Third District Court of Appeal

State of Florida

Opinion filed May 6, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-125
Lower Tribunal No. 17-5758

Osmany Estevez and Yenisbel Ramirez,
Appellants,

vs.

Citizens Property Insurance Corporation,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mavel Ruiz, Judge.

Giasi Law, P.A., and Melissa A. Giasi and Erin M. Berger (Tampa), for appellants.

Kubicki Draper, and Valerie A. Dondero and Nicole L. Wulwick; Link & Rockenbach, P.A. and Kara Rockenbach Link, Cynthia L. Comras, and Daniel M. Schwarz (West Palm Beach), for appellee.

Before LOGUE, HENDON, and LOBREE, JJ.

LOGUE, J.

Osmany Estevez and Yenisbel Ramirez (the "Insureds") appeal the grant of a summary judgment entered for Citizens Property Insurance Corporation (the "Insurer") and against them. We affirm.

In this case, the Insureds sued their Insurer for denying their claim for water damage to their home. The Insurer moved for summary judgment based on the affidavits and reports of two experts who inspected the damaged roof and gave the opinion that the water damage was due to wear and tear and therefore not covered by the policy.

The Insureds responded to the summary judgment motion by filing only part of an affidavit prepared by their expert. They filed pages 1, 2, and 4, of the expert's affidavit, but omitted page 3 which apparently contained paragraphs 13, 14, 15, 16, 17, and part of 18 of the expert's analysis. The Insureds later declined to provide the missing page when given the opportunity by the court below to do so.

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000) (citing Menendez v. Palms W. Condo. Ass'n, 736 So. 2d 58 (Fla. 1st DCA 1999)). It "is designed to test the sufficiency of the evidence to determine if there is sufficient evidence at issue to justify a trial or formal hearing on the issues raised in the pleadings." The Fla. Bar v. Greene, 926 So. 2d 1195, 1200 (Fla. 2006).

After careful review, we find that the affidavits filed by the Insurer met its preliminary burden as movant for summary judgment of showing that no genuine issue of material fact existed. The affidavit filed by the Insureds, on the other hand failed to meet their burden as non-movants opposing summary judgment to "come forward with counter-evidence sufficient to reveal a genuine issue," Harvey Bldg., Inc. v. Haley, 175 So. 2d 780, 783 (Fla. 1965), because their expert's affidavit in the truncated form filed in this record contains only conclusions and fails to provide a discernible, factually-based chain of reasoning necessary for an expert opinion to be admissible in evidence. Gonzalez v. Citizens Prop. Ins. Corp., 273 So. 3d 1031, 1037 (Fla. 3d DCA 2019). See Morgan v. Cont'l. Cas. Co., 382 So. 2d 351, 353 (Fla. 3d DCA 1980) ("It is well established that affidavits, such as those presented by plaintiff, which are based entirely upon speculation, surmise and conjecture, are inadmissible at trial and legally insufficient to create a disputed issue of fact in opposition to a motion for summary judgment.").

Affirmed.