

IN THE COUNTY COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

JACOB JIRKA AND JOHN JIRKA,

Plaintiffs,

CASE NO. 05-2016-SC-038481-XXX

vs.

SECURITY FIRST INSURANCE COMPANY,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE, having come before the Court for a hearing pursuant to Defendant's motion for summary judgment, with both sides being represented by counsel. The Court having reviewed the file, argument of counsel, and being otherwise fully advised in the premise, the Court finds as follows:

1. To begin with, "[a] motion for summary judgment may only be granted if the pleadings, depositions, answers to interrogatories and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law ... [and] ... the movant [must] demonstrate conclusively that the nonmoving party cannot prevail." Cohen v. Wall, 576 So.2d 945 (Fla. 2d DCA 1991).

2. For reasons set forth below, Defendant has met this burden by showing absence of a genuine issue as to any material fact when all the evidence is viewed in the light most favorable to the Plaintiffs.

3. The undisputed facts reveal that Plaintiffs had an insurance policy with Defendant-insurer (hereinafter referred to as the 'Policy') at the time of their claimed loss of personal property due to a theft which had occurred on or about August 5, 2015.

4. Under the terms of the Policy, Plaintiffs' needed to provide the Defendant -insurer the necessary documents in form of an inventory of "*damaged personal property showing the quantity, description, age, actual cash value and amount of loss ... [including] related documents that establish ownership of the damaged personal property and justifying the figures in the inventory*". See: Policy, Section I - Conditions, at page 9 of 18, as amended by SFIV HO 09 SP 12 08, page 5-6 of 10.

5. The Policy also contained a clause requiring compliance with the provisions of the Policy before bringing a cause of action against Defendant. See: Policy, SFIV HO 00 03 03 91, Section I – Conditions, at page 11 of 18.

6. The undisputed facts further show that Plaintiffs did not provide an inventory of damaged personal property due to a theft and failed to respond to the repeated requests from Defendant for supporting documentation.

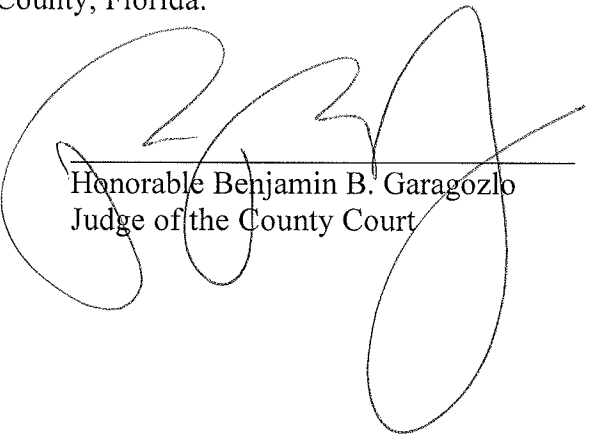
7. Based on the record before the Court, Plaintiffs knew that the requested documents were needed to properly adjust the claim, yet before furnishing the requested inventory Plaintiffs' instituted this action.

8. Plaintiffs' failure to comply with the condition precedent prior to the filing of this action - as Defendant's motion for summary judgment correctly states: "... is fatal to their action for breach of contract". *See also: Starling v. Allstate Floridian Ins. Co.*, 956 So. 2d 511 (Fla 5th DCA 2007). Whereupon;

ORDERED AND ADJUDGED that;

9. The Defendant's motion for summary judgment is hereby granted.

DONE and **ORDERED** this 22nd day of April 2019, in Chambers at the Moore Justice Center, Viera, Brevard County, Florida.



Honorable Benjamin B. Garagozlo
Judge of the County Court

Copies to:

*Plaintiffs; c/o counsel of record
Defendant; c/o counsel of record*