DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

THE KIDWELL GROUP LLC d/b/a AIR QUALITY ASSESSORS of FLORIDA a/a/o LUCY COLLIER,

Appellant,

v.

FLORIDA FARM BUREAU CASUALTY INSURANCE COMPANY,

Appellee.

No. 2D21-321

October 19, 2022

Appeal from the County Court for Polk County; Hope M. Pattey, Judge.

Chad A. Barr and Dalton L. Gray of Chad Barr Law, Altamonte Springs, for Appellant.

Robert T. Schulte, Matthew C. Scarborough, and Shiela Burke of Scarborough Attorneys at Law, Tampa, for Appellee.

KELLY, Judge.

The Kidwell Group LLC d/b/a Air Quality Assessors of Florida (AQA) appeals from an order dismissing with prejudice its amended statement of claim for breach of contract against Florida Farm

Bureau Casualty Insurance Company. AQA argues that in dismissing the action, the county court erroneously relied on facts outside the four corners of the amended statement of claim in determining AQA lacked standing to bring the action. We agree and reverse.

The insured purchased a homeowner's insurance policy from Farm Bureau. During the policy period, the insured's home sustained a loss covered by the policy and she hired AQA to inspect and assess the damage. In exchange for its services, the insured executed an assignment of insurance benefits in favor of AQA. AQA subsequently submitted the assignment contract and an invoice for the work it performed to Farm Bureau. When Farm Bureau denied payment, AQA sued Farm Bureau for breach of contract citing the assignment of benefits contract. AQA attached to its amended statement of claim the assignment contract between AQA and the insured, its invoice for services rendered, and a certified copy of the insurance policy.

Farm Bureau ultimately moved to dismiss AQA's amended statement of claim arguing AQA lacked standing because it sold its assignment of benefits to another company, Resolution Claims II,

LLC. Attached to the motion to dismiss was an "Assignment Agreement" allegedly between AQA and Resolution Claims. AQA filed a written response to the motion to dismiss arguing, in part, that the motion impermissibly went beyond "the four corners of the complaint." The county court disagreed with AQA's contention and dismissed the action finding in its written order that the assignment of benefits between AQA and Resolution Claims was not outside the four corners of the complaint because "it was incorporated within [Farm Bureau's] Motion to Dismiss and has at no time been disputed by [AQA]." This appeal follows.

This court reviews an order dismissing a complaint de novo. *Landmark Funding, Inc. v. Chaluts*, 213 So. 3d 1078, 1079 (Fla. 2d DCA 2017). In ruling on a motion to dismiss, a "trial court 'is limited to considering the four corners of the complaint along with the attachments incorporated into the complaint.' " *Id.* (quoting *Neapolitan Enters., LLC v. City of Naples*, 185 So. 3d 585, 589 (Fla. 2d DCA 2016)); *see also Nat'l Collegiate Student Loan Tr. 2006-4 v. Meyer*, 265 So. 3d 715, 718 (Fla. 2d DCA 2019) (stating that in ruling on a motion to dismiss a complaint for lack of standing, the court must confine itself to the four corners of the complaint and

accept all allegations in the complaint as true). "Moreover, the attachment of documents to the motion to dismiss does not allow for their consideration in deciding the motion." *Enlow v. E.C. Scott Wright, P.A.*, 274 So. 3d 1192, 1193 (Fla. 5th DCA 2019).

Here, the trial court's order dismissing AQA's cause of action with prejudice clearly went beyond the four corners of the amended statement of claim and its attachments. Instead, the order impermissibly relied on the allegations contained in Farm Bureau's motion to dismiss and attached exhibit. This was error. *See id.; Landmark Funding, Inc.*, 213 So. 3d at 1079-80. Because the allegations in AQA's amended statement of claim and its attachments, taken as true, were sufficient to state a cause of action against Farm Bureau for breach of contract, we reverse the order of dismissal with prejudice and remand to the trial court for further proceedings.[1]

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[1] Farm Bureau suggests we can affirm the dismissal, notwithstanding the intrusion of the proffered assignment agreement into the four corners of AQA's amended statement of claim, because the agreement was "impliedly incorporated by reference into the Amended Statement of Claim." On one occasion, our court affirmed a dismissal of a lawsuit based on a settlement agreement that had been reached in prior litigation that, the panel deemed, had been impliedly incorporated into the plaintiff's lawsuit.

Reversed and remanded.

LUCAS and ATKINSON, JJ., Concur.

Opinion subject to revision prior to official publication.

See Veal v. Voyager Prop. & Cas. Ins. Co., 51 So. 3d 1246, 1249-50 (Fla. 2d DCA 2011). Since the *Veal* decision cited no legal support for its consideration of an "impliedly incorporated" document in a motion to dismiss for failure to state a cause of action, and because the court did not purport to state a binding rule of law for considering motions to dismiss in future cases, we believe the *Veal* holding is confined to the discrete facts that were before that panel.