FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Glades Restoration, LLC a.a.o. Jimmy McKinstry v. Homeowners Choice Property & Casualty Insurance Company, Inc.

Glades Restoration · No. Nos. 1D2023-1334 and 1D2023-2809 · Decided April 2, 2025

SUMMARY

The Florida First District Court of Appeal reversed orders dismissing with prejudice complaints by Glades Restoration, LLC, seeking payment from an insurer under assignments of insurance benefits. The court held that the trial court should have allowed amendment to attach required documentation and that the execution and dating issues concerning a cost estimate could not properly be resolved on a motion to dismiss. The court affirmed the denial of attorney fees under section 57.105 and remanded.

CASE DETAILS

COURT	First District Court of Appeal of Florida
WRITING FOR THE COURT	Robert Roberts; Ray; Kelsey
JURISDICTION	Florida First District Court of Appeal
DECIDED	April 2, 2025
DOCKET	Nos. 1D2023-1334 and 1D2023-2809
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Glades Restoration appealed the pre-answer dismissal with prejudice of two complaints seeking payment from an insurer under assignments from an insured homeowner. The insurer cross-appealed the denial of its motion for attorney fees under section 57.105, Florida Statutes.
STANDARD OF REVIEW	Abuse of discretion for the denial of leave to amend; the factual issue concerning the estimate's footer date could not properly be resolved on a motion to dismiss.
PRECEDENTIAL VALUE	published
PARTIES	Glades Restoration, LLC a.a.o. Jimmy McKinstry v. Homeowners Choice Property & Casualty Insurance Company, Inc.

TOPICS

motions to dismiss · motion to amend · pleadings · statutory interpretation · attorney fees

PRACTICE AREAS

civil procedure · insurance litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing the first complaint with prejudice instead of allowing amendment to attach the statutorily required documentation.
2. Whether the trial court properly dismissed the amended complaint based on the unsigned estimate and the date appearing in the document footer.
3. Whether the insurer was entitled to attorney fees under section 57.105, Florida Statutes.

HOLDINGS

1. The trial court abused its discretion by dismissing the first complaint with prejudice and refusing to allow amendment where the plaintiff preserved its request to amend, had not abused the amendment privilege, and represented that the required documentation existed and could satisfy the statute.
2. The trial court erred in dismissing the amended complaint based on the estimate's lack of signatures and the date in its footer.
3. The denial of the insurer's motion for attorney fees was affirmed without further discussion.

KEY QUOTATIONS

> *"A party should be allowed to amend unless it has "abused the privilege to amend, an amendment would prejudice the opposing party, or the complaint is clearly not amendable."*" (2)

> *"The separate factual question about the date on the footer cannot properly be resolved on a motion to dismiss."* (2)

FACTUAL BACKGROUND

Glades Restoration alleged that it was entitled under assignments from an insured homeowner to seek payment from Homeowners Choice for repair services. Its first complaint did not attach the itemized services-and-prices list required by section 627.7152(2), although it alleged that the document existed and had been sent to the insurer. A second complaint, later amended to attach a detailed estimate, was dismissed because the estimate was unsigned and its footer was dated after filing, even though the estimate itself predated the assignment.

PROCEDURAL HISTORY

The Escambia County Court dismissed both complaints with prejudice. In the first case, the complaint lacked an attached itemized list of services and prices, and the trial court denied an oral request for leave to amend. In the second case, the trial court dismissed an amended complaint because the attached estimate was unsigned and had a footer dated after filing. The appellate court consolidated the appeals, reversed the dismissals, affirmed the denial of attorney fees, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The first complaint may be amended to include the required documentation and, if desired, its declaratory-judgment claim. The dismissals with prejudice are reversed, and the matter is remanded for further proceedings. The order denying attorney fees is affirmed.

CASES CITED

- Fla. Nat'l Org. for Women, Inc. v. State, 832 So. 2d 911, 915 (Fla. 1st DCA 2002)
- Wells Fargo Bank, N.A. v. Bohatka, 112 So. 3d 596, 601 (Fla. 1st DCA 2013)

OPINION

PER CURIAM.

