

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

DANIELLE GRANDRIMO,

Plaintiff,

vs.

PARKCREST HARBOUR ISLAND
CONDOMINIUM ASSOC., INC.,
USAA CASUALTY INSURANCE COMPANY,
CITIZENS PROPERTY INSURANCE INC., and
FIDELITY NATIONAL PROPERTY AND CASUALTY INSURANCE COMPANY

Defendants.

Case No:

10 006421

DIVISION H

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, Danielle Grandrimo, by and through her undersigned counsel, and pursuant to Florida Rules of Civil Procedure and files this complaint and demand for jury trial against Parkcrest Harbour Island Condominium Assoc., Inc., et al., and in support states as follows:

Venue and Jurisdiction

1. Plaintiff DANIELLE GRANDRIMO (hereafter referred to as GRANDRIMO) is a resident of Hillsborough County.
2. Defendant PARKCREST HARBOUR ISLAND CONDOMINIUM ASSOC., INC. (hereafter referred to as PARKCREST) is an active corporation doing business in Hillsborough County.
3. Defendant USAA CASUALTY INSURANCE COMPANY is an active corporation doing business in Hillsborough County.

4. Defendant CITIZENS PROPERTY INSURANCE INC. is an active corporation doing business in Hillsborough County.
5. Defendant FIDELITY NATIONAL PROPERTY AND CASUALTY INSURANCE COMPANY is an active corporation doing business in Hillsborough County.
6. Venue is proper in this Court.
7. The damages in this case presently exceed \$15,000.00.
8. Plaintiff has satisfied all conditions precedent to bringing this action.

Common Allegations

9. Plaintiff bought a condominium unit located at 700 S. Harbor Island Blvd. #211 in Tampa, Florida in April 2007.
10. The unit is a 1,184 square foot condominium built in 2005 and serviced by one central A/C system.
11. Plaintiff experienced water intrusion for the first time in June 2007, and the damage was repaired by the developer's contractors.
12. Plaintiff's condominium was flooded with sewage water from the guest bathroom in August 2008.
13. At the time, the property manager asserted that the problem that led to the sewage flood stemmed from an accumulation of feminine hygiene items at the elbow junction of the common plumbing pipes below Plaintiff's unit.
14. The condominium needed extensive repairs in order to be habitable, including new hardwood floors; new carpet in the guest bedroom; new tile in the kitchen, dining room and guest bathroom.

15. During the repair process, the condominium unit was not considered habitable, and Plaintiff was forced to stay in a hotel for several weeks.
16. Plaintiff suffered pecuniary damage from the extensive damage to her condominium, in the amount exceeding \$2000, as evidenced by the insurance claim.
17. On July 1, 2009, Plaintiff's unit was again penetrated by water at multiple sites, which affected the carpet of both bedrooms; the wallboards; ceiling; and the newly replaced hardwood floors.
18. The water intrusion caused microbial propagules, which are tiny fungal microorganisms.
19. Plaintiff put Defendant Parkcrest on notice as to the presence of microbial growths.
20. Defendant Parkcrest failed to hire a mold expert to prepare a set of mold remediation protocols.
21. Plaintiff still experiences water intrusion, as do many neighbors on her floor.
22. As of August 12, 2009, a public health consultant gave Plaintiff a cost estimate for a moisture damage evaluation with air samples for her home.
23. One mold assessment company quoted Plaintiff a price of \$1,743.08 to inspect and identify Visible Mold Growth (VMG) in the condominium according to established protocols and sampling guidelines, while another quoted \$1,395.00.
24. Plaintiff submitted insurance claims to USAA Casualty Insurance Company.
25. The claims should have been covered under the terms and conditions of the insurance policies.

26. Defendant USAA Casualty Insurance Company failed to extend coverage for the claims.
27. Additionally, Defendant USAA did not satisfy its implied obligation of good faith in exercising its duty under the terms of the contract.
28. Defendant made material misrepresentations to Plaintiff in regards to the cause of the mold growth in her condominium.
29. Defendant USAA misrepresented pertinent facts relating to Plaintiff's coverage.
30. Defendant denied Plaintiff's claims without conducting reasonable investigations based upon available information.
31. Defendant USAA failed to promptly provide a reasonable explanation in writing to Plaintiff of the basis in the insurance policy for denial of a claim.
32. Defendant USAA failed to promptly notify Plaintiff of any additional information necessary for the processing of a claim.
33. Defendant USAA knowingly failed to advise Plaintiff of her rights in accordance with the terms and conditions of the contract and applicable laws of the state of Florida.
34. Defendant USAA company failed to adjust or investigate every claim, damage, or loss made or occurring under Plaintiff's insurance contract in accordance with the terms and conditions of the contract and of the applicable laws of the state.

COUNT I – BREACH OF CONTRACT

USAA Casualty Insurance Company, Citizens Property Insurance Corporation and Fidelity National and Casualty Insurance Company

35. This is an action against Defendants for Breach of Contract.
36. Plaintiff adopts and reincorporates her allegations in paragraphs 1-34, as if fully

set forth herein.

