

32 Fla. L. Weekly Supp. 436b**Online Reference: FLWSUPP 3210THER**

Insurance -- Automobile -- Rescission of policy -- Material misrepresentations on application -- Failure to disclose accurate marital status -- Motion for summary judgment based on rescission of policy due to insured's disclosure on policy application that he was married and that other resident driver was also married and failure to disclose that insured was married to third party, not other resident driver, is denied where there is factual issue as to marital status of insured and other resident driver

THERAPY CENTER OF TAMPA, LLC., Plaintiff, v. DIRECT GENERAL INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2022-007657-SP-21. Section CL01. November 22, 2024. Gordon Murray, Judge. Counsel: George Milev, The Evolution Law Group P.A., Weston, for Plaintiff. Jacqueline Zewiski, Kubicki Draper, Fort Lauderdale, for Defendant.

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

THIS CAUSE, having come before this Honorable Court on November 6, 2024 on Defendant's Motion for Summary Judgment, the Court having heard arguments by counsels for the parties that and being otherwise fully advised in the premises, hereby,

FINDS, ORDERS AND ADJUDGES as follows:

1. This is a PIP lawsuit based on alleged breach of automobile insurance contract.
2. Claudia Mendez was a Named Insured on a policy of automobile insurance issued by Defendant.
3. The effective dates of the subject policy were 2/13/20 through 8/13/20.
4. Claudia Mendez was involved in an automobile accident on 2/13/20.
5. The subject policy of insurance was issued based on an application for insurance executed by Carlos Frometa Mayner, another Named Insured in regard to the policy at issue.
6. Carlos Frometa Mayner disclosed his marital status as "married" on the application for insurance and listed Claudia Mendez as a Household Resident and Driver.
7. Carlos Frometa Mayner listed Claudia Mendez marital status as "married" on the application for insurance.
8. On 3/25/20 Defendant rescinded the policy at issue for the following reason: "Material Misrepresentation. Failure to disclose accurate marital status at policy inception."
9. Defendant's coverage investigation revealed that Carlos Frometa Mayner was legally married to a different lady, not residing in the same household and as a result post facto Defendant rated both Carlos Frometa Mayner and Claudia Mendez as "single" which resulted in increase of the insurance premium.
10. Defendant did not offer Carlos Frometa Mayner to pay the difference in the insurance premium calculated by Defendant, but instead voided the subject policy of automobile insurance ab initio.
11. Defendant argues that the policy was properly rescinded based on the alleged misrepresentation on the application -- failure to disclose accurate marital status.

12. Plaintiff argues that Defendant improperly voided the subject policy of insurance as Carlos Frometa Mayner in fact properly listed his marital status as “married” on the application for insurance, as Defendant did not offer Carlos Frometa Mayner the opportunity to pay the difference in the premium before voiding the policy, and as Defendant did not include interest with the insurance premium refund issued to Carlos Frometa Mayner.

13. Plaintiff further argues that Defendant's underwriting guidelines assigning higher insurance premiums to “single” versus “married” applicants is in violation of Section Florida Statute 626.9541(o)9, Unfair Methods of Competition and Unfair and Deceptive Acts, reads in its pertinent part: “No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement” (emphasis added), that forfeiture of rights under an insurance policy is not favored by the law, especially where, as here, a forfeiture is sought after the happening of the event giving rise to the insurer's liability, and that the materiality of a misrepresentation on an application for insurance is a question for the trier of fact.

14. It doesn't appear that the parties are disputing that Carlos Frometa Mayner was legally married at the time of the application for insurance.

15. It should be noted that there were no depositions taken of Carlos Frometa Mayner and Claudia Mendez, and presented before the Court, and there is no other admissible summary judgment evidence showing what the applicants' marital status was at the time of the application for insurance.

16. Defendant has filed a request for judicial notice of Hillsborough County's docket for case number 20-DR-001960 purporting to show that a Carlos Frometa Mayner had filed for dissolution of marriage from a 3rd party which was not finalized until following the date of the application for insurance at issue. However, the Court is unconvinced that the evidence presented is conclusive proof of the insured's marital status as it relates to his relationship with Claudia Mendez.

17. The Court would have to make factual determinations as to the marital status of the applicants and what exactly is meant by the subject policy of insurance in order to rule in favor of Defendant.

18. Pursuant to Florida Rule of Civil Procedure 1.510(a) “[t]he Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

19. Defendant has failed to meet its burden of proof that there is no genuine issue of material fact before the Court and that Defendant's Motion for Summary Judgment should be granted as a matter of law.

20. Wherefore, Defendant's Motion for Summary Judgment is hereby Denied.

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