IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

YORDANY ZAMORA LOPEZ, *et al.*,

Appellant,

vs.

U-HAUL CO. OF FLORIDA, *et al.*,

Appellees.
_____/

Case No. 3D2024-1488

Trial Court Case No. 23-26785-CA01

APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE

Appellants, Yordany Zamora Lopez, Beatriz Guzman, and Juveally M. Lopez a/k/a Uveally Lopez ("Appellants" or "Injured Parties"), by and through undersigned counsel, respond to the Court's Order to show cause issued on October 31, 2024, and state as follows.

I. Introduction

In this appeal, the Injured Parties, Defendants below, have appealed an Order entering Final Judgment against a defaulting co-Defendant, Alberto Camps Perez a/k/a Alberto Perez Camps ("Perez" or the "Defaulting Defendant"). Although the Final Judgment does not dispose of all claims between all parties, the

appeal should be permitted because the final judgment completely disposes of all counts in the complaint between Appellees and the Defaulting Defendant, the Final Judgment adjudicates and permanently deprives the Injured Parties of a vested right, and the claims being disposed of are sufficiently separate and distinct from the remaining claims in the case that the judgment qualifies as a partial final judgment under Rule 9.110(k). Moreover, since the filing of this appeal, all claims between Appellants and Appellees have been adjudicated, and a judgment has entered in favor of Appellees on the remaining Count II of the Counterclaim.

II. Background

Appellee UHFL is engaged in the business of leasing rental trucks to consumers in the Florida. Appellee UHAZ is a qualified self- insured and provides the Minimum Financial Responsibility to lessees of vehicles leased by UHFL. Appellee ARCOA is engaged in the business of offering optional Supplemental Liability Insurance coverage on eligible rental vehicles leased by UHFL.

On February 16, 2023, Perez leased a rental truck from UHFL. The rental truck carried limited liability coverage in accordance with the state's Minimum Financial Responsibility and Supplemental

Liability Insurance with coverage of up to $1,000,000. The following day, February 17, 2023, Perez collided with the vehicle owned and operated by Appellee Yordany Zamora Lopez, in which the remaining Injured Parties were passengers.

On November 20, 2023, Appellees filed a Petition for Declaratory Judgment (the "Petition"), naming Perez and the Injured Parties as Defendants. *See* Appendix A. The Petition sought a declaration of no coverage for the accident in which the Injured Parties were damaged based on Appellees' interpretation of the terms of the policies and arguing that coverage should be denied because Perez failed to cooperate with their pre-suit investigation and that the parties involved in the accident had staged the accident as part of a fraudulent scheme.

The Injured Parties filed an Amended Answer and Affirmative Defenses to the declaratory judgment Petition. In addition, they filed a counterclaim against Appellees by virtue of their ownership and operation of a dangerous instrumentality and a crossclaim against Perez for negligence. *See* Appendix B.

Perez did not file a timely responsive pleading or motion, and an Order granting Appellees' Ex-Parte Motion For Judicial Default was entered against Perez on April 22, 2024. *See* Appendix C.

Appellees then filed a Motion for Default Final Judgment on the declaratory judgment action against Perez on April 23, 2024. *See* Appendix D. Based on their vested rights as beneficiaries of the policies insuring the rental truck and seeking to prevent the declaration that would deprive them of those rights, the Injured Parties filed a Response in opposition to Appellee's Motion on May 17, 2024. *See* Appendix E. They opposed the relief based on their opposition to the Petition and requested the trial court withhold judgment because of the likelihood of an inconsistent, incongruous, and absurd result should they prevail.

After further briefing (including Appellees' reply and the parties' respective notices of supplemental authorities), the trial court held a hearing on the matter on July 24, 2024.

