

2019 WL 8063350

Only the Westlaw citation is currently available.

United States District Court, N.D. Florida,  
Panama City Division.

Joseph LAMONICA, Plaintiff,

v.

HARTFORD INSURANCE COMPANY  
OF THE MIDWEST, Defendant.

Case No. 5:19cv78-RH-MJF

|  
Signed 11/27/2019

#### Attorneys and Law Firms

Daniel Cruz, Daniel Cruz PA, Miami, FL, Jose Pete Font, Sonya Paige Randolph, Font & Nelson LLC, Fort Lauderdale, FL, for Plaintiff.

Brian Marcus McKell, Perry Goodman, Brooke Oransky Turetzky, Mound Cotton Wollan & Greengrass LLP, Fort Lauderdale, FL, William David Wilson, Mound Cotton Wollan & Greengrass, Florham Park, NJ, for Defendant.

### **ORDER DENYING THE PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT AND TO TAX FEES AND COSTS**

Robert L. Hinkle, United States District Judge

\*1 This is an insurance dispute arising from Hurricane Michael. The plaintiff has moved for partial summary judgment and to tax attorney's fees and costs against the defendant insurer. This order denies the motion because the record presents a genuine dispute of material fact on whether the plaintiff is entitled to recover.

I

On a summary-judgment motion, disputes in the evidence must be resolved, and all reasonable inferences from the evidence must be drawn, in favor of the nonmoving party. The moving party must show that, when the facts are so viewed, the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A summary-judgment motion cannot be

used to resolve in the moving party's favor a "genuine dispute as to any material fact." Fed. R. Civ. P. 56(a).

II

The defendant Hartford Insurance Company of the Midwest provided coverage on a single-family home on Moore Court in Panama City, Florida. The named insureds were the plaintiff Joseph Lamonica and the estate of Pearl O. Lamonica, who was Joseph Lamonica's mother. The home suffered damage from Hurricane Michael. At that time, the only person living at the home full time was Joseph's brother Michael Lamonica. The plaintiff Joseph Lamonica has so testified. Lamonica Dep., ECF No. 35-2 at 5-6. Joseph Lamonica lived in another city but says he sometimes stayed at the Moore Court home.

The Hartford policy covered damage to the "residence premises," a term defined to include only premises where a named insured resided. This record presents, at least, a genuine dispute over whether the Moore Court home met this definition.

Mr. Lamonica says Hartford waived this defense by accepting premiums knowing Mr. Lamonica had a different address and by tendering payment of an amount Hartford calculated as the loss. But the record does not establish that Hartford accepted premiums knowing that no named insured resided at the Moore Court home. And when Hartford tendered payment, Hartford explicitly reserved all its defenses. Under Florida law, coverage cannot be extended by estoppel, at least in the absence of detrimental reliance on the insurer's acknowledgement of coverage. See *Doe v. Allstate Ins. Co.*, 653 So.2d 371 (Fla. 1995) (holding that, absent an insured's detrimental reliance, an insurer's defense of a claim without a reservation of rights does not estop the insurer from denying coverage); *Arguelles v. Citizens Prop. Ins. Corp.*, 278 So. 3d 108 (Fla. 3d DCA 2019) (holding that an insurer's unknowing acceptance of premiums from a nonresident owner did not estop the insurer from denying coverage based on a "residence premises" restriction). Mr. Lamonica is not entitled to summary judgment.

This makes it unnecessary to address Hartford's separate defense that Mr. Lamonica failed to cooperate in Hartford's investigation of the loss.

III

For these reasons,

IT IS ORDERED:

1. Mr. Lamonica's motion for partial summary judgment, ECF No. 23, is denied.

\*2 2. Mr. Lamonica's motion to tax attorney's fees and costs, ECF No. 36, is denied.

SO ORDERED on November 27, 2019.

**All Citations**

Slip Copy, 2019 WL 8063350

---

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.