

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 2016AP900182CAXXMB  
L.T. NO.: 2015SC00877XXXXNB

SWIFT INVESTMENTS, INC. d/b/a  
FANTASTIC FINISHES OF PALM BEACH  
COUNTY a/a/o MELISSA PARKS  
Appellant,

v.

ALLSTATE PROPERTY AND CASUALTY  
INSURANCE COMPANY,  
Appellee.

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Opinion filed: **AUG 04 2017**

Appeal from the County Court in and for Palm Beach County,  
Judge Sandra Bosso-Pardo

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PER CURIAM.

Appellant, Swift Investments, Inc. d/b/a Fantastic Finishes of Palm Beach (“Fantastic Finishes”), appeals the trial court’s order granting Appellee’s, Allstate Property and Casualty Insurance Company’s (“Allstate”), Renewed Motion for Summary Judgment. We find that the trial court erred by granting summary judgment in favor of Allstate because genuine issues of material fact exist as to whether Allstate elected to repair the vehicle, thus waiving appraisal, and as to whether Allstate fully paid for the loss to the vehicle covered by the insurance policy.

On August 22, 2014, Melissa Parks (“the insured”) took her vehicle to Fantastic Finishes for repair of damage to her vehicle caused by a motor vehicle accident. At the time of the accident, the insured’s vehicle was covered by an automobile insurance policy (“the policy”) issued to the insured by Allstate. Fantastic Finishes submitted an estimate to Allstate for \$8,773.77 and Allstate’s appraiser prepared a written estimate, estimating that repairs would cost \$5,729.33. Allstate’s estimate contained a provision, which was not contained in the policy, that “supplement[al] request[s] will not be honored without Allstate’s prior approval” and that “[t]his is not an authorization for repairs.” On July 29, 2014, Allstate sent a letter to Fantastic Finishes in which it stated that it was invoking its right to appraisal.

On January 28, 2015, Fantastic Finishes filed a Complaint against Allstate for breach of contract arising out of Allstate’s failure to pay the full amount of Fantastic Finishes’ estimate for repair work of the vehicle. On October 28, 2015, Allstate filed a Renewed Motion for Summary Judgment (“Renewed Motion”) relying on *Progressive American Insurance Company v. Collision Concepts of Delray, LLC*<sup>1</sup> and arguing that it was entitled to summary judgment as a

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<sup>1</sup> 28 Fla. L. Weekly Supp. 400a (Fla. 15th Cir. 2015).

matter of law because neither Fantastic Finishes nor the insured participated in appraisal as requested by Allstate. Allstate also argued that it never authorized Fantastic Finishes to repair the vehicle.

This Court finds that Allstate's reliance on *Collision Concepts* is misplaced. In *Collision Concepts*, the Fifteenth Circuit Court, acting in its appellate capacity, granted a petition for writ of certiorari where an insurer sought review from a non-final order denying its motion to enforce appraisal, reasoning that nothing in the record indicated that the insurer waived appraisal by electing to repair the vehicle. *Collision Concepts* is not controlling because in that case the insured took the vehicle to the repair shop for repairs after the insurer assessed damage to the vehicle, acknowledged coverage, and issued two checks to the insured. Here, the record indicates that Allstate inspected the vehicle at Fantastic Finishes, where it discussed and negotiated details of the repair with employees of Fantastic Finishes. The record also shows that Allstate sent correspondence to Fantastic Finishes and listed Fantastic Finishes as payee on its checks. Although Allstate contends that it was required to list Fantastic Finishes on its checks and that its appraiser was not permitted to authorize repairs, genuine issues of material fact exist as to whether Allstate elected to repair the vehicle, thereby waiving appraisal. Therefore, the lower court erred in granting summary judgment in favor of Allstate.

This Court also rejects Allstate's argument that the language contained in the supplemental estimate requiring pre-approval for repairs bound Fantastic Finishes because this language was contained only in the supplemental estimate, and not in the policy itself. See *Stewart Agency, Inc. v. The Standard Fire Insurance Company*, Case No. 16AP900115 (Fla. 15th Jud. Circ. June 13, 2017) (reversing the lower court's award of summary judgment in favor

of an insurer where the insurer's estimate, but not its insurance policy, contained language requiring pre-approval for additional repairs). Therefore, this language does not constitute a contractual duty on the part of Fantastic Finishes. Moreover, Florida courts have held that whether an insurer breaches an obligation to cooperate is a question of fact inappropriate for summary judgment. *Bontempo v. State Farm Mut. Auto. Ins. Co.*, 604 So. 2d 28, 29 (Fla. 4th DCA 1992); *Bankers Ins. Co. v. Macias*, 475 So. 2d 1216, 1218 (Fla. 1985). Additionally, issues of material fact remain as to the scope of repairs required to restore the insured's vehicle to its pre-loss condition. Such repairs include, among others, assembling headlights, removing battery cables, restoring corrosion protection, and disabling a SRS unit.

Accordingly, we **REVERSE** the lower court's grant of summary judgment in favor of Allstate because issues of material fact remain. Fantastic Finishes' Motion for Appellate Attorneys' Fees is **GRANTED** and the matter is remanded for the lower court to determine a reasonable amount of fees, contingent upon the entry of judgment in Fantastic Finishes' favor on remand.

SMALL, OFTEDAL, and SASSER, JJ., concur.

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d/b/a FANTASTIC FINISHES OF  
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Appeal from the County Court in and for  
Palm Beach County; Judge Sandra Bosso-Pardo

ALLSTATE PROPERTY  
AND CASUALTY INSURANCE  
COMPANY  
Appellee.




Date of Appeal: June 10, 2016

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DATE OF PANEL: JULY 18, 2017

PANEL JUDGES: SMALL, OFTEDAL, SASSER

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
 8/2/17	)		)		)
DATE: J.	)		)		)
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