DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LUZ CINTRON and AGUSTINE CINTRON,

Appellants,

v.

EDISON INSURANCE COMPANY,

Appellee.

No. 2D21-1334

May 18, 2022

Appeal from the Circuit Court for Hillsborough County; Emmett L. Battles, Judge.

William D. Mueller, Elliot B. Kula, and W. Aaron Daniel, of Kula & Associates, P.A., Miami; and Andres Alonso of Alonso Legal, PLLC, Coral Gables, for Appellants.

Andrew A. Labbe of Groelle & Salmon, P.A., Tampa, for Appellee.

STARGEL, Judge.

Luz and Agustine Cintron (the Cintrons) challenge the trial court's dismissal with prejudice of their Second Amended Complaint for Declaratory Relief (second amended complaint) against Edison Insurance Company (Edison). Because the trial

court erred in its determination that the Cintrons' second amended complaint failed to state a cause of action for declaratory relief, we reverse.

The Cintrons' home was insured with Edison when they made a claim for damage. The insurance policy included coverage for "sudden and accidental direct loss to property described in Coverages A and B only if that loss is a physical loss to covered property." The policy also provided exclusions to coverage, including, as pertinent here, "wear and tear," "marring," "deterioration".

While the policy was in effect, the Cintrons alleged that their property suffered direct physical loss from Hurricane Irma. The Cintrons reported the loss to Edison which, after inspecting the home, denied coverage for the damage, advising the Cintrons that the policy did not cover the direct physical loss suffered. Among the reasons offered for the denial of the Cintrons' claim was that the physical loss reported was not caused by Hurricane Irma but rather by "wear and tear," "marring," or "deterioration" of the property and was thus excluded under the terms of the policy.

On August 7, 2020, the Cintrons filed suit seeking a declaratory judgment which concerns the interpretation and construction of contractual rights, obligations, and exclusions contained in the Policy and the facts surrounding the claim, namely: whether there is coverage for the subject loss, which was caused by Hurricane Irma, along with compliance of relevant policy provisions concerning post-loss obligations.

In response, Edison filed a motion to dismiss arguing that the Cintrons failed to meet the pleading requirements necessary to seek declaratory relief under Florida law. After hearing argument, the trial court granted the motion without prejudice, giving the Cintrons twenty days to amend the complaint.

The Cintrons then filed an Amended Complaint for Declaratory Relief (amended complaint). Edison again moved to dismiss based on the Cintrons' failure to state a cause of action. After a hearing, the trial court granted Edison's motion to dismiss, finding that the allegations of the amended complaint did not raise any questions sufficient to require declaratory relief and that interpretation or construction by the court was not necessary for the parties to

understand their rights. The trial court again provided the Cintrons twenty days to cure the pleading deficiencies.

On February 10, 2021, the Cintrons filed their Second Amended Complaint for Declaratory Relief. In response, Edison moved to dismiss for a third time. The trial court dismissed the Cintrons' second amended complaint with prejudice.

"[T]he purpose of a declaratory judgment is to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations." *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 404 (Fla. 1996) (quoting *Santa Rosa County v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1192 (Fla. 1995)). Thus, requests for declaratory relief should be liberally construed. *See* § 86.101, Fla. Stat. (2021) (explaining that chapter 86 is "substantive and remedial" and that due to its purpose, it "is to be liberally administered and construed").

To survive a motion to dismiss, a complaint for declaratory relief must allege:

> [T]here is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or

> present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest[s] are all before the court by proper process or class representation and that the relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity.

Chiles, 680 So. 2d at 404 (alterations in original) (quoting *Santa Rosa County*, 661 So. 2d at 1192–93).

The trial court dismissed the Cintrons' second amended complaint with prejudice on the bases that (a) the Cintrons' second amended complaint failed to state a cause of action, (b) there was no ambiguous policy language requiring construction, and (c) the Cintrons had an adequate remedy at law.

The Cintrons satisfied the pleading requirements when they alleged that their residence had been damaged by Hurricane Irma; that they had submitted a claim to Edison for payment under an all-perils property insurance policy; that Edison had denied the claim on the ground that certain exclusions, such as those for "wear and tear" and "deterioration" barred recovery; that they had provided Edison with copies of invoices, estimates, photos, and

other documents that related to purportedly necessary repairs, contending that these materials demonstrated the inapplicability of the cited exclusions; and that there is now a bona fide dispute between the parties as to the applicability of the exclusions in light of the facts of this case.

