

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

People's Trust Insurance Company v. The Kidwell Group, LLC

No. 4D22-1314 · No. No. 4D22-1314 · Decided June 28, 2023

SUMMARY

The Florida Fourth District Court of Appeal reversed a final judgment for The Kidwell Group, LLC in a breach of insurance contract action. The court held that the insurer was entitled to a directed verdict because the engineering report was not shown to be a cost to repair or replace the damaged roof under the policy. The court also held that the jury instructions and verdict form were erroneous because they omitted that issue and instead addressed matters the insurer had conceded.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Ciklin, J.; KlingenSmith, C.J.; Gross, J.
JURISDICTION	Florida
DECIDED	June 28, 2023
DOCKET	No. 4D22-1314
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The insurer appealed a final judgment entered after a jury trial in favor of the assignee, in a breach-of-contract action seeking payment for an engineering report under a homeowners insurance policy.
STANDARD OF REVIEW	The ruling on a motion for directed verdict is reviewed de novo. Jury instructions and a verdict form are reviewed for abuse of discretion, and reversal is warranted when an erroneous or incomplete statement of law is confusing or misleading and results in a miscarriage of justice.
PRECEDENTIAL VALUE	Published Florida district court of appeal opinion; precedential subject to the court's rehearing-finality statement.
PARTIES	People's Trust Insurance Company v. The Kidwell Group, LLC, d/b/a Air Quality Assessors of Florida, a/a/o Cliff Warren

TOPICS

insurance coverage

breach of contract

motion for directed verdict

standard of review

appellate procedure

PRACTICE AREAS

insurance

contracts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the insurer was entitled to a directed verdict because the appellee failed to prove that the engineering report was a cost to repair or replace the damaged roof under the policy.
2. Whether the trial court committed reversible error by using jury instructions and a verdict form that omitted the dispositive issue of whether the engineering report's cost was a cost to repair or replace the property and instead submitted issues the insurer had conceded.

HOLDINGS

1. The insurer was entitled to a directed verdict because the appellee failed to present evidence that the engineering report was a cost to repair or replace the roof as required by the policy.
2. The trial court committed reversible error by failing to instruct the jury or ask on the verdict form whether the engineering report's cost was a cost to repair or replace the property, while submitting conceded issues concerning the coverage period and policy exclusions.

KEY QUOTATIONS

“A motion for directed verdict should not be granted unless the trial court, after viewing the evidence in the light most favorable to the non-moving party, determines that no reasonable jury could render a verdict for the non-moving party.” (at 2)

“Reversible error occurs when an instruction is not only an erroneous or incomplete statement of the law, but is also confusing or misleading.” (at 3)

“In other words, the jury was not given the opportunity to determine if AQA’s evidence sufficiently established that the engineering report’s cost was a “cost to repair or replace” the property.” (at 3-4)

FACTUAL BACKGROUND

A homeowner's property was damaged in a hurricane, and the insurer admitted a covered loss and settled the claim for \$30,000, an amount exceeding the cost of a new roof. The homeowner assigned policy benefits to the Kidwell Group, doing business as Air Quality Assessors of Florida, in exchange for an engineering report concerning the damage. The report was never provided to or used by the roofing contractor or homeowner in replacing the roof, and the insurer refused to pay the \$3,500 invoice because it was not a cost to repair or replace covered property.

PROCEDURAL HISTORY

The County Court denied the insurer's motion for summary judgment because a genuine dispute remained concerning whether the engineering report constituted a cost of repair or replacement under the policy. After

trial, the court denied the insurer's motions for directed verdict and entered judgment for the appellee based on a jury verdict. The Fourth District reversed and remanded with instructions to enter a verdict for the insurer.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand with directions to enter a verdict in favor of People's Trust Insurance Company.

CASES CITED

- MasTec N. Am., Inc. v. Morakis, 288 So. 3d 685, 688 (Fla. 4th DCA 2019)
- Young v. Becker & Poliakoff, P.A., 88 So. 3d 1002, 1011 (Fla. 4th DCA 2012)
- Houghton v. Bond, 680 So. 2d 514, 522 (Fla. 1st DCA 1996)
- Premier Lab Supply, Inc. v. Chemplex Indus., Inc., 94 So. 3d 640, 644 (Fla. 4th DCA 2012)
- Barton Protective Servs., Inc. v. Faber, 745 So. 2d 968, 974 (Fla. 4th DCA 1999)
- Gross v. Lyons, 721 So. 2d 304, 306 (Fla. 4th DCA 1998)