

Online Reference: FLWSUPP 3208GAIB

Insurance -- Homeowners -- Water damage -- Insurer's motion for summary judgment based on homeowner having discarded defective shower rough-in valve after it was replaced and before insurer's adjuster could examine valve is denied -- Jurors could reasonably conclude that replaced valve was source of loss based on damage in area of valve and testimony that leak was resolved once replacement was made

JOHNSON GAIBOR, Plaintiff, v. CITIZENS PROPERTY INSURANCE CORPORATION, Defendant.
County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX23070203. Division 53.
September 26, 2024. Robert W. Lee, Judge.

ORDER DENYING DEFENDANT'S MOTION**FOR FINAL SUMMARY JUDGMENT**

This cause came before the Court on September 25, 2024 for hearing of the Defendant's Motion for Final Summary Judgment, and the Court's having been sufficiently advised in the premises, rules as follows:

The Motion is DENIED. The Court finds that there is a genuine dispute as to a material fact, and therefore the Defendant is not entitled to judgment as a matter of law.

This case involves a claim for water damage occurring as the result of a defective rough-in valve in a residential shower. It is without dispute that the homeowner discarded the old valve once it was replaced, but before the insurer's adjuster could examine it. According to the Defendant's argument, this is the linchpin of its entitlement to a judgment in its favor. But the record evidence filed for and against the summary judgment motion shows that a jury could find in the Plaintiff's favor even in the absence of the defective valve.

Here, the Defendant's expert properly relied on information gleaned from a conversation with another person as to the source of the leak, i.e., the defective valve. Even though the conversation may be deemed hearsay, an expert is permitted to rely on such a statement so long as it is not "spoon fed" by counsel or not the only evidence supporting the cause of the loss, neither circumstance which appears on this record. Ehrhardt's Fla. Evidence §704.1 (2024). The Plaintiff's timely-filed expert's report also includes photographs that corroborate the rough-in valve as being the source of the leak. Further, the Court would note that jurors are permitted to use some dose of common sense when evaluating the evidence. *See Crane v. Simpson*, 213 So.2d 299 (Fla. 2d DCA 1968). In this case we have a photograph of what clearly appears to be a newer rough-in valve, with nearby evidence of water damage that remains. Coupled with the testimony that the matter was resolved once this repair was made, a juror could reasonably conclude that the replaced rough-in valve was the source of the loss.

Further, this is not a case where the homeowner did all repairs before the insurer was able to observe the loss. The homeowner -- understandably -- made only the repair necessary to stop the leak and mitigate his loss. The resulting damage was on full display for the insurer's adjuster to timely observe.

This case shall remain on the Court's calendar for jury-track pretrial conference.

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