

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GRANADA INSURANCE COMPANY,

CASE NO. 4D23-2863

Appellant,

v.

SERGIO ANTONIO CASTILLO,
OSCEOLA FARMS CO. and affiliates,
a Florida Corporation, OKEELANTA
CORPORATION, and affiliates, a
Florida Corporation, and JOSEPH
MICHEL

Appellees.

ANSWER BRIEF OF APPELLEES

On appeal from the Fifteenth Judicial Circuit
in and for Palm Beach County

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STATEMENT OF THE CASE AND FACTS

A. Background Facts

1. Castillo Obtains Insurance Policy from Granada

Sergio Castillo (“Castillo”) is a truck driver who hauls sugar cane under contracts with Osceola Farms Co. (“Osceola Farms”) and Okeelanta Corporation (“Okeelanta”) using a 2000 Volvo tractor he owns. (R:422-23, 428-29). The sugar cane hauling “season” generally runs from October through March each year. (R:423). During the season, Castillo works seven days a week, for 12-14 hours per day hauling harvested sugar cane from local area farms to sugar mills, including Osceola Farms’ location in Pahokee (Palm Beach County). (R:451, 455).

During the season, Castillo keeps his tractor parked on Osceola Farms’ property. (R:455-56). During the off-season, he parks the truck on a farm in Canal Point, also in Palm Beach County. (R:446-49, 456).

In 2018, Castillo reached out to American Insurance Brokers (“AIB”) to arrange insurance for his tractor for the 2018-19 season.

(R:458-59, 465). Castillo went to an AIB location in person on October 1, 2018, and spoke with AIB's representative, Patricia Perez ("Perez"). (R:459-60).

While Castillo is a United States citizen, he is originally from Nicaragua and is a native Spanish speaker. (R:416, 438-39). He does not speak or write English and can read very little English. (R:462, 470). When he arrived at AIB, he spoke to Perez in Spanish. (R:460). Castillo explained to Perez that he hauled sugar cane under contract to Osceola Farms/Okeelanta and that he was looking to get insurance for the upcoming season. (R:460). Castillo verbally gave Perez information she asked for and Perez entered the information into the insurance application. (R:488-90).

At the conclusion of the meeting, Perez printed the three-page insurance application with the details already filled in. (R:489-90). She did not translate the substance of the application for Castillo. (R:471). Instead, she turned to the final page and asked him to sign the document, which he did. (R:488-90).

In the application, Perez correctly identified Castillo's permanent residential address, an apartment in Miami, which is the

address on his commercial driver's license. (R:2185). At no point during their discussion did Perez ask Castillo where he garaged his truck. (R:464, 489). Despite this, Perez wrote in the application that the tractor was principally garaged at 400 10th Street, NW, Moore Haven, Florida, which is in Glades County. (R:2185). According to Castillo, his tractor has never been garaged at the Moore Haven location. (R:456). In fact, he is not familiar with that address and has never been there. (R:456, 501). Castillo does not know why Perez included the Moore Haven address as the garaging location of his tractor and does not know where Perez got that address. (R:466, 501).

Perez testified that the Moore Haven address had been copied over by AIB onto Castillo's application from quotes she had been provided from other contractors of Osceola Farms/Okeelanta. (R:1500-01, 1554-55, 1697).

AIB submitted the application to Granada. Granada, noting Castillo's personal residence was in Miami and the garage location of the tractor was in Moore Haven, had Castillo execute a supplemental application. (R:36). In the supplemental application, Granada sought to confirm that the two addresses were accurate. (R:36). Again, the

supplemental application was in English. (R:36). Castillo signed the document at the direction of the AIB representative without understanding what he was signing. (R:470-71, 484-85).

Granada ultimately issued Castillo an automobile liability policy effective October 1, 2018-October 1, 2019 (the “Subject Policy”). (R:38-82). Osceola Farms and Okeelanta were identified as additional insureds under the Subject Policy. (R:40).