FIRST DISTRICT COURT OF APPEAL STATE OF FLORIDA _____________________________ Nos. 1D2023-1334 1D2023-2809 _____________________________ GLADES RESTORATION, LLC, a.a.o. Jimmy McKinstry, Appellant/Cross-Appellee, v. HOMEOWNERS CHOICE PROPERTY & CASUALTY INSURANCE COMPANY, INC., a Florida Corporation, Appellee/Cross-Appellant. _____________________________ On appeal from the County Court for Escambia County.

R. Scott Ritchie, Judge. April 2, 2025 PER CURIAM. We previously consolidated these appeals for travel and assignment to the same panel, and now consolidate them for disposition. In Case No. 23-1334, Glades Restoration (Restoration) appeals the pre-answer dismissal of two complaints seeking payment for services rendered to a homeowner who had insurance through Appellee Homeowners Choice Property & Casualty Insurance (Insurer).

In Case No. 23-2809, Insurer cross-appeals the trial court's denial of its motion for attorney fees under Florida Statutes section 57.105 (regarding sanctions for raising unsupported claims or defenses). In both cases, we reverse the trial court orders dismissing Restoration's complaints with prejudice. Given our disposition, we affirm without further discussion the order on cross-appeal denying attorney fees.

In both complaints, Restoration alleged the right to seek payment from Insurer under assignments from the insured homeowner. Restoration's first complaint failed to attach an itemized list of services and prices as section 627.7152(2) required, although Restoration asserted that such a detailed document existed and had been sent to Insurer.

The hearing transcript reflects that Restoration's attorney orally requested leave to amend to attach the requisite documentation, but the trial court dismissed with prejudice, acknowledging it was a "close call." The dismissal included a second count for declaratory judgment of rights under the insurance contract.

The court likewise dismissed with prejudice a second complaint, which apparently sought payment for additional or different repairs, even though Restoration amended the complaint and attached a detailed estimate. The court found dismissal appropriate because the estimate was not signed, and the footer on the attachment was dated after the suit was filed, although the detailed estimate itself was dated days before the assignment.

On these facts, the trial court abused its discretion in dismissing the first complaint and refusing to allow amendment. Leave to amend should be "given freely." Fla. Nat'l Org. for Women, Inc. v. State, 832 So. 2d 911, 915 (Fla. 1st DCA 2002). A party should be allowed to amend unless it has "abused the privilege to amend, an amendment would prejudice the opposing party, or the complaint is clearly not amendable." Id. Further, "the failure to attach necessary documents is a remediable offense." Wells Fargo Bank, N.A. v. Bohatka, 112 So.

3d 596, 601 (Fla. 1st DCA 2013). As to the first complaint in Case No. 23-1334, Restoration preserved its request to amend, had not abused the right to amend, and represented that the amendment would not be futile because the documentation existed and would satisfy the statute. At that stage of pleading, the court could not speculate about whether the 2 amendment would ultimately pass muster.

Restoration may file an amended complaint including (if it wishes) its declaratory- judgment claim. We also find the trial court erred in dismissing the amended complaint in Case No. 23-2809 because of the date on the document footer of the cost estimate, and its lack of signatures.

The statute requires that an assignment agreement itself must be executed (and this one was), but does not require that the cost estimate be executed. See § 627.7152(2)(a)(1), (4), Fla. Stat. (2021). The separate factual question about the date on the footer cannot properly be resolved on a motion to dismiss. REVERSED in part, AFFIRMED in part, and REMANDED.

ROBERTS, RAY, and KELSEY, JJ., concur. _______________________________ Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. _______________________________ Gabriel Gonzalez Insua and Lisbet Velasquez of Velasquez & Perez Perez Law Firm, Miami, for Appellant/Cross-Appellee. Mihaela Cabulea of Butler Weihmuller Katz Craig LLP, Tampa, and Scott Gold of Homeowners Choice Property & Casualty Insurance Company, Plantation, for Appellee/Cross-Appellant.