Finally, on July 29, 2024, the trial court issued its Order granting Appellees' Motion for Default Final Judgment and entering final judgment on the declaratory judgment action, declaring, among other things, that: "There is no coverage . . . *for any and all*

prior, current, *pending and future claims and lawsuits, related to the February 17, 2023 Accident*," which resulted in the injuries to Appellants; and that "[Appellees] are not responsible for payment of *any monies for any claims, lawsuits and damages*, including attorney's fees and costs, *arising out of . . . the February 17, 2023 Accident*," in which the Injured Parties suffered damages. Appendix F, Final Judgment at pg. 2.

The Injured Parties filed a timely appeal from that judgment on August 22, 2024.

III. Appellants Have Been Injuriously Affected by the Final Judgment and the Final Judgment is Appealable

A. Appellants have been aggrieved and injuriously affected by the final judgment sought to be reviewed.

The Florida Supreme Court has long held that "one injured by a party insured under a liability insurance policy is an intended third party beneficiary to the policy." *Morales v. Zenith Ins. Co.*, 714 F.3d 1220, 1232 (11th Cir. 2013) (citing *Shingleton v. Bussey*, 223 So. 2d 713, 716 (Fla. 1969)).

In *Shingleton*, the Florida Supreme Court specifically applied the doctrine of third party beneficiary doctrine to motor vehicle

liability insurance. The Court explained that securing motor vehicle liability insurance "is an act undertaken by the insured with the intent of providing a ready means of discharging his obligations that may accrue to a member or members of the public as a result of his negligent operation of a motor vehicle." *Shingleton*, 223 So. 2d at 716. Thus, the Court concluded that such policies intend "to benefit injured third parties" thus "render[ing] motor vehicle liability insurance amenable to the third party beneficiary doctrine." *Id.* "The Florida Supreme Court held that this cause of action vests in or accrues 'to the injured party at the same time he becomes entitled to sue the insured.'" *Morales*, 714 F.3d at 1232 (quoting *Shingleton*, 223 So. 2d at 716).

It is worth noting that this vested right arises by operation of law. *Shingleton*, 223 So. 2d at 715-16 ("We conclude a direct cause of action now inures to a third party beneficiary against an insurer in [] liability insurance coverage cases as a product of the prevailing public policy of Florida. . . . [W]e think there exists sufficient reason to raise by operation of law the intent to benefit injured third parties and thus to render [] liability insurance amenable to the third party beneficiary doctrine."); *Beta Eta House Corp., Inc. of*

Tallahassee v. Gregory, 237 So.2d 163 (Fla. 1970) (reaffirming that *Bussey* applies to all types of liability insurance).

The Florida Legislature later enacted a statute which requires an injured third party to first obtain a judgment against the insured as a condition precedent to filing a direct lawsuit against the liability insurer. *See Morales*, 714 F.3d at 1232 (citing *Hazen v. Allstate Ins. Co.*, 952 So. 2d 531, 535 (Fla. 2d DCA 2007); and § 627.4136(1), Fla. Stat.). However, the third party beneficiary analysis remains intact. *Progressive Exp. Ins. Co. v. Scoma*, 975 So.2d 461 (Fla. 2d DCA 2007).

In fact, Florida's nonjoinder statute specifically allows a "cause of action against a liability insurer by a person not an insured under the terms of the liability insurance contract" by a person who "obtain(s) a settlement or verdict against a person who is an insured under the terms of such policy for a cause of action which is covered by such policy." §627.4136(1), Fla. Stat. *See Hazen*, 952 So. 2d at 535 (injured third party may file a direct action against liability insurer after obtaining verdict against the insured). *See also Williams v. Union Nat'l Ins. Co.*, 528 So.2d 454 (Fla. 1st DCA 1988) (recognizing the right of a judgment creditor to proceed directly

against a tortfeasor's insurance company for breach of contract); *Auto-Owners Ins. Co. v. St. Paul Fire and Marine Ins. Co.*, 547 So.2d 148, 151 (Fla. 2d DCA 1989) ("[A]n injured plaintiff acquires an interest in an insurance policy at the time of the accident, thereby rendering the insurance company directly liable").