2. The relationship between Granada and AIB

In 2005, Granada/GIC Underwriters entered into a Producer’s Agreement with American Ins. Brokers Life and Health, Inc. (R:2042-46). The signatory on behalf of American Ins. Brokers Life and Health, Inc. was Julio H. Gonzalez. (R:2046).

The Producer’s Agreement purported to outline the relationship between Granada/GIC, referred to as “Manager” in the agreement, and American Ins. Brokers Life and Health, Inc., referred to as “Producer” in the agreement. One provision of that document which Granada relies on here and will be discussed further below is the Authority and Duties section, which provides:

2. Authority and Duties

a. Binding of Risks

Producer will solicit risks in accordance with the underwriting rules, regulations and directives that Producer is given by Manager. Producer will forward to Manager's Underwriting Department all applications (which will be on prescribed company forms) for all risks solicited. Producer has no authority to accept or bind risks on Manager's or represented insurer's behalf.

The Producer may not bind any risks nor make any representation on behalf of the Manager or represented insurer, nor waive, alter, modify, or change any of the terms, rates, conditions or any policy issued by the Manager or represented insurer.

(R:2042).

The Producer's Agreement also contained a Termination provision, which provided, in relevant part:

4. Termination

a. Automatic Termination

This Agreement will automatically terminate if any of the following happens:

2. Producer sells, transfers, or makes other substantial changes in the management or ownership of Produce's agency without giving the Manager written notification seven (7) days after such sale, transfer or change[.]

(R:2044) (E.S.).

Another relevant section has to do with assignment of the agreement and change of ownership of the producer:

5. Assignment or Change of Ownership

a. Producer may not assign, encumber, or otherwise dispose of this Agreement or any interest in this Agreement, without Manager's written consent. Any attempted assignment, transfer, or encumbrance or other disposition, without Manager's consent will be void.

b. Producer must notify Manager in writing within seven (7) days after any sale, transfer or other substantial change of Producer's agency ownership or management.

(R:2045).

Consistent with these provisions, Granada's corporate representative, Celia Galvin, testified that when there is a sale of an agent, documentation must be submitted to Granada and a new producer's agreement is required. (R:702-03).

Perez purchased American Ins. Brokers Life and Health, Inc. from Gonzalez in 2008. (R:1677-78). There is no evidence that Gonzalez or Perez notified Granada in writing of the sale in 2008, as required by the termination provision above. There is also no evidence that Granada gave written consent to the assignment of the agreement to Perez, as required by the assignment provision. Thus,

pursuant to the plain language of the termination clause, the agreement was automatically terminated upon the purchase by Perez and it was not assigned to Perez or her new company, AIB.

While there is no evidence of any Producer's Agreement in effect between Granada and AIB, it is undisputed that Granada appointed AIB as its agent, pursuant to section 626.451(3), Florida Statutes.

That statute provides, in relevant part:

(1) Each appointing entity or person designated by the department to administer the appointment process appointing an agent, adjuster, service representative, customer representative, or managing general agent in this state shall file the appointment with the department or office and, at the same time, pay the applicable appointment fee and taxes. Every appointment is subject to the prior issuance of the appropriate agent's, adjuster's, service representative's, or customer representative's license.

(2) By authorizing the effectuation of an appointment for a licensee, the appointing entity is thereby certifying to the department that an investigation of the licensee has been made and that in the appointing entity's opinion and to the best of its knowledge and belief, the licensee is of good moral character and reputation, and is fit to engage in the insurance business. The appointing entity shall provide to the department any other information the department or office may reasonably require relative to the proposed appointee.

(3) **By authorizing the effectuation of the appointment of an agent**, adjuster, service representative, customer representative, or managing general agent **the appointing**

entity is thereby certifying to the department that it is willing to be bound by the acts of the agent, adjuster, service representative, customer representative, or managing general agent, within the scope of the licensee's employment or appointment. [Emphasis added].

3. Castillo is involved in an accident

On December 20, 2018, more than two months after the Subject Policy became effective, Castillo was involved in an auto accident while driving his tractor connected to a trailer owned by Osceola Farms. (R:18). The other vehicle involved in the accident was driven by Joseph Michel (“Michel”). (R:18). Thereafter, Michel filed a negligence action against Castillo alleging that Castillo’s negligent operation of his tractor-trailer caused the accident and that he was injured as a result. (R:18).

