681, 683 (Fla. 2d DCA 2018); *Sidiq v. Tower Hill Select Ins. Co.*, 276 So. 3d 822, 826-27 (Fla. 4th DCA 2019). We therefore affirm the order on appeal and note that—as similarly expressed in the language of the dismissal order itself—our affirmance is without prejudice to any right a party, such as the homeowner, with standing to pursue a claim related to an initial determination of coverage has to bring

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<sup>3</sup> *Brown* presented the opposite scenario, whether the insured could still sue for breach of contract after an AOB that was contingent on coverage, where coverage had been denied and no work under the AOB had been performed, but its conclusion that the insured retained standing to sue is instructive to the scenario in this case regarding an initial coverage determination.

such action or for Massey to pursue any claim it might have for benefits under the AOB once such coverage has been determined.<sup>4</sup>

Affirmed.

KHOUZAM and ATKINSON, JJ., Concur.

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Opinion subject to revision prior to official publication.

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<sup>4</sup> Massey also argues that the order further erroneously reaches a determination that the AOB lacked sufficient consideration. Although we decline to address the merits of this claim, we note for the purposes of any future litigation under this AOB that despite any such reference in this order of dismissal, Edison acknowledges that lack of consideration was not the contractual deficiency it argued in regard to the AOB and that the issue at the hearing was one of standing based on ripeness of the AOB contract rather than lack of consideration.