As to the second basis for the trial court's dismissal, the availability of declaratory relief is not contingent on the existence of purportedly ambiguous policy language. The supreme court made clear in *Higgins v. State Farm Fire & Casualty Co.*, 894 So. 2d 5, 12 (Fla. 2004), that although declaratory relief is available to resolve such ambiguity, it is not available *only* to resolve such ambiguity. *See id.* ("[A]lthough section 86.021 . . . grants to the courts the power to determine any question of 'construction or validity' arising under a contract, section 86.051 states that the enumeration of powers in section 86.021 'does not limit or restrict the exercise of the general powers conferred in section 86.011.' "). Rather, declaratory relief is available to resolve questions concerning the application of unambiguous policy provisions to a disputed set of facts. "Put another way, 'the courts have the general power to issue declaratory judgments . . . in suits *solely* seeking a determination of

any fact affecting the applicability of an "immunity, power, privilege, or right." ' " *Heritage Prop. & Cas. Ins. Co. v. Romanach*, 224 So. 3d 262, 265 (Fla. 3d DCA 2017) (quoting *Higgins*, 894 So. 2d at 12).

As the trial court observed, refusing to limit declaratory actions to those cases involving some ambiguity or some question of interpretation may result in substantial overlap with otherwise-available actions at law. But that is what the legislature has provided. As the supreme court stated when discussing a prior but similarly worded version of the pertinent statutory sections:

> It is difficult to find broader words or express a broader scope of jurisdiction. Unless we are to deny the power of the Legislature to enact the statute we must give full force to its language, subject only to the constitutional limitations upon the functions of the judicial department of government. . . . With these [pleading] requirements met there is almost no limit to the number and type of cases that may be heard under this statute.

May v. Holley, 59 So. 2d 636, 639 (Fla. 1952).

While the trial court was correct that the Cintrons had an adequate remedy at law, the plain language of section 86.111, Florida Statutes (2021), unequivocally dispatches the final basis, providing, "The existence of another adequate remedy does not preclude a judgment for declaratory relief." *See also Michael A.*

Marks, P.A. v. Geico Gen. Ins. Co., 332 So. 3d 11, 11-12 (Fla. 4th DCA 2022) (agreeing that pursuant to section 86.111, the trial court erred in dismissing a declaratory judgment action merely because the plaintiff could have brought an action for breach of contract instead).

Accordingly, we reverse and remand to allow the Cintrons to proceed with their claim for declaratory relief.

Reversed and remanded.

LaROSE and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.

Third District Court of Appeal

State of Florida

Opinion filed May 18, 2022.
Not final until disposition of timely filed motion for rehearing.

No. 3D21-1940
Lower Tribunal No. 20-8912 CC

Oxana Nazarova,
Appellant,

vs.

Angela Nayfeld,
Appellee.

An Appeal from the County Court for Miami-Dade County, Myriam Lehr, Judge.

Sunrise Law Firm, PLLC, and Anna V. Perekotiy and Philip Michael Cullen III, for appellant.

No appearance for appellee.

Before EMAS, SCALES and BOKOR, JJ.

EMAS, J.

Oxana Nazarova, plaintiff below, appeals a final judgment awarding $12,982.50 in attorney's fees to Angela Nayfeld, defendant below. Nazarova contends the trial court erred by including, in the final judgment, an award of attorney's fees for litigating the amount of attorney's fees, contrary to State Farm Fire & Cas. Co. v. Palma, 629 So. 2d 830 (Fla. 1993) and its progeny. We agree, and reverse that portion of the final judgment awarding fees for litigating the amount of attorney's fees.[1]

The billing records of defendant's attorney, upon which the trial court's order was based, included entries for work performed and time billed for litigating the amount of fees to be awarded. These are sometimes referred to as "fees for fees,"[2] and generally are not recoverable. See Palma, 629 So. 2d at 833 (holding "fees may be awarded for litigating the issue of entitlement to attorney's fees but not the amount of attorney's fees"); N. Dade Church of God, Inc. v. JM Statewide, Inc., 851 So. 2d 194, 196 (Fla. 3d DCA 2003)) ("It is settled that in litigating over attorney's fees, a litigant may claim fees where entitlement is the issue, but may not claim attorney's fees incurred in litigating the amount of attorney's fees.")

