

Third District Court of Appeal

State of Florida

Opinion filed July 1, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1949
Lower Tribunal No. 18-30259

Waterproofing and Roofing Design, Inc., etc.,
Appellant,

vs.

Frank Ashworth, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Jose M. Rodriguez, Judge.

Diane S. Perera, P.A., and Diane S. Perera and Erika Garay, for appellant.

Arnaldo Velez, P.A., and Arnaldo Velez, for appellees.

Before SCALES, MILLER and GORDO, JJ.

SCALES, J.

Appellant Waterproofing and Roofing Design, Inc., d/b/a Joe Ward Roofing, the plaintiff below, appeals a final summary judgment entered as to appellees, defendants below, Frank and Cecilia Ashworth. We affirm.

Pursuant to a written contract between appellant, a roofer, and Juan Carballo, appellant performed roofing repair and replacement work at a house owned by Carballo and his wife, Ana Carballo. Appellant alleged that it did not receive payment for the work, and that Juan Carballo's daughter, appellee Cecilia Ashworth, arranged for insurance proceeds for the damaged roof and internal water damage to be used to pay off the Carballos' mortgage (under which Cecilia Ashworth was a co-obligor), rather than to pay appellant. In addition to asserting claims against the Carballos (which appear to remain pending below and are not subject to this appeal), appellant asserted implied contract and quasi-contract claims against both appellees¹ and a civil theft claim against Cecilia Ashworth.

In a detailed, well-reasoned summary judgment order, the trial court correctly found that, under the facts of this case: (i) there is no basis for a civil theft claim against Cecilia Ashworth under section 812.014 of the Florida Statutes; and (ii) as a matter of law, the existence of an express, written contract between appellant and

¹ While not entirely clear from the operative third amended complaint, it appears that appellant's claims against appellee Frank Ashworth are premised on the allegations that Frank benefitted from appellant's work because Frank's in-laws received a new roof and Frank's wife, Cecilia, was released from her mortgage obligations.

the homeowner Juan Carballo defeats appellant's implied contract and quasi-contract claims against appellees. See Sterling Breeze Owners' Ass'n v. New Sterling Resorts, LLC, 255 So. 3d 434, 437 (Fla. 1st DCA 2018).

Affirmed.