

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

WILLIAM SUMMERS,

Plaintiff,

v.

Case No.: 2007 CA 5232 WS/H

SCOTTSDALE INSURANCE COMPANY,

Defendant.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, William Summers ("Mr. Summers"), by and through his undersigned counsel, files his Motion for Partial Summary Judgment and respectfully requests the Court to enter partial summary judgment in his favor and against Scottsdale Insurance Company ("Scottsdale") and find that the insurance policy issued by Scottsdale to Mr. Summers for the policy period of October 27, 2006 – October 27, 2007 does not comply with Fla. Stat. §626.924 and, as a result, the policy was not placed under the provisions of Florida's Surplus Lines Law. Therefore, like every other insurer who issues policies of insurance in this State, Scottsdale is governed by Florida Statute §627.706 which requires that sinkhole coverage be included in the policies.

SUMMARY JUDGMENT STANDARD

In this matter, as in any proceeding for summary judgment, Mr. Summers has the burden of proving the absence of any issue of material fact, which includes overcoming all reasonable inferences in favor of the nonmoving party. See Holl v. Talcott, 191 So. 2d 40 (Fla. 1966). Where the record reflects no genuine issue of material fact, a court may enter judgment for the moving party as a matter of law. See Moore v. Morris, 475 So. 2d 666 (Fla. 1986). In this matter,

the material facts are undisputed and partial summary judgment in favor of Mr. Summers and against Scottsdale is appropriate.

MOTION FOR PARTIAL SUMMARY JUDGMENT

1. On October 27, 2006, Scottsdale issued a policy of insurance to Mr. Summers for his home located at 4210 Headsail Drive, New Port Richey, Florida. The policy number is HOS0340495 and the policy period is October 27, 2006 – October 27, 2007. See Certified Copy of the Insurance Policy attached hereto as Exhibit A.

2. On or about December 21, 2006, Mr. Summers called Scottsdale and reported damage to his home. In response to the claim, Scottsdale hired Rimkus Consulting Group, Inc. to determine the cause of the damage at the residence. On April 12, 2007, Scottsdale's hired experts at Rimkus Consulting Group, Inc. confirmed that sinkhole activity was causing the damage to this residence. See Rimkus Consulting Group's report confirming sinkhole activity at this property is attached hereto as Exhibit B.

3. After sinkhole activity was confirmed on this property, Scottsdale, for the first time, claimed that it is a Surplus Lines Carrier and, therefore, not subject to Florida Statute §627.706, which requires insurers in this state to provide sinkhole coverage to insureds. See May 11, 2007 denial letter from Scottsdale to Mr. Summers citing provisions in the policy that specifically exclude damages resulting from settling, subsidence and sinkholes attached hereto as Exhibit C.

4. Florida Statute §627.706(1)(2007) states "Every insurer authorized to transact property insurance in this state shall provide coverage for a catastrophic ground cover collapse and shall make available, for an appropriate additional premium, coverage for sinkhole losses on

any structure, including contents of personal property contained therein, to the extent provided in the form to which the coverage attaches.”

5. Scottsdale’s hired engineers confirmed in the report dated April 12, 2007 that a sinkhole loss had occurred at this property and that sinkhole activity was affecting the structure. See Exhibit B attached hereto. Therefore, a sinkhole loss as defined by Fla. Stat. §627.706 has been confirmed.

6. Scottsdale has taken the position in this action that it is a Surplus Lines Carrier and that this insurance policy was placed under the provisions of Florida’s Surplus Lines law found at Fla. Stat. §626.913-626.937.

7. Scottsdale then further relies on Florida Statute §627.021(2)(e) for the proposition that Chapter 627, Florida Statutes, including Florida Statute §627.706, does not apply to Surplus Lines Carriers.

8. Florida Statute §627.021(2)(e) states as follows: “This chapter does not apply to (e) Surplus lines insurance placed under the provisions of ss. 626.913-626.937.” (emphasis added).