[1] We find no merit in the remaining claims raised by Nazarova and affirm on those points without further discussion.

[2] See, e.g., Universal Prop. & Cas. Ins. Co., v. Celestrin, 316 So. 3d 752 (Fla. 3d DCA 2021); Oquendo v. Citizens Prop. Ins. Corp., 998 So. 2d 636 (Fla. 3d DCA 2008); Mallas v. Mallas, 326 So. 3d 704 (Fla. 4th DCA 2021).

However, if the asserted basis for the award of attorney's fees is an underlying contract, and the pertinent contract language is "broad enough to encompass fees incurred in litigating the amount of fees," a litigant may claim attorney's fees incurred in litigating the amount of attorney's fees. Waverly at Las Olas Condo. Ass'n, Inc. v. Waverly Las Olas, LLC, 88 So. 3d 386, 389 (Fla. 4th DCA 2012) (holding language of the agreement—which authorized an award of attorney's fees for "any litigation" between the parties—was "broad enough to encompass fees incurred in litigating the amount of fees"). See also Burton Family P'ship v. Luani Plaza, Inc., 276 So. 3d 920, 923 (Fla. 3d DCA 2019) (noting that "certain contractual fee provisions are sufficiently broad to warrant an exception" to the general rule prohibiting fees for fees; affirming the order on appeal because the fees were awarded pursuant to a provision that expressly authorized the recovery of fees "for litigating the issue of the amount of fees to be awarded"); Mallas v. Mallas, 326 So. 3d 704, 706 (Fla. 4th DCA 2021) ("This court has also held that an award of fees for fees is permissible in cases when a contract is broad enough to encompass such an award").

The attorney's fee provision in the instant case provides:

> Attorney's Fees. In any lawsuit brought **to enforce the Lease** or under applicable law, the party in whose favor a judgment or decree has been rendered may recover its reasonable court costs, including attorney's fees from the non-prevailing party.

(Emphasis added).

This contractual language is simply not broad enough to encompass recovery of fees for litigating the amount of fees to be awarded, and thus the general rule, which prohibits an award of fees for fees, is applicable. Compare Pretka v. Kolter City Plaza II Inc., No. 09-80706-CIV-MARRA, 2013 WL 12080754 at *1 (S.D. Fla. Dec. 10, 2013) (denying prevailing party's request for fees incurred in litigating the amount of fees to be awarded, noting that the contract provision, which authorized recovery of fees for "'litigation to enforce' the terms and provisions of this Agreement[] does not encompass fees on fees.")

We therefore reverse that portion of the final judgment and remand with directions to amend the final judgment by removing any attorney's fees awarded for litigating the amount of attorney's fees to be awarded. In all other respects, we affirm the final judgment.

Affirmed in part, reversed in part and remanded with directions.

Third District Court of Appeal

State of Florida

Opinion filed May 18, 2022.
Not final until disposition of timely filed motion for rehearing.

No. 3D21-615
Lower Tribunal No. 20-24 SP

Claims Holding Group, LLC,
Appellant,

vs.

AT&T Mobility, LLC,
Appellee.

An Appeal from the County Court for Miami-Dade County, Lody Jean, Judge.

Douglas H. Stein, P.A., and Douglas H. Stein; Beighley, Myrick, Udell & Lynne, P.A., and Maury L. Udell, for appellant.

Gunster, and Angel A. Cortiñas and Jonathan H. Kaskel, for appellee.

Before EMAS, SCALES and GORDO, JJ.

SCALES, J.

Appellant Claims Holding Group, LLC ("Claims Holding"), the plaintiff below, appeals the trial court's final summary judgment entered in favor of appellee AT&T Mobility ("AT&T"), the defendant below, as well as the trial court's order denying Claims Holding's motion for rehearing. We affirm because the trial court correctly concluded that res judicata precluded Claims Holding from asserting its claims against AT&T.

I. Relevant Background

In June 2019, a principal of Claims Holding, Adam Beighley, sued AT&T in the small claims division of the county court of Miami-Dade County, asserting that AT&T's charging Beighley a monthly $1.99 administrative fee both violated Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") and constituted a breach of Beighley's wireless phone contract with AT&T. In October 2019, the parties settled Beighley's claims. As part of the settlement, Beighley dismissed his lawsuit against AT&T, with prejudice. Notwithstanding the settlement, AT&T continued to charge Beighley the monthly administrative fee.