Granada was notified of the suit. (R:84). Thereafter, Granada investigated and discovered that the Moore Haven address listed on the insurance application was not, in fact, the address where Castillo garaged his tractor. (R:17, 84). It cancelled the Subject Policy, alleging material misrepresentation on Castillo’s part in the supplemental application. (R:84). It returned to Castillo all premiums paid. (R:84-85).

B. Granada Files Suit

Granada filed a declaratory judgment action against Castillo, Osceola Farms, Okeelanta, and Michel, seeking, generally, a declaration that there was no coverage under the subject policy and that it had no duty to defend Castillo, Osceola Farms, or Okeelanta with respect to the accident with Michel. (R:14-85). Granada alleged that Castillo made a material misrepresentation in the application and supplemental application regarding the garaging location and that the misrepresentation “materially impacted the rate” Granada charged for the policy. (R:19-21). Granada also alleged that Castillo intentionally listed the wrong garaging location so that he could secure a lower premium. (R:20). Had Castillo identified the correct garaging location, Granada alleged it would have charged a higher premium. (R:21). Accordingly, Granada alleged the policy was void. (R:19-21).

In his answer to the complaint, Castillo denied that he made any misrepresentation in submitting his insurance application. (R:102-03). In his affirmative defenses, he alleged AIB and its representatives were acting as Granada’s agents in connection with

the application when they used the Moore Haven address in the application. (R:103). Accordingly, Castillo alleged Granada was bound by those agents' actions. (R:103-04).

C. Granada and Castillo Move for Partial Summary Judgment

Castillo moved for partial summary judgment on the issue of whether AIB and its representative Perez were agents of Granada. (R:1706-15). Castillo argued that AIB was Granada's agent and, as it was undisputed that AIB's representative, Perez, filled out the garaging location portion of the application incorrectly, Granada should be bound by her actions. Accordingly, Castillo alleged Granada should be estopped from rescinding the Subject Policy. (R:1713).

Granada later moved for partial summary judgment on the issue of the existence of an agency relationship between Granada and AIB. (R:2168-87). It asked the court to determine, as a matter of law, no agency relationship existed between it and AIB and thus, Granada could not be bound by AIB's actions. Granada argued that the Producer's Agreement entered into between AIB and Granada limited AIB's authority by stating that AIB could not "bind or accept any

risks on GIC Underwriters' or Granada's behalf." (R:2172-76). Granda argued that because AIB was allegedly acting outside the scope of its authority when it filled in the address on the application it could not be liable for AIB's actions.

D. The Trial Court Grants Summary Judgment in Favor of Castillo and Against Granada

The trial court held two hearings on the competing motions for summary judgment. (R:2194-2213; SR:1-39). After the hearings, the court entered an Omnibus Order granting Castillo's motion for partial summary judgment and denying Granada's motion. (R:2257-63). The court concluded that Granada was "bound by the actions of Ms. Perez and AIB in procuring, completing, and submitting the application of insurance for their client Mr. Castillo," pursuant to section 626.451(3). (R:2263). The court explained that the Producer's Agreement did not compel a different result because it did not restrict Perez or AIB's authority to take, complete, or fill out the insurance application and submit it to Granada for approval. (R:2262).

Granada moved for reconsideration. (R:2272-80). Castillo responded (R:2284-89), and the trial court denied the motion. (R:2302).

Given the trial court's rulings on the motions for partial summary judgment, Castillo sought a final summary judgment in his favor. (R:2265-68). The court granted that motion and entered judgment in favor of Castillo, Osceola Farms, and Okeelanta (referred to collectively hereafter as the "Insureds"). (R:2306-07). The court held that Granada was bound by the actions of its agents, Perez and AIB. (R:2306). As such, the court concluded that Granada was estopped from rescinding the Subject Policy as it was "bound by the knowledge and actions of its appointed agent in taking the application." (R:2306). Accordingly, the court held the Subject Policy was effective and required Granada to provide coverage for the claims made by Michel. (R:2307).