9. The issue here is not whether Florida Statute §627.706 applies to Surplus Lines Carriers. For purposes of this Motion only, it is assumed that Florida Statute §627.706 does not apply to Surplus Lines Carriers who “place their policies under the provisions of ss. 626.913-626.937.” Fla. Stat. §627.021(2)(e). Although that is a question that is the subject of continuous debate, we need not debate that issue here. Instead, for purposes of this motion only, the question is whether this policy was “placed under the provisions of ss. 626.913-626.937” as is required by Florida Statute §627.021(2). Because the answer to that question, as a matter of law, is “No,” Plaintiff is entitled to partial summary judgment in his favor and against Scottsdale.

10. Florida Statute §626.924, which is contained within Florida's Surplus Lines Law (ss. 626.913-626.937), states as follows:

Each surplus lines agent through whom a surplus lines coverage is procured shall write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his or her name, address, and identification number and the name and address of the producing agent through whom the business originated and shall have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words: THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

11. Plaintiff is in possession of another version of the policy, not the certified copy, that contains a stamp of the language required by Florida Statute §626.924. See Exhibit D attached hereto. However, the language included in the non-certified copy of the policy still does not comply with Florida Statute §626.924 because it does not include the language in the required type-set of all capitals. As a result, even if this non-certified copy of the policy is considered, it still does not comply with Florida Statute §626.924 and, therefore, this policy was not "placed under the provisions of ss. 626.913-626.937" as required by Florida Statute §627.021(2)(e). As a result, as a matter of law, there can be no dispute that Florida Statute §627.706 applies to this action and requires Scottsdale to provide indemnification to its insured for this confirmed sinkhole loss.

12. Importantly, this policy has a lengthy Florida specific endorsement. See Exhibit E attached hereto. If Scottsdale was not bound by the laws of the State of Florida when it issued a policy in this state, why would it have included an 8 page Florida specific endorsement? Certainly, it knew it was subject to the laws of this State when it issued a policy to an insured in this State.

13. Furthermore, why would Scottsdale have tested this property for sinkhole activity if there would be no coverage no matter the results? Certainly, Scottsdale has a duty to investigate the claim, but if geological testing of the property wouldn't make a bit of difference, why was it done? Clearly, when Scottsdale ordered this testing, there was a recognition that sinkhole coverage, as required by Florida law, was a part of this policy. Scottsdale's actions in testing this property and then abandoning its insured after the positive test results were obtained has prejudiced the insured. Scottsdale's actions have caused the Property Appraiser's office in Pasco County to flag this property as a sinkhole property, which has substantially decreased the value of this home. The decrease in value of this home at the hands of Scottsdale and Scottsdale's subsequent refusal to honor its indemnification obligations under the policy and under Florida law has caused substantial injury to the insured.

14. Scottsdale has previously paid the Coverage A policy limits on two (2) Florida sinkhole properties that Plaintiff is aware of which makes the position it has taken in this case inconsistent with its prior actions. See Affidavit of Joseph A. Porcelli attached hereto as Exhibit F.

WHEREFORE, for all of the foregoing reasons, Plaintiff, William Summers, respectfully requests this Court to enter partial summary judgment in his favor and against Scottsdale Insurance Company on the issue of sinkhole coverage in the policy at issue in this action. As a matter of law, this policy was not "placed under the provisions of ss.626.913 - 626.937" because the policy did not include the required language as set forth in Fla. Stat. §626.924. As such, as a matter of law, there is no basis upon which Scottsdale can rely to exempt

itself from Fla. Stat. §627.706, which requires insurance companies issuing policies in the State of Florida to provide sinkhole coverage to their insureds.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Gerald T. Albrecht, Esq. and Christina M. Fears, Esq.**, Butler Pappas Weihmuller Katz Craig, L.L.P., 777 S. Harbour Island Blvd., Suite 500, Tampa, FL 33602 on this _____ day of June, 2008.

Attorney