

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017AP000066CAXXMB
L.T. No.: 502014SC004284XXXXNB

SWIFT INVESTMENTS, INC.
d/b/a FANTASTIC FINISHES OF
PALM BEACH a/a/o Mary Walsh,
Appellant,

v.
USAA CASUALTY INSURANCE
COMPANY,
Appellee.

Opinion filed:

MAY 03 2018

Appeal from the County Court in and for Palm Beach County,
Judge Nancy Perez

For Appellant: Scott Edwards, Esq.
7000 W. Palmetto Park Road, Ste. 210
Boca Raton, FL 33433

For Appellee: Douglas Stein, Esq.
Two Alhambra Plaza, Ste. 800
Miami, FL 33134

PER CURIAM.

AFFIRMED.

Appellant, Swift Investments, Inc. d/b/a Fantastic Finishes of Palm Beach ("Fantastic Finishes"), appeals the trial court's order granting Appellee USAA Casualty Insurance Company's ("USAA") Motion for Summary Judgment in an action alleging breach of contract. Fantastic Finishes alleges that the trial court erred by awarding USAA summary judgment because genuine issues of material fact existed as to whether USAA fully paid for the loss to the vehicle covered by its automobile insurance policy.

On November 30, 2013, the insured was involved in a motor vehicle accident, which resulted in damage to her vehicle. At the time of the accident, the insured's vehicle was covered by an automobile insurance policy ("the policy") issued to the insured by USAA. The insured took her vehicle to Fantastic Finishes for repairs, and on January 24, 2014, Fantastic Finishes submitted an estimate for repairs for \$10,085.28.¹ USAA also prepared a written estimate for the repairs, estimating that the repairs would cost \$9,222.85.²

The policy, issued by USAA to the insured, contains a provision providing that, in the event of a covered auto loss, USAA "will pay for loss caused by Collision to your covered auto . . . Loss includes total loss, but does not include any damage other than the cost to repair or replace." The policy further states that USAA's liability is limited to the "amount necessary to repair the loss based on our estimate or an estimate that we approve, if submitted by you or a third party. Upon request, we will identify at least one facility that is willing and able to complete the repair for the amount of the estimate."

As USAA's policy indicates, USAA offers its insured the opportunity to contact USAA if the insured was unable to find a repair company willing to perform the repair work for the price listed in USAA's estimate. Upon such contact, USAA will then recommend a repair shop that will perform the repair work for the price listed in its estimate. But, the insured did not do so.

The facts at hand are analogous to those in *Arch Roberts & Co. v. Auto-Owners Ins. Co.*, 305 So. 2d 882 (Fla. 1st DCA 1974). There, the insured brought action against the insurer to collect the entire value of the insured vehicle under the collision provision of the insurance automobile policy. *Arch Roberts & Co.*, 305 So. 2d at 882-83. Pursuant to the policy, the

¹ This amount is the amount of Fantastic Finishes' estimate less the \$500.00 deductible required to be paid by the insured under the policy.

² This amount is the amount of USAA's estimate less the \$500.00 deductible required to be paid by the insured under the policy.

insurer elected to repair the vehicle and advised the insured of its estimate to repair the vehicle. *Id.* Upon receipt of the estimate, the insured claimed the vehicle could not be satisfactorily repaired and sold it for salvage. *Id.* The trial court granted summary judgment in favor of the insurer, holding that the insurer's liability was limited to the amount of the appraisal for repair. *Id.* at 883. On appeal, the First District Court of Appeal affirmed and reasoned that the insured prevented the insurer from exercising its option. *Id.* at 884. Like the insured in *Arch Roberts & Co.*, the insured here did not afford USAA an opportunity to exercise its option of approving an estimate submitted by the insured or a third party, or finding another repair shop that would perform the necessary repairs for the amount included in USAA's estimate.

Fantastic Finishes relies heavily on *Stewart* and *Swift*, two opinions authored by the Fifteenth Circuit sitting in its appellate capacity. See *Stewart Agency, Inc. v. The Standard Fire Insurance Company*, 25 Fla. L. Weekly Supp. 306b (Fla. 15th Cir. Ct. June 13, 2017); *Swift Investments, Inc. d/b/a/ Fantastic Finishes of Palm Beach County a/a/o Melissa Parks v. Allstate Property and Casualty Insurance Company*, 25 Fla. L. Weekly Supp. 499a (Fla. 15th Cir. Ct. Aug. 4, 2017). Fantastic Finishes broadly characterizes these cases as ones in which summary judgment is inappropriate where material facts remain as to the scope of repairs required to restore an insured's vehicle to its pre-loss condition. While partially correct, both of these cases are distinguishable because unlike in *Stewart* and *Swift*, USAA relies on its policy provision to argue its point that it did not breach its contractual provision.

In *Swift*, the insured took the vehicle to the repair shop for repairs and two estimates were submitted—one by Allstate, the insurer, and another by Fantastic Finishes, the repair shop. 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.” This Court rejected Allstate’s argument that the language contained in the supplemental estimate bound Fantastic Finishes because this language was not contained in the policy itself, relying on our opinion in *Stewart* for such proposition. The instant case is factually dissimilar because USAA has a policy provision requiring approval for any estimates submitted by the insured or a third party. Moreover, unlike the insurer’s language in *Stewart* and *Swift*, USAA’s language in its policy specifically provides the insured an opportunity to contact USAA if the insured cannot find a repair shop that will perform the repair work for the amount stated in USAA’s estimate.

Accordingly, we **AFFIRM** the trial court’s grant of summary judgment in favor of USAA. Fantastic Finishes’ Motion for Attorney’s Fees is **DENIED**. USAA’s Motion for Attorney’s Fees is **GRANTED**, and the matter is **REMANDED** for the trial court to determine a reasonable amount of fees, with the award being contingent upon the trial court’s determination that the proposal for settlement was properly made and submitted.

HAFELE, SMALL and NUTT, JJ., concur.

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SWIFT INVESTMENTS, INC. d/b/a/
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Opinion/Decision filed: **MAY 03 2018**

v.

Appeal from the County Court in and for
Palm Beach County, Judge Nancy Perez

USAA CASUALTY INSURANCE
COMPANY,
Appellee.

Date of Appeal: April 19, 2017

DATE OF PANEL: APRIL 16, 2018

PANEL JUDGES: HAFELE, SMALL, NUTT

AFFIRMED/REVERSED/OTHER: AFFIRMED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:

) DISSENTING:

) CONCURRING SPECIALLY:

) With/Without Opinion

) With/Without Opinion

5/2/18 
DATE: _____

J.)

J.)

J.)

5/2/18 
DATE: _____

J.)

J.)

J.)

5/3/18 
DATE: _____

J.)

J.)

J.)