37. Plaintiff has performed all conditions precedent to payment under the policy or all such conditions have occurred.
38. Plaintiff and Defendants had a written contract. Plaintiff paid premiums to Defendants, and in return, Defendants were to provide residential coverage for Plaintiff's condominium located at 700 S. Harbor Island Blvd. #211, Tampa, Florida 33602.
39. On or about March 16, 2009, Plaintiff suffered a covered loss under the insurance policies when water believed to be originating from an upstairs condominium unit leaked into the common element space between the upstairs unit and the Plaintiff's unit and then into the ceiling and walls of the Plaintiff's unit causing and encouraging the growth of toxic mold.
40. Plaintiff filed claims with Defendant USAA Casualty Insurance Company on: June 2, 2007; August 13, 2008 and July 1, 2009.
41. Plaintiff filed claim #7392390-91A-3-8021 with Defendant USAA Casualty Insurance Company on August 13, 2008.
42. Plaintiff received an August 14, 2008 letter regarding her August 13, 2008 claim.
43. In the August 14 letter, Defendant USAA Casualty Insurance Company suggested a contractor to assist her with the repairs related to her August 13 claim. The letter also stated that: she was under no obligation to use the contractor, but the contractor would provide a two-year limited warranty for the repair of covered damages. However, should she hire the contractor, she would be required to sign an agreement permitting them to repair her property and would need to pay her

policy deductible directly to the contractor.

44. Graystone Construction Corporation estimated the total replacement value at \$4,256.98, including material sales tax, overhead and profit, on August 15, 2008.
45. Flooring America estimated replacement of the flooring September 27, 2008 at \$11,019.48, including material sales tax.
46. Plaintiff also incurred maid service, emergency drying, and extreme hotel room expenses due to the flooding and renovation procedures.
47. Defendant USAA Casualty Insurance Company denied coverage of the loss without asserting a legitimate basis of denial.
48. The cause of the loss was not excluded or limited under the insurance policies held with Defendant USAA Casualty Insurance Company.
49. The policy states: "Every hazard insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium shall provide primary coverage for: (1) All portions of the condominium property as originally installed or replacement of all kinds and quality, in accordance with the original plans and specifications; (2) All alterations or additions made to the condominium property or association property pursuant to s.718.113(2); and (3) The coverage shall exclude all personal property within the unit or limited common elements, and floor, wall and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements or any of the foregoing."
50. Policy was issued/renewed on April 9, 2009.

51. Despite demands, Defendant USAA Casualty Insurance Company has refused to provide coverage under insurance policy to the Plaintiff, which constitutes a breach of contract.

52. Plaintiff has been damaged by these breaches, as Defendant USAA Casualty Insurance Company owes Plaintiff the proceeds of the insurance policies in an amount that will cover the entire cost of repair (minus the deductible) plus interest on the proceeds, attorneys' fees and court costs.

WHEREFORE, Plaintiff requests judgment in her favor holding Defendant USAA Casualty Insurance Company liable for breach of contract, including the award of compensatory damages, attorneys fees and costs and such other and further relief as this Honorable Court deems equitable and just.

COUNT II
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
USAA Casualty Insurance Company, Citizens Property Insurance Corporation and
Fidelity National and Casualty Insurance Company

53. This is an action against Defendants for Breach of the Implied Covenant of Good Faith and Fair Dealing.

54. Plaintiff adopts and reincorporates her allegations in paragraphs 1-34, as if fully set forth herein.

55. Plaintiff and Defendants are parties to a valid contract.

56. Under the terms of the contracts, Defendants had a duty to investigate, evaluate, and pay a reasonable settlement for covered claims within a reasonable amount of time.

57. Defendants failed to perform their part of the bargain in good faith thereby violating the implied covenant of good faith and fair dealing.
58. All contracts entered into in Florida contain an obligation of good faith and fair dealing. *See North American Van Lines v. Lexington Ins. Co.*, 678 So.2d 1325 (Fla. 4th DCA 1996); *Taylor v. Safeco*, 361 So.2d 743 (Fla. 1st DCA 1978).
59. The duty of good faith and fair dealing does not exist in the air by itself but instead attaches to the performance of a specific contractual obligation. *Johnson Enter. of Jacksonville, Inc. v. FPL Group, Inc.*, 162 F.3d 1290, 1314 (11th Cir. 1998). See also *Midcontinent Casualty Company v. Royal Palm Estate Builders, Inc.*, 2007 WL 4225801 (S.D. Fla. Oct 2, 2007).
60. However, this duty does attach to a specific contractual obligation: paying the claim of a valid insurance policy.
61. While allegations of a failure to adjust, investigate or pay a claim were held not to state a claim for breach of the implied duty of good faith and fair dealing in *Trief v. American General Life Insurance Co.*, 444 F.Supp. 2d 1268, 1270 (S.D. Fla. 2006), this count is not about Golden Rule's failure to adjust, investigate or pay a claim, but the underhanded way in which purposely stalled commencing the underwriting process until the insured made a claim while continuing to collect the insured's premiums in the meantime.
62. Plaintiff has been damaged by this breach of the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiff requests judgment in her favor holding that Defendant USAA Casualty Insurance Company violated the obligation of good faith and fair dealing under the

parties' contract; including the award of compensatory damages, punitive damages upon the appropriate evidentiary proffer, attorneys fees and costs if the same are recoverable pursuant to contract or statute and such other and further relief as this Honorable Court deems equitable and just.

