

Law360 (Online News)

Insurer Owes Fees Despite Fraud Finding, Fla. Court Says

By Jody Godoy

October 15, 2015

Law360, New York (October 15, 2015, 4:32 PM ET) -- A Florida appeals court affirmed that an insurer must pay two homeowners' attorney fees in a water damage coverage fight despite a jury finding the policyholders had lied, finding there is no exception in the law for deceitful policyholders.

Because Citizens Property Insurance Corp. lost its counterclaim against Ernesto and Rebecca Bascuas in their coverage suit, the insurer is required to pay their attorneys' fees under Florida law, the panel ruled. Citizens had appealed the fee award, pointing to a jury's finding that the pair lied to the insurer. While the appeals panel expressed understanding for the insurer's argument, it refused to circumvent the state legislature.

"While Citizens' argument may be persuasive to support a change in this area of the law (to allow for a fraud exception), we reaffirm that such a change must be effectuated legislatively, not judicially," the court said, pointing to a 2005 ruling on the same issue in another case.

The dispute stems from water damage the Bascuas claimed occurred at their home after a break in the plumbing system in May 2012. The homeowners told Citizens about the claim, and the insurer then paid \$28,000 on the loss. The pair then sued, claiming the total damage was more than \$330,000 and that Citizens had refused to pay.

Citizens lodged a counterclaim alleging the Bascuas had colluded with a plumber to fake the claim and been unjustly enriched by the \$28,000 payout.

Both parties lost their claims before a jury, and the trial court granted the Bascuas' motion for fees and costs and denied the insurer's motion for the same.

As a defense to the Bascuas' claim for breach of contract, Citizens had asked the jury to decide whether the pair made false statements at the time of their claim. The jury said yes to that question.

On appeal, Citizens argued that for an insurer to pay attorneys' fees in a suit over a misrepresented claim runs counter to the public interest because it would discourage insurers from challenging false claims and encourage insurance fraud.

Regardless of the alleged deception, the appeals court affirmed on Wednesday that

because Citizens lost its counterclaim, the insurer should pay the homeowners' attorney fees pursuant to Florida law.

But the homeowners should pay the insurer's costs as well because Citizens won in trial court against the Bascuas in their breach of contract suit, the panel ruled, reversing that part of the judgment. The court did not award the insurer its attorneys' fees, as Citizens had not appealed that portion of the judgment.

Counsel for the parties did not immediately reply to requests for comment on Wednesday.

Citizens is represented by Kara Berard Rockenbach and Lauren J. Smith of Methe & Rockenbach PA and David Tarlow and Asika Patel of Quintairos Prieto Wood & Boyer PA.

The Bascuas are represented by Harold C. Knecht Jr. and Jorge C. Borrón of Knecht & Knecht PA and Margaret B. Reeder.

The consolidated appeal is Citizens Property Insurance Corp. v. Ernesto and Rebecca Bascuas, case numbers 3D14-2434 and 3D14-1549, in the Florida Court of Appeal, Third District.

<http://www.law360.com/insurance/articles/714198>

Court Opinion:

<http://www.3dca.flcourts.org/opinions/3D14-2434.pdf>