

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-937
Lower Tribunal No. 18-2008

Jose Bello and Jennie Bello,
Appellants,

vs.

GeoVera Specialty Insurance Company,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull,
Judge.

Alonso & Perez, LLP, and Rafael F. Alonso, for appellants.

Paul R. Percy, P.A., and Maureen G. Percy; Hinshaw & Culbertson, LLP,
and Joseph V. Manzo, for appellee.

Before EMAS, C.J., and FERNANDEZ and LINDSEY, JJ.

EMAS, C.J.

In this first-party property insurance action arising out of Hurricane Irma in 2017, Jose and Jennie Bello (the insured) seek review of a final summary judgment entered in favor of GeoVera Specialty Insurance Company (the insurer). The insured argues that the trial court erred in denying their motion for continuance of the summary judgment hearing, and in granting final summary judgment, because there were outstanding discovery requests that had not been responded to, as well as a pending motion to compel that outstanding discovery that had not yet been heard by the trial court.

Contemporaneous with the filing of the complaint, the insured had served upon the insurer a request for production and interrogatories. The insurer did not provide any of the requested discovery nor file a response or objection to these discovery requests. Instead, three weeks after service of the complaint, the insurer sought appraisal, and the parties shortly thereafter stipulated to appraisal and to a stay of the proceedings pending issuance of an appraisal award.

Soon after the appraisal award issued and the stay was lifted, the insurer moved for summary judgment. However, the insurer had still not provided any of the requested discovery or even filed a formal response or objection. The insured moved to compel the insurer's compliance with the discovery requests, and also moved for a continuance of the summary judgment to allow adequate time for the discovery process following the lifting of the stay. Under the specific circumstances

presented, we agree that the trial court abused its discretion in denying the motion to continue the summary judgment hearing, and reverse the final summary judgment. See Torres v. MK Tours, Inc., 10 So. 3d 672 (Fla. 3d DCA 2009); Erace v. Erace, 683 So. 2d 1114 (Fla. 3d DCA 1996); A&B Pipe and Supply Co. v. Turnberry Towers Corp., 500 So. 2d 261 (Fla. 3d DCA 1986); Scherr v. Andrews, 497 So. 2d 970 (Fla. 3d DCA 1986); Cullen v. Big Daddy's Lounges, Inc., 364 So. 2d 839, 840 (Fla. 3d DCA 1978).

We express no opinion on the merits of the summary judgment motion, or the ancillary question (relevant to the issue of entitlement to attorney's fees under section 627.428, Florida Statutes (2017)) of whether suit was filed prematurely or was reasonably necessary to prompt the insurer to invoke arbitration. Travelers of Fla. v. Stormont, 43 So. 3d 941 (Fla. 3d DCA 2010).¹

¹ As we have previously explained in Stormont:

In order to be entitled to attorney's fees, it must have been reasonably necessary for the insured to file a court action. The purpose behind section 627.428 is plainly to place the insured or beneficiary in the place she would have been if the carrier had seasonably paid the claim or benefits without causing the payee to engage counsel and incur obligations for attorney's fees. Where suit is filed without any necessity to do so, attorney's fees under section 627.428 will be denied.

If the insured is forced to file suit, and the insurer thereafter pays the award without the necessity of the trial court entering judgment, the confession of judgment doctrine applies. This doctrine applies where the insurer has denied benefits the insured was entitled to, forcing the insured to file suit, resulting in the insurer's change of heart and payment before

Reversed and remanded.

judgment. In that circumstance, the insured is entitled to an award of attorney's fees.

Travelers of Fla. v. Stormont, 43 So. 3d 941, 944-45 (Fla. 3d DCA 2010).