SUMMARY OF THE ARGUMENT

The trial court did not err in entering summary judgment in favor of the Insureds. This case involves two legal relationships. First is the relationship between Granada and AIB. The second is the relationship between Granada, AIB, and the State of Florida and its citizens. It is undisputed that Granada appointed AIB as its agent pursuant to section 626.451, Florida Statutes. The legal authority AIB had to act as an agent for Granada was created by Granada's appointment of AIB as its agent with the State of Florida. By appointing AIB, it agreed to be bound by AIB's acts, within the scope of AIB's appointment. §626.451(3).

Granada argued it could not be bound by AIB's actions here because it was acting outside the scope of its authority when Perez inputted the information into Castillo's application and submitted it to Granada. However, filling out and submitting insurance applications is entirely within the scope of responsibilities of an insurance agent. *See* §626.112(1)(b).

Granada's argument that AIB's acts were outside the scope of its agency, as provided for in the Producer's Agreement fails for multiple reasons. First, the Producer's Agreement did not apply here

to limit AIB's authority. It was entered into between Granada and AIB's predecessor, another company entirely, and terminated pursuant to its own terms, upon the sale to Perez.

Further, even if it was still in effect between Granada and AIB, it would not have limited the scope of AIB's authority to fill out and submit insurance applications. Contrary to Granada's contention, AIB did "not bind any risks nor make any representation on behalf of [Granada], nor waive, alter, modify, or change any of the terms, rates, conditions or any policy issued by [Granada]." (IB:2, quoting R.2179). AIB filled out and submitted an application, which was entirely within the scope of its agency.

Here, the trial court properly enforced the legal appointment of AIB as Granada's agent and properly concluded the Producer's Agreement was not applicable under the facts of this case. AIB was Granada's appointed agent, so Perez's use of the incorrect address on Castillo's application was properly imputed to Granada. Castillo made no misrepresentation. The trial court properly enforced the insurance policy.

Final Summary Judgment should be affirmed.

ARGUMENT

POINT-ON-APPEAL

THE TRIAL COURT CORRECTLY ENTERED SUMMARY JUDGMENT IN FAVOR OF CASTILLO BECAUSE THE GARAGING LOCATION WAS ENTERED INTO THE INSURANCE APPLICATION BY GRANADA'S AGENT.

Standard of Review

The Insureds agree the standard of review is *de novo*. (IB:8).

Merits

It is undisputed that Granada appointed AIB as its agent pursuant to section 626.451, Florida Statutes. It is also undisputed that AIB's representative Perez entered the garaging location information into Castillo's insurance application without input from Castillo. Then, after Castillo was involved in an accident and needed the protection he contracted and paid for, Granada alleged that Castillo misrepresented the garaging location in the application. Once that was proven not to be true, it still tried to avoid its responsibility to Castillo by disavowing responsibility for its agent's

actions. The trial court properly rejected Granada’s arguments and entered summary judgment in favor of the Insureds.

A. AIB was Granada’s Agent and Acted Within the Scope of its Appointment.

“Florida has an extensive statutory scheme set out in Chapter 626, Florida Statutes ... regulating both the state licensing of insurance agents and the appointment of insurance agents as designated agents by insurance companies.” *Almerico v. RLI Ins. Co.*, 716 So.2d 774, 778 (Fla. 1998).

Pursuant to this statutory scheme, an insurance company can appoint agents to act on its behalf. Section 626.451, Florida Statutes, provides, in relevant part:

(1) Each appointing entity or person designated by the department to administer the appointment process appointing an agent, adjuster, service representative, customer representative, or managing general agent in this state shall file the appointment with the department or office and, at the same time, pay the applicable appointment fee and taxes. Every appointment is subject to the prior issuance of the appropriate agent’s, adjuster’s, service representative’s, or customer representative’s license.

...

