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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 50-2019-AP-000041-CAXX-MB
L.T. NO.: 50-2018-CC-009099-XXXX-MB

FIRST EMPIRE RESTORATIONS, LLC
a/a/o KATTIE DUTRUEIL,
Appellant,

v.

AVATAR PROPERTY & CASUALTY
INSURANCE COMPANY,
Appellee.
_____/

Opinion filed: November 30, 2020

Appeal from the County Court in and for Palm Beach County;
Judge Edward A. Garrison

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PER CURIAM.

Appellant, First Empire Restorations, LLC ("First Empire"), appeals an order entering final summary judgment in favor of Appellee, Avatar Property & Causality Insurance Company ("Avatar"). First Empire argues that the lower court erred when it found that the homeowner's Assignment of Benefits ("AOB") was invalid in light of *Quiroga v. Citizens Property Insurance*

Corp., 34 So. 3d 101 (Fla. 3d DCA 2010). During the pendency of this appeal, the Fifth District Court of Appeal decided *Speed Dry, Inc. v. Anchor Property and Casualty Insurance Co.*, 302 So. 3d 463 (Fla. 5th DCA 2020) which held, in a factually similar circumstance, that Florida law does not prohibit the assignment of post-loss insurance benefits meant for the repair of a homestead to a third-party contractor. Since this Court is bound by the decisions of Florida's District Courts of Appeal, we must reverse the judgment of the county court and remand for further proceedings consistent with this opinion and with *Speed Dry*.

First Empire was hired by a homeowner, Kattie Dutrueil, to perform repairs to her homestead after it received extensive water damage. Dutrueil had also informed Avatar, the issuer of her homeowner's insurance policy, about the damage her home had received. As part of her contract with First Empire, Dutrueil signed an AOB whereby she assigned "any and all insurance rights, benefits, proceeds and any cause of action under any applicable insurance policies" to First Empire. First Empire subsequently invoiced Avatar for $5,000.00. Avatar refused to pay, and First Empire filed a complaint in county court alleging breach of contract. Avatar later filed a motion for summary judgment, arguing that, under the *Quiroga* decision, Dutrueil could not divest her interest in insurance proceeds meant for her homestead through the AOB because it was an unsecured agreement. The lower court, also relying on *Quiroga*, granted Avatar's motion for summary judgment. This appeal followed.

Article X, section 4 of the Florida Constitution provides homestead protections to homeowners in the State of Florida. Of particular relevance to this appeal are sections 4(a) and 4(c) of article X. Section 4(a) protects the homestead from forced sale by creditors. Art. X, § 4(a), Fla. Const,; *Snyder v. Davis*, 699 So. 2d 999, 1001–02 (Fla. 1997). Section 4(c), on the other hand, restricts the devise of homestead property, but specifically states that the "owner of homestead real

estate . . . may alienate the homestead by mortgage, sale or gift." Art. X, § 4(c), Fla. Const. This provision of the Florida Constitution gives a homeowner the power to alienate the homestead property whenever he or she feels fit to do so, as long as his or her spouse agrees. *See McKean v. Warburton*, 919 So. 2d 341, 344–45 (Fla. 2005).

In *Quiroga*, the Third District held that a charging lien cannot be placed on insurance proceeds meant for a homestead when the lien is based on an unsecured agreement. *Quiroga*, 34 So. 3d at 101 (citing Art. X, § 4(a), Fla. Const.). The district court came to this conclusion after synthesizing two earlier decisions of the Florida Supreme Court. First, in *Orange Brevard Plumbing & Heating Company v. La Croix*, 137 So. 2d 201 (Fla 1962), the Florida Supreme Court held that insurance proceeds paid out to repair damages to a homestead were also protected by the homestead exemption because it "is intended to restore the property." *Id.* at 203–04. Second, the district court relied on *Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007), where our supreme court held that the homestead exemption cannot be waived unless there is a secured agreement that ensures that the waiver "is made knowingly, intelligently, and voluntarily." *Id.* at 861. In light of these decisions, the Third District held that an unsecured agreement did not and could not waive the appellant's homestead protections, and that appellee was precluded from placing a lien on the property by virtue of article X, section 4(a). *Quiroga*, 34 So. 3d at 102.

