

FLORIDA DISTRICT COURT OF APPEAL, SECOND DISTRICT

Citizens Property Insurance Corporation v. Alvarez

198 So. 3d 45 (Fla. Dist. Ct. App. 2015) · No. 2D13-5125 · Decided October 30, 2015

SUMMARY

The Florida Second District Court of Appeal affirmed a final judgment awarding insureds German Alvarez and Luz Marroquin \$75,918.06 on a disputed sinkhole insurance claim. The court also affirmed the denial of prejudgment interest, holding that the jury liquidated the repair claim as of the verdict date and that no earlier fixed date of loss had been established.

CASE DETAILS

COURT	Florida District Court of Appeal, Second District
WRITING FOR THE COURT	Altenbernd, Judge; Crenshaw, Judge; Dakan, Stephen L., Associate Senior Judge
JURISDICTION	Florida
DECIDED	October 30, 2015
DOCKET	2D13-5125
DISPOSITION	affirmed
PROCEDURAL POSTURE	Citizens appealed a final judgment entered after a jury verdict in favor of its insureds on a disputed sinkhole insurance claim. The insureds cross-appealed the denial of prejudgment interest.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review. Citizens challenged the denial of a directed verdict, and the insureds challenged the denial of prejudgment interest.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Citizens Property Insurance Corporation v. German Alvarez, Luz Marroquin

TOPICS

[insurance coverage](#) [damages](#) [remedies](#) [appellate procedure](#)

PRACTICE AREAS

[property insurance](#) [insurance coverage](#) [prejudgment interest](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether Citizens was entitled to a directed verdict based on the statutory presumption of correctness afforded to certain engineering or geological findings and recommendations in sinkhole claims under section 627.7073(1)(c), Florida Statutes (2010).
2. Whether Citizens was entitled to avoid the burden of proving the exclusion of coverage for the sinkhole claim.
3. Whether the insureds were entitled to prejudgment interest accruing before the jury verdict.

HOLDINGS

1. Citizens was not entitled to a directed verdict based on the asserted statutory presumption of correctness.
2. Citizens was not entitled to avoid its burden of proof concerning the exclusion of coverage.
3. The insureds were not entitled to prejudgment interest from a date before the verdict because the record did not establish an earlier fixed date of loss, and the jury liquidated the claim as of the date of the verdict.

KEY QUOTATIONS

“There simply is no factual determination establishing an earlier “fixed date of loss” from which to calculate prejudgment interest.” (-2-)

“We do not rule out the possibility that such a claim could be presented to a jury in a manner that might allow for prejudgment interest.” (-2-)

FACTUAL BACKGROUND

German Alvarez and Luz Marroquin submitted a disputed sinkhole insurance claim to Citizens Property Insurance Corporation. After a jury trial, the jury determined the amount of the insureds' repair loss as \$75,918.06, and the circuit court entered judgment in that amount. The claim for prejudgment interest was first raised after the jury returned its verdict, and the record did not establish an earlier fixed date of loss.

PROCEDURAL HISTORY

The circuit court entered a \$75,918.06 final judgment for German Alvarez and Luz Marroquin following a jury trial concerning their sinkhole claim. Citizens challenged the denial of a directed verdict and the allocation of the burden of proof concerning a coverage exclusion. The insureds challenged the denial of prejudgment interest from a date before the verdict. The Second District affirmed both the appeal and the cross-appeal.

DISPOSITION

affirmed

CASES CITED

- Citizens Prop. Ins. Corp. v. Munoz, 158 So. 3d 671 (Fla. 2d DCA 2014)

- Mejia v. Citizens Prop. Ins. Corp., 161 So. 3d 576 (Fla. 2d DCA 2014)
- Argonaut Insurance Co. v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985)
- Tower Hill Select Insurance Co. v. McKee, 151 So. 3d 2 (Fla. 2d DCA 2014)
- Albanese Popkin Hughes Cove, Inc. v. Scharlin, 141 So. 3d 743, 746-48 (Fla. 3d DCA 2014)

OPINION

ALTENBERND, J.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT CITIZENS PROPERTY INSURANCE) CORPORATION,)) Appellant/Cross-Appellee,)) v.) Case No. 2D13-5125) GERMAN ALVAREZ and LUZ) MARROQUIN,)) Appellees/Cross-Appellants.)) Opinion filed October 30, 2015. Appeal from the Circuit Court for Hillsborough County; Sam D. Pendino, Judge.

Kara Berard Rockenbach of Methe & Rockenbach, P.A., West Palm Beach, for Appellant/Cross-Appellee. Laura Datz, Michael V. Laurato, and Kimberly Hendee of Austin & Laurato, P.A., Tampa, for Appellees/Cross-Appellants. ALTENBERND, Judge. Citizens Property Insurance Corporation appeals a final judgment in favor of its insureds, German Alvarez and Luz Marroquin (the Insureds), arising from a disputed sinkhole claim.

The Insureds cross-appeal the denial of their request for prejudgment interest on the \$75,918.06 judgment. We affirm both the appeal and the cross-appeal. In its appeal, Citizens argues that it was entitled to a directed verdict due to a so-called statutory presumption of correctness, which was afforded to certain findings and recommendations of engineering or geological professionals in sinkhole claims under the law applicable in 2010.

See § 627.7073(1)(c), Fla. Stat. (2010). It also argues that it should not have had a burden of proof concerning the exclusion of coverage for this sinkhole claim. This court has recently rejected both arguments. See Citizens Prop. Ins. Corp. v. Munoz, 158 So. 3d 671 (Fla. 2d DCA 2014), petition for discretionary review pending, No. SC15-414 (Fla. Mar. 13, 2015); Mejia v. Citizens Prop.

Ins. Corp., 161 So. 3d 576 (Fla. 2d DCA 2014). In the event that the supreme court accepts jurisdiction in Munoz, we recognize that the same issues are potentially dispositive in this appeal. In the Insureds' cross-appeal, they argue that they were entitled to prejudgment interest from a point prior to the verdict. They rely on the line of cases beginning with Argonaut Insurance Co. v. May Plumbing Co., 474 So.

2d 212 (Fla. 1985). Citizens claims that this case is controlled by our recent decision in Tower Hill Select Insurance Co. v. McKee, 151 So. 3d 2 (Fla. 2d DCA 2014). We are not convinced that these precedents are controlling.

In this case, the claim for prejudgment interest was first raised with the trial court after the jury had returned its verdict. The jury instructions and the verdict form asked the jury to determine the amount of loss by establishing the cost to repair the damage. Nothing in the record, including the expert testimony on the cost of repair, -2- supports a theory that the jury was determining that cost for a date other than the date of the verdict.

There was dispute as to the cost of the repair, and the jury resolved that dispute and liquidated the claim as of the date of the verdict. There simply is no factual determination establishing an earlier "fixed date of loss" from which to calculate prejudgment interest. See *Albanese Popkin Hughes Cove, Inc. v. Scharlin*, 141 So. 3d 743, 746-48 (Fla. 3d DCA 2014).

We do not rule out the possibility that such a claim could be presented to a jury in a manner that might allow for prejudgment interest. It simply was not presented in such a manner in this case. Affirmed. CRENSHAW, J., and DAKAN, STEPHEN L., ASSOCIATE SENIOR JUDGE, Concur.
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