Under this well-established jurisprudence, the Injured Parties had a vested right to a claim against Appellees for the insurance coverages available to Perez. That right was vested at the same time they became entitled to sue Perez—that is, at the time of the accident of February 17, 2023.

The Final Judgment at issue divests Appellants of this vested right, as it expressly holds that: "There is no coverage . . . *for any and all* prior, current, *pending and future claims and lawsuits, related to the February 17, 2023 Accident*," which resulted in the injuries to Appellants; and that "[Appellees] are not responsible for payment of *any monies for any claims, lawsuits and damages*, including attorney's fees and costs, *arising out of . . . the February 17, 2023 Accident*," in which the Injured Parties suffered damages. Final Judgment at pg. 2.

Appellants therefore have standing, as they have been aggrieved and "injuriously affected by the order sought to be reviewed." *See King v. Brown*, 55 So. 2d 187, 188 (Fla. 1951); *Citizens Prop. Ins. Corp. v. All Ins. Restoration Servs.*, 365 So. 3d 434, 435 (Fla. 3d DCA 2023).

B. The Final Judgment is Appealable.

"A judgment, if otherwise final . . . which totally disposes of the case as to a party or parties, is a final appealable order which we have jurisdiction to review." *Let's Help Fla. v. Dhs Films*, 392 So. 2d 915, 915 (Fla. 3d DCA 1980). The declaratory final judgment completely disposes of all counts in the Petition and all controversies between Appellees and the Defaulting Defendant. Moreover, that final judgment directly injures Appellants who, without a right to appeal therefore, are left without recourse.

Moreover, where the counts being disposed of are sufficiently separate and distinct from the remaining counts in the case, the final judgment qualifies as a partial final judgment under Rule 9.110(k), appealable either at the time of rendition or when the lower tribunal has completed its judicial labor in the case. *See Let's Help Fla. v. Dhs Films*, 392 So. 2d 915, 916 n.2 (Fla. 3d DCA 1980)

("The resolution of appealability in the several claims situation depends upon whether they are distinct and severable."); *Mendez v. West Flagler Family Ass'n, Inc.*, 303 So. 2d 1 (Fla. 1974) ("[T]he . . . rule [against a partial appeal] is relaxed where the judgment, order or decree adjudicates a distinct and severable cause of action.").

As this Court has long recognized, "When it is obvious that a separate and distinct cause of action is pleaded which is not interdependent with other pleaded claims, it should be appealable if dismissed with finality at trial level and not delayed of appeal because of the pendency of other claims between the parties." *Miami-Dade Water & Sewer Authority v. Metropolitan Dade County*, 469 So. 2d 813, 814 (Fla. 3d DCA 1985).

In this case, the only remaining claim is the direct negligence cross-claim made by Appellants against Perez.[1] That claim seeks to establish the negligence of Perez in driving the rental truck. The final judgment on the Petition for declaratory judgment of no coverage is separate and distinct to that only remaining claim. That

[1] Since the filing of this appeal, the trial court, on October 26, 2024, entered a final judgment on the counterclaim by Appellants against Appellees. *See* Appendix G. Thus, all claims between Appellants and Appellees have now been adjudicated.

judgment determined that Appellees have no coverage obligation as it pertains to *any* present or future lawsuits based on allegations that Perez failed to cooperate with pre-suit investigation and that the parties involved in the accident had staged the accident as part of a fraudulent scheme. None of those issues will be the subject of the remaining claim by Appellants against Perez.

Under these circumstances, the final judgment at issue is a partial final judgment appealable under Rule 9.110(k). In fact, this is the type of situation the rule was to address. *See* ARTICLE: FLORIDA'S PARTIAL FINAL JUDGMENT RULE: PROBLEMS AND SOLUTIONS, 17 FLA. ST. U.L. REV. 749, 750 (1990).

Respectfully submitted this 12th day of November, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 12, 2024, a copy of the foregoing document was served via email to:

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