

*** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 1/5/2017 12:29:16 PM.***

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL DIVISION

CARLOS RODRIGUEZ AND
CARMEN RODRIGUEZ,

Plaintiffs

CASE NO.: CACE-14-000565

vs.

GEOVERA SPECIALTY INSURANCE
COMPANY,

Defendant.

**FINAL ORDER GRANTING DEFENDANT'S SECOND MOTION TO DISMISS FOR
FRAUD UPON THE COURT AND DEFENDANT'S SECOND MOTION FOR
SANCTIONS**

THIS CAUSE having come before the Court November 9, 2016 on Defendant's Second Motion to Dismiss for Fraud upon the Court and Defendant's Second Motion for Sanctions and the Court having considered as evidence the August 21, 2014 sworn interrogatories of the Plaintiff, the February 5, 2015, deposition testimony of the Plaintiff, the Court's order granting limited sanctions on this same issue dated December 8, 2015, Plaintiff's May 12, and May 24th interrogatories and response to discovery, and the May 25, 2016, Section 57.105 Florida Statutes Notice sent to Plaintiffs, all evidentiary items were attached to Defendant's Motion and further, having heard arguments of the parties at the November 9, 2016 evidentiary hearing,

The Court makes the following findings of fact in deciding the issues:

1. January 2014, the Plaintiff filed suit against their homeowners insurance for water damage caused by an alleged roof leak. The complaint alleged \$57,955. in damages.

2. In May 2014, Plaintiffs completed all the repairs to the roof leak and resulting water damage before they sold the house at issue and testified under oath that the total cost of all the repairs completed in May 2014, was between \$18,000 to \$20,000.

3. After the repair and contrary to the truth, in the August 2014 sworn interrogatories, after a payment by this Defendant, Plaintiff falsely swore an alleged remaining balance for water damage in the amount of \$52,261.

4. In the Amended Complaint filed after the May 2014 repairs and contrary to the truth, Plaintiff alleged \$57,955 in damages.

5. On February 5, 2015, during Plaintiff's sworn testimony in deposition, Plaintiff disclosed to the Defendant for the first time that since May 2014, Plaintiff had known that the damages based on the actual cost of repair were between \$18,000 to \$20,000 and that the house was later sold.

6. On December 8, 2015, the Court heard the defendant's first Motion for Sanctions for Fraud on the Court. At the hearing, the above described set of facts were presented to the Court and the Court declined to find the willful, wanton, conduct necessary for a finding of fraud but ordered that Defendant was entitled to FL.R.Civ.P. 1.380c attorney fees and costs for the time expended in disproving the \$57,955 false number. Plaintiff agreed the correct number was the \$18,000 to \$20,000 cost of repair and agreed to drop the \$57,955 claim from the case.

7. In January 2016 Defendant submitted interrogatories and request to produce to Plaintiff regarding damages to get a specific amount and correct interrogatories and to get any documents to substantiate an amount. After a requested court ordered extension to April 29 and filed late contrary thereto, on May 12 and May 24, 2016, Plaintiff signed and Plaintiff's counsel filed, sworn interrogatories claiming \$57,955 in water damages and producing as proof the same estimate.

8. Based on the December 8, 2015 evidentiary hearing in awarding the discovery sanctions, the Court found that Plaintiff's August 2014 interrogatories "...had a false number for damages which in turn misled the defendant for approximately five months."

9. Rather than just go forward with a second motion for sanctions, defense counsel called to try to alert Plaintiff's counsel to no avail and subsequently filed a section 57.105 Notice with a 21 safe harbor provision. Both parties agree that the 21 day safe harbor time period was missed and that it was only after the after the Second Motion for Sanctions was filed that Plaintiff filed new discovery responses dated August 1, 2016.

10. For all the foregoing reasons including notice and failure to correct the problem within 21 days, sanctions per Section 57.105 Florida Statutes are warranted. The Court notes that Plaintiff did not assert any plausible objection to the 57.105 notice or sanctions.

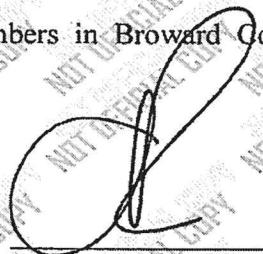
11. The Court next considers the factors outlined in Kozel v. Ostendorf, 629 So.2d 817 (Fla. 1993). 1) the conduct at issue was either willful, deliberate or contumacious or was of such a high degree of inexcusable, deliberate violation of the December 8, 2015 Court order and after multiple notices that it is considered willful and inexcusable; 2) The Court finds Plaintiff has been previously sanctioned for exactly the same behavior in this case; 3) The client was personally involved because they signed the sworn August 2014 sworn interrogatories and the May 2016 sworn interrogatories; 4) There is prejudice to the opposing party in delay of the case and money spent on their counsel from May 2014 through the November 9, 2016 hearing; 5) The justification offered by Plaintiff's counsel at the hearing is insufficient, this was not just a mistake. This was a violation of a Court order, multiple false filings under oath, failing to heed phone calls failing to heed the 57.105 notice and just flaunting discovery and court proceedings; 6) The behavior creates an insurmountable problem with the administration of justice: lies are repeated and filed under

oath, Court orders are ignored and a simple case just can't go forward and is completely delayed in Court because Plaintiff insists on going forward with untrue damages. Extreme sanctions are warranted because this behavior and factual pattern illustrated in this order render the Court system inoperable.

IT IS HEREBY:

ORDERED and ADJUDGED that Defendant's Second Motion to Dismiss for Fraud upon the Court and Defendant's Second Motion for Sanctions are both **GRANTED** and as a 57.105 sanction and sanction for fraud on the Court, the Plaintiffs' lawsuit, CACE-14-000565, is **DISMISSED WITH PREJUDICE.**

DONE AND ORDERED in Chambers in Broward County, Florida this 5th day of ~~December, 2016.~~ **January, 2017.**



HONORABLE CARLOS A. RODRIGUEZ
CIRCUIT COURT JUDGE