(3) **By authorizing the effectuation of the appointment of an agent**, adjuster, service representative, customer representative, or managing general agent **the appointing entity is thereby certifying to the department that it is willing to be bound by the acts of the agent**, adjuster, service representative, customer representative, or managing general agent, **within the scope of the licensee’s employment or appointment.** [Emphasis added].

Thus, by appointing an agent pursuant to section 626.451, an insurer expressly agrees to be bound by the acts of the agent taken within the scope of the appointment.

“Appointment” is defined in Chapter 626 as “the authority given by an insurer or employer to a licensee **to transact insurance or adjust claims on behalf of an insurer or employer.**” §626.015(4).

Chapter 626 also extensively addresses the permitted role of an insurance agent. Section 626.112(1)(a), provides that to act as an insurance agent, a person must be licensed by the state and appointed by an agency or person. Licensed agents are permitted to “engage in the solicitation of insurance.” §626.112(1)(b). The “solicitation of insurance” is defined as:

[T]he attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;

2. Distributing an invitation to contract to prospective purchasers;
3. Making general or specific recommendations as to insurance products;
4. **Completing orders or applications for insurance products;**
5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or
6. Offering or attempting to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

§626.112(1)(b)(emphasis added).

There is no dispute here that AIB is a licensed insurance agent. There is also no dispute that Granada appointed AIB as its agent pursuant to section 626.451. As Granada's appointed agent, AIB had actual authority to perform every act on behalf of Granada which the appointment gave the agent the right to do. *Hughes v. Pierce*, 141 So.2d 280, 284 (Fla. 1st DCA 1961); *Gonzalez v. Great Oaks Cas. Ins. Co.*, 574 So.2d 1182, 1184 (Fla. 3d DCA 1991) ("Plainly, [the insurer] had conferred actual authority on Real to act on its behalf in binding insurance coverage."). Here, AIB was given the authority by Granada

to transact insurance claims on its behalf. AIB was further permitted as part of its role as an agent to solicit insurance, which includes the ability to complete applications. Further, pursuant to section 626.451(3), Granada was bound by AIB's acts taken within the scope of its appointment.

B. AIB did not Exceed the Scope of its Authority.

Granada argues that AIB exceeded the scope of authority granted to it in the 2005 Producer's Agreement entered into between it and American Ins. Brokers Life and Health Inc. (IB:8-12). That Producer's Agreement was no longer in effect. Further, even if it applied, AIB/Perez did not exceed the limit of the authority granted in that agreement.

1. The Producer's Agreement Does Not Apply Here.

As noted above, the Producer's Agreement was entered into between Granada and American Ins. Brokers Life and Health Inc. The insurance agency involved in Castillo's insurance application is AIB, American Insurance Brokers. AIB was not a party to the Producer's Agreement. The agreement would not apply to AIB unless

it was assigned to AIB. The Producer's Agreement prohibited assignment of the agreement without the written consent of Granada. Here, there was no evidence that Gonzalez or Perez ever notified Granada of the sale or that Granada provided consent to the assignment of the agreement. Accordingly, the evidence supports that it was never assigned to Perez and her new company, AIB.

Moreover, the Producer's Agreement contained an Automatic Termination provision that provided that the agreement would be automatically terminated if the agency was sold without giving Granada written notification of the sale within seven days of the sale. Here, again, there was no evidence that Perez or Gonzalez gave Granada written notification of the sale of American Ins. Brokers Life and Health Inc. Thus, the Producer's Agreement was terminated automatically in 2008.

Granada did nothing to police or enforce the Producer's Agreement terms and was content to accept business and premiums from AIB, without an effective agreement. It wasn't until Granada would have to defend and indemnify Castillo that it suddenly became interested in the terms of the Producer's Agreement. However,

Granada's tortured argument has nothing to do with AIB's legal authority to act and the scope of AIB's appointment was not limited by the terms of that agreement, which was no longer in effect.

While the trial court did not feel the need to address the issue, the evidence makes clear that the 2005 Producer's Agreement submitted by Granada did not apply here and thus did not establish the scope of AIB's authority under the law.