Quiroga's application to post-loss insurance benefits was called into question by the Fifth District's decision in *Speed Dry*. The facts therein are nearly identical to the instant appeal: a homestead was damaged by a hurricane and the owner entered into a contract with the appellant/contractor to repair his home. *Speed Dry*, 302 So. 3d at 464. As part of his contract with the appellant, the owner assigned his rights to post-loss insurance benefits to the appellant. *Id.* The insurance company challenged this assignment, arguing, just as Avatar does, that the assignment

was void in light of *Quiroga*. *Id.* The Fifth District rejected this argument by distinguishing sections 4(a) and 4(c) of article X. *Id.* at 465. In contrast to the facts in *Speed Dry*, *Quiroga* involved a lien placed on the homestead itself—directly implicating section 4(a). *Id*. The *Speed Dry* court reasoned that, because the assignment of benefits did not involve a forced sale or a lien, it instead implicated section 4(c) which allows a homestead owner to alienate the homestead. *Id.* The Fifth District thus asserted that "article X, section 4(c) of the Florida Constitution does not prohibit the assignment of post-loss insurance benefits due as a result of damage to a homestead property." *Id*. at 467; *see also Landmark Const. Inc. of Cent. Fla. v. Anchor Prop. & Cas. Ins. Co.*, No. 5D19-2629, 2020 WL 5264822, at *1–2 (Fla. 5th DCA Sept. 4, 2020) (Evander, C.J., concurring) (reasserting that section 4(c) does not prohibit the assignment of post-loss insurance benefits).[1] Accordingly, based on *Speed Dry*, the AOB at issue in this case was not invalid and granting summary judgment based on *Quiroga* is no longer proper.

The county court did not have, as we do, the benefit of relying on *Speed Dry*. In fact, the lower court's reliance on *Quiroga* was perfectly reasonable and appropriate at the time the decision was made. However, since *Speed Dry* is directly on point and there is no other precedent to the contrary from the Fourth District Court of Appeal (or any other district court), this Court must follow it. *See Omni Ins. Co. v. Special Care Clinic, Inc.*, 708 So. 2d 314, 315 (Fla. 2d DCA 1998) ("[T]he circuit court, when acting in its appellate capacity, must follow the precedent of another

[1] The Fifth District certified the following question of great public importance to the Florida Supreme Court in both *Speed Dry* and *Landmark*: "Does article X, section 4(c) of the Florida Constitution allow the owner of homestead real property, joined by the spouse, if married, to assign post-loss insurance benefits to a third-party contractor contracted to make repairs to a homestead property." *See Speed Dry*, 302 So. 3d at 467; *Landmark*, 2020 WL 5264822, at *1.

district court of appeal where that court has decided the legal issue facing the circuit court and its own district court of appeal has not yet ruled on the issue.").[2]

Because we hold that *Speed Dry* is directly on point, the lower court's grant of summary judgment in favor of Avatar was erroneous. We therefore **REVERSE** the county court's entry of summary judgment and **REMAND** for further proceedings consistent with this opinion.

We also **GRANT in PART** and **DENY in PART** First Empire's "Motion for Attorney's Fees and Costs." We **GRANT** the motion insofar as it relates to appellate attorney's fees and **REMAND** to the trial court to award a reasonable amount of fees. The motion is **DENIED without PREJUDICE** as to costs so that First Empire can seek appellate costs in the lower court after this Court issues its mandate. *See Vella v. Vella*, 691 So. 2d 612, 612 (Fla. 4th DCA 1997).

KERNER, MARTZ, and J. KEYSER, JJ., concur.

[2] Avatar also relies on a citation opinion from the Fourth District Court of Appeal which affirmed an order by this Court, acting in its capacity as a trial court, relying on *Quiroga* to find that an assignment of post-loss insurance benefits was invalid. *See JD Restoration, Inc. v. Universal Prop. & Cas. Ins. Co.*, 245 So. 3d 809, 810 (Fla. 4th DCA 2018). However, an appellate opinion affirming the lower court without a written opinion has no precedential value. *State v. Swartz*, 734 So. 2d 448, 448 (Fla. 4th DCA 1999).