COUNT III -- BREACH OF FIDUCIARY DUTY
USAA Casualty Insurance Company, Citizens Property Insurance Corporation and
Fidelity National and Casualty Insurance Company

63. This is an action brought against Defendants for Breach of Fiduciary Duty.
64. Plaintiff adopts and reincorporates her allegations in paragraphs 1-34, as if fully set forth herein.
65. Every insurance contract contains a fiduciary duty between insurer and insured. *Allstate Indemnity Company v. Ruiz*, 899 So.2d 1121, 1125-6 (Fla. 2005).
66. As Plaintiff's insurer, Defendants owe a fiduciary duty to Plaintiff when Plaintiff files a claim with Defendants.
67. Part of that fiduciary duty includes investigating, evaluating, and paying out a reasonable settlement within a reasonable amount of time.
68. Defendants must consider the best interest of the Plaintiff while carrying out their fiduciary duty.
69. Defendants failed to carry out their duty in the best interest of the Plaintiff, which constitutes a breach of Defendants' fiduciary duty.
70. *Ruiz* asserted that this fiduciary duty became the "exercise of good faith," and Section 624.155 extended this duty to first-party bad faith claims.
71. The fiduciary duty owed to Plaintiff by Defendants is separate and apart from the claims handling obligations of Fla. Stat. 624.155.

72. By this Court, Plaintiff is not seeking damages associated with bad faith insurance claims handling under Fla. Stat. 624.155.

73. Plaintiff has been damaged by Defendants' breach of fiduciary duty in that she expended personal funds for covered repairs and to mitigate the damages.

WHEREFORE, Plaintiff requests judgment in her favor holding Defendants liable for breach of fiduciary duty, including the award of compensatory damages, attorneys' fees and costs and such other and further relief as this Honorable Court deems equitable and just.

COUNT IV – DECLARATORY JUDGMENT
USAA Casualty Insurance Company, Citizens Property Insurance Corporation and
Fidelity National and Casualty Insurance Company

74. This is an action against Defendants for Declaratory Judgment.

75. Plaintiff adopts and reincorporates her allegations in paragraphs 1-34, as if fully set forth herein.

76. Plaintiff is in doubt as to her rights under the terms of the insurance contracts.

77. Plaintiff is in doubt as to her rights under the residential property and casualty insurance policies.

78. Plaintiff invokes the court's jurisdiction under Fla. Stat. § 86.

79. There is an actual and present dispute as to the rights of parties to this action.

80. The parties are not seeking an advisory opinion from this Court.

81. Plaintiff is entitled to a declaratory judgment of the rights of the parties.

WHEREFORE, Plaintiff prays the Court issue an Order declaring the rights of the parties, and corresponding damages, and such other and further relief as this Honorable Court deems equitable and just.

COUNT V – NEGLIGENCE

Parkcrest Harbour Island Condominium Assoc., Inc., USAA Casualty Insurance Company, Citizens Property Insurance Corporation and Fidelity National and Casualty Insurance Company

82. This is an action by Plaintiff against all Defendants for negligence.
83. Plaintiff adopts and reincorporates her allegations in paragraphs 1-34, as if fully set forth herein.
84. As a result of the failure to properly inspect the Plaintiff's condominium, the Plaintiff's insurance claims were improperly denied.
85. Defendants owed a duty to timely secure a licensed indoor air quality expert/certified industrial hygienist to determine the condition of the apartment and prepare a set of mold remediation protocols consistent with acceptable standards.
86. Defendants breached that duty by failing to promptly secure an expert to investigate the condition of the apartment and to prepare a set of mold remediation protocols, despite being on put on notice by Plaintiff.
87. Defendants' breach of duty directly and proximately caused damages to Plaintiff, including but not limited to property damage, personal injury, and damages to her personal property and repair costs.
88. As a result of Defendants' failure to timely repair a water leak originating from her unit, Plaintiff has suffered property damage and personal injury.
89. Defendants had a duty as an adjoining land owner to ensure her property did not interfere with the use and enjoyment of another's property.
90. Defendants breached their duty by failing to repair a leak in her unit which led to

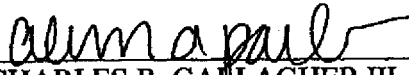
water being leaked into Plaintiff's unit causing and encouraging the growth of toxic mold in the Plaintiffs' unit.

91. Defendants' breach of duty directly and proximately caused damages to Plaintiff, including but not limited to property damage, personal injury, and damages to her personal property and repair costs.

WHEREFORE, Plaintiff requests judgment in her favor holding Defendants liable for negligence including the award of compensatory damages, punitive damages upon the appropriate evidentiary proffer, attorneys' fees and costs if the same are recoverable pursuant to contract or statute and such other and further relief as this Honorable Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all counts so triable.



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