

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502016AP900115CAXXMB  
L.T. NO.: 502015SC000953XXXXNB

STEWART AGENCY, INC. d/b/a  
EARL STEWART TOYOTA OF  
NORTH PALM BEACH, a/a/o Victoria Lyons  
Appellant,

v.

THE STANDARD FIRE  
INSURANCE COMPANY,  
Appellee.

---

Opinion filed: JUN 13 2017

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

For Appellant: Scott Edwards, Esq.  
7000 Palmetto Park Road, Suite 210  
Boca Raton, FL 33433  
scott@scottjedwards.com

For Appellees: Benjamin L. Bedard, Esq.  
470 Columbia Drive  
Bldg. C101  
West Palm Beach, FL 33409  
bbedard@rrbpa.com

Laura E. Bedard, Esq.  
470 Columbia Drive  
Bldg. C101  
West Palm Beach, FL 33409  
lbedard@rrbpa.com

PER CURIAM.

Appellant, Stewart Agency, Inc. ("Earl Stewart Toyota"), appeals the trial court's order granting Appellee's, The Standard Fire Insurance Company's, Motion for Summary Judgment.

We find that the trial court erred by granting summary judgment in favor of The Standard Fire Insurance Company, because genuine issues of material fact existed as to whether The Standard Fire Insurance Company fully paid for the loss to the vehicle covered by its automobile insurance policy.

On September 24, 2014, Victoria Lyons (“the insured”) took her vehicle to Earl Stewart Toyota 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 The Standard Fire Insurance Company (“the insurer.”) On September 26, 2014, Earl Stewart Toyota submitted an estimate to the insurer for \$5, 890.48. On September 30, 2014, Earl Stewart Toyota submitted a supplemental estimate for repairs for \$6,228.59. After Earl Stewart Toyota submitted both estimates, the insurer’s appraiser prepared a written estimate, estimating that repairs would cost \$4,180.56. The insurer’s estimate contained a provision, which was not contained in the policy, that “all supplements must be preapproved” and that “supplement repair charges may be subject to rejection unless approved by Travelers prior