About three months after dismissing his lawsuit, Beighley, in January 2020, assigned to Claims Holding "any and all legal claims and/or choses-

in-action" that Beighley had against AT&T.[1] Claims Holding then brought the instant lawsuit against AT&T in the small claims division of county court. As Beighley's lawsuit had also alleged, Claims Holding's lawsuit alleged that AT&T's administrative fee violated FDUTPA and constituted a breach of AT&T's wireless phone contract. Claims Holding also included an unjust enrichment claim against AT&T.

AT&T moved for summary judgment on two grounds: (1) by application of the doctrine of res judicata, Beighley's dismissal, with prejudice, of his lawsuit precluded Claims Holding's claims; and (2) any claim that Beighley had against AT&T arising out of the administrative fee was akin to a personal tort that is not assignable. In a detailed final summary judgment order, the trial court found for AT&T on both grounds; and, in another detailed order, the trial court denied Claims Holding's motion for rehearing. Claims Holding timely appealed both orders.

II. Analysis[2]

[1] The assignment specifically referenced AT&T's "imposition of improper administrative fees on my account" as well as an alleged "data throttling."

[2] We review *de novo* a final summary judgment. Nat'l Collegiate Student Loan Tr. 2007-3 v. De Leon, 281 So. 3d 565, 567 n.2 (Fla. 3d DCA 2019) ("A trial court's ruling that res judicata precludes a subsequent lawsuit is a legal determination that we review *de novo*.").

While the trial court's final summary judgment was based on both grounds argued by AT&T, we find the trial court's res judicata determination dispositive and express no opinion on whether Beighley's claims were assignable. The doctrine of res judicata prevents the re-litigation of a claim that was brought or could have been brought in prior litigation. Fla. Dep't of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001). For res judicata to apply, four identities must exist between the former suit and the suit in which res judicata is to be applied: "(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the persons for or against whom the claim is made." Pearce v. Sandler, 219 So. 3d 961, 966 (Fla. 3d DCA 2017) (quoting Tyson v. Viacom, Inc., 890 So. 2d 1205, 1209 (Fla. 4th DCA 2005) (en banc)).

The issue in this case is whether "the thing being sued for" in Claims Holding's case was the same thing Beighley sued for in his lawsuit, thereby implicating the first of the four identities of the res judicata test. Claims Holding asserts that Beighley's suit sought damages incurred *before* Beighley dismissed his suit, while its claim seeks those separate and distinct damages incurred *after* Beighley dismissed his suit. Conversely, AT&T

argues that, irrespective of when the damages were incurred, both claims are identical because they both derive from exactly the same alleged misconduct: AT&T's imposition of its monthly administrative fee.

We agree with AT&T that, for res judicata purposes, in determining whether both litigations involve "the thing being sued for," the proper inquiry focuses on the defendant's conduct, rather than the plaintiff's damages. As the trial court pointed out in its order denying Claims Holding's rehearing motion, neither suit was premised on recovery of specific payments made to AT&T by the respective plaintiffs; rather, both suits were premised on the theory that AT&T imposed a "bogus" administrative fee.

Our determination in this regard is supported by this Court's decision in Russell v. A & L Development, Inc., 273 So. 2d 439 (Fla. 3d DCA 1973), and by our sister Court's more recent decision in Seminole Tribe of Florida v. State Department of Revenue, 202 So. 3d 971 (Fla. 1st DCA 2016). Russell held that when a claim is the same in both actions, but plaintiff seeks different relief in the second action, res judicata bars the second action. Russell, 273 So. 2d at 440. Seminole Tribe held, in part, that a second action, in which a claim for damages arises from a later time period, is barred by res judicata when the substantive issue before the two courts is the same in both cases. Seminole Tribe, 202 So. 3d at 973. In both of these cases, the

appellate court, when determining whether "the thing being sued for" was identical to that of the prior litigation, looked to whether the substantive issue of the claim, rather than the relief sought by the claimant, was the same.

In conducting this inquiry, we have little difficulty determining that the substantive issue underpinning both Beighley's claim and Claims Holding's claim is identical. Both cases assert that AT&T's misconduct consisted of AT&T's imposition of the monthly administrative fee. Therefore, notwithstanding the different time periods in which damages allegedly were incurred in the two cases, the "thing being sued for" in both cases is identical. We conclude that the trial court properly applied the res judicata doctrine to preclude Claims Holding's claims.

Affirmed.