2. AIB/Perez did not Exceed the Scope of Authority Provided for in the Producer's Agreement.

The trial court concluded it was not necessary to determine whether the Producer's Agreement was still valid because it determined that even if the Producer's Agreement applied, AIB had not exceeded the scope of authority granted in that agreement. (R:2262-63). This decision was correct and should be affirmed.

As noted above, the 2005 Producer's Agreement provides the following:

2. Authority and Duties

a. Binding of Risks

Producer will solicit risks in accordance with the underwriting rules, regulations and directives that Producer is given by Manager. Producer will forward to Manager's Underwriting Department all applications (which will be on prescribed company forms) for all risks solicited. **Producer has no authority to accept or bind risks on Manager's or represented insurer's behalf.**

The Producer may not bind any risks nor make any representation on behalf of the Manager or represented insurer, nor waive, alter, modify, or change any of the terms, rates, conditions or any policy issued by the Manager or represented insurer.

(R:2042)(emphasis added).

Granada argues that by putting the Moore Haven address in Castillo's insurance application, "AIB directly altered, modified, and changed the rate of the policy ..." in violation of the above provisions. (IB:12). Specifically, it claims that AIB "changed the *rate* of the policy." (IB:12). This argument stems from a blatant misapplication of that contractual language. AIB did not alter, modify or change the rate of the policy because at the time it submitted Castillo's application, *there was no policy and there was no rate*. The rate was established after Granada reviewed the application and provided a quote.

AIB acted within the scope of its authority by filling out and submitting Castillo's application to Granada. The fact that AIB inputted incorrect information into that application which may have affected Granada's calculation rate does not change the nature of AIB's role.

Granada relies on the federal trial court's decision in *Prime Prop. & Cas. Ins. Co. v. Kepali Group, Inc.*, No. 21-81787-CIV, 2023 WL 4996936 (S.D. Fla. July 5, 2023), to support its argument; however, as recognized by the trial court (R:2262-63), that case is distinguishable.

In *Kepali*, the insurance agent was a statutorily appointed agent of the insurer pursuant to section 626.451. The insured went to the agent to have a vehicle added to his existing insurance. While the timeline of events is complicated, importantly, the agent represented to the insured that the vehicle in question was insured by issuing a certificate of insurance, auto id cards, and list of insured vehicles containing the subject vehicle. In fact, the insurer had not received the signed application or the payment and never issued an endorsement for the subject vehicle.

The issues in *Kepali* were whether the agent was an agent of the insurer and whether it was acting within the scope of its authority when it purported to issue a policy to the insured. While the agent was a statutorily appointed agent of the insurer pursuant to section 626.451(3), the court found that the statute was not dispositive because the agent had acted outside of the scope of its appointment. There, the agent and the insurer had entered into an appointed agent agreement. That agreement provided that the agent could “only bind policies, renew policies, issue endorsements or certificates of additional insurance, or take any other action regarding an insurance policy issued, or to be issued, by [the insurer] with the express permission of [the insurer].” *Id.* at *4. The trial court determined that the agent “clearly exceeded the scope of its authority” outlined in that agreement “when it issued the certificate of insurance and auto id cards for the [Subject vehicle] without the express permission of [the insurer].” *Id.* at *10. Thus, the court concluded, to the extent that the agent could be considered an agent of the insurer, the insurer was not bound by the agent’s acts because they were taken outside the scope of its authority.

Kepali is simply not applicable here. First, there was no producer's agreement in effect here. Even if the 2005 Producer's Agreement was still in effect, it did not contain the type of language as that in *Kepali*. Here, AIB did not purport to bind a policy, as in *Kepali*, and did not engage in conduct expressly precluded in the Producer's Agreement. The conduct of AIB for which the Insureds seek to hold Granada responsible was not prohibited by the Producer's Agreement but was entirely within the scope of authority of an insurance agent.

The trial court correctly determined that “[t]here was no attempt by either AIB or Perez to make, alter, modify, accept, or bind the Policy” as prohibited by the Producer's Agreement. (R:2263). Accordingly, the trial court's decision that AIB was acting as Granada's agent and that Granada should be bound by its actions should be affirmed.

