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BREACHING CONTRACT BY IMPROPERLY DELAYING LOSS  
ADJUSTMENT: FLORIDA CONSEQUENTIAL DAMAGES.

By

Dennis J. Wall.

In a case that “involves the snail-paced resolution of insurance claims for property damage caused by a hurricane in 2004,” a Florida appellate panel unanimously held that the policyholder could sue Citizens Property Insurance Corporation for consequential damages but not for bad faith. *Manor House, LLC v. Citizens Prop. Ins. Corp.*, No. 5D17-2841, 2019 WL 2306107, at \*1 (Fla. 5<sup>th</sup> DCA May 31, 2019) (Edwards, J., for a unanimous Court; opinion stated not final until released for publication in the permanent law reports).

In reaching this decision, the Florida appellate court acted with significance beyond its borders and even beyond Florida itself. Citizens is immune from “bad faith” in Florida. However, Citizens is not immune, this Court held, from consequential damages for breach of contract that require neither allegations nor proof of bad faith.

The policyholder owned apartment buildings that were damaged during Hurricane Frances in 2004. Citizens allegedly improperly adjusted the claim including unnecessary delay in processing it. The policyholder alleged that as a consequence of the property insurance carrier’s delay (i.e., by Citizens), the policyholder lost rental income that it would have received had its property insurance claim been adjusted properly and without unnecessary delays.

The trial judge held that Citizens is not liable for such consequential damages and entered partial summary judgment in favor of Citizens on that claim.

On appeal, the Fifth District panel reversed this holding. The appellate panel established the law of Florida beyond bad faith extracontractual damages. The panel unanimously held that when an insurance carrier breaches the insurance contract it must face exposure to extracontractual damages in this sense: The contract breach allegedly caused the consequential damages. No inquiry into bad faith or good faith is necessary in such a case.

As the appellate panel held in a well-reasoned opinion by Judge Edwards in this case:

In granting summary judgment, the trial court denied Manor House the opportunity to prove whether the parties contemplated that Manor House, an apartment complex, would suffer consequential damages in the form of lost rental income if Citizens breached its contractual duties to timely adjust and pay covered damages, which in this case allegedly resulted in a significant delay in completing repairs so that units could once again be rented. We hold that the trial court erred in so ruling, and we reverse that partial summary judgment so that the parties may litigate all issues related to Manor House's claim of lost rent. It is undisputed that Citizens, a creature of statute, is immune from bad faith claims. *See* § 627.351(6)(s) 1, Fla. Stat. (2017). However, the consequential damages Manor House seeks are based squarely on breach of contract claims requiring no allegation or proof that Citizens acted in bad faith.

Manor House, LLC v. Citizens Prop. Ins. Corp., No. 5D17-2841, 2019 WL 2306107, at \*2 (Fla. 5<sup>th</sup> DCA May 31, 2019).

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