3. AIB Did Not Exceed the Limits of Authority Expressed in the Insurance Application.

Granada also contends that AIB was not its apparent agent because Castillo was on notice through the application for insurance

“that AIB had ‘no right to MAKE, ALTER, MODIFY, or DISCHARGE any CONTRACT or POLICY issued on the basis of this application.’” (IB:17). The Insureds will address the apparent agency issue below, but briefly addresses here the issue of the limitation on authority expressed in the application. As explained above, AIB did not “make, alter, modify or discharge” any contract or policy here. It filled out and submitted an application, which was entirely within its authority.

C. Apparent Agency is Not at Issue Here

Granada’s Initial Brief is sprinkled with references to apparent agency issues. For example, it claims AIB is a broker and that brokers are generally agents of the insureds. (IB:10-11, 13-15). It also notes that AIB could and did submit applications to multiple insurance agencies. These issues are red herrings. As discussed above, it is undisputed that Granada appointed AIB as its agent pursuant to section 626.451. Pursuant to that appointment, Granada is statutorily bound by the acts of AIB. Apparent agency is not at issue.

Granada and Amicus, Prime Property & Casualty Insurance Company, rely heavily on the Florida Supreme Court’s decision in

Almerico v. RLI Ins. Co., 716 So.2d 774 (Fla. 1998), to support their position that AIB was not Granada’s apparent agent. However, the facts of that case make it clear why it does not apply here. In *Almerico*, the starting point for the discussion of whether the insurer could be held liable for the actions of the agent was the undisputed fact that the agent “was not formally appointed as an agent for RLI under Florida’s statutory and administrative scheme for licensing and appointment.” *Id.* at 778.

In *Almerico*, because the agent was not formally appointed as an agent for the insurer under Florida’s statutory scheme, the court considered whether other statutory or common law agency principles applied to bind the insurer based on the actions of the agent. The court looked to section 626.342. That section provides that an insurer that furnishes supplies such as applications and stationery to an agent “**not appointed to represent the insurer** and who accepts from or writes any insurance business for such agent or agency **is subject to civil liability to an insured of such insurer to the same extent and manner as if such agent or prospective agent had been appointed or authorized by the insurer** or such

agent to act on its or his or her behalf.” §626.342(2). Thus, that section creates liability on behalf of the insurer, even where it has not appointed the agent in question, to the same extent as if it had appointed the agent. That section recognizes that if the insurer had appointed the agent as an insured, it would be liable for the agent’s actions.

In *Almerico*, the court held that “furnishing of company materials by the insurance company to the individual agent or broker and the subsequent acceptance of business from that agent establish civil liability by an insurer to an insured **in the same manner as if the insurer had specifically designated the broker as its agent.**” *Id.* at 781 (emphasis added). The court explained that the statute “clearly informs insurance companies that while they may receive business from **unaffiliated agents** by providing them with certain insurance business materials that identify the agent with the company, if a company thereafter accepts business from the agent, **it will be held responsible to the insured just as if it had lawfully and formally appointed the agent as its own.**” *Id.* at 782 (emphasis added).

Almerico and *Brown v. Inter-Ocean Ins. Co.*, 438 F. Supp. 951 (N.D. Ga. 1977), also cited by Granada and discussed in *Almerico*, do not apply here because neither case involved an agent appointed by the insurer as a statutory agent pursuant to section 626.451. To the contrary, in each case, the issue was whether the insurer could be held liable to the same extent as it would be if the agent had been statutorily appointed. Here, AIB was appointed as Granada's statutory agent and it was thus bound by its acts, pursuant to section 626.451.

CONCLUSION

For the reasons discussed above, the Final Summary Declaratory Judgment entered in favor of Castillo, Osceola Farms, and Okeelanta and against Granada on October 31, 2023, must be affirmed.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY a true copy of the foregoing was furnished to all counsel on the attached service list, via the Florida Courts E-Filing Portal on October 31, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.045(e) and 9.210(a)(2)(B), Appellees hereby certify that the type size and style of the Answer Brief of Appellees is Bookman Old Style 14pt and that the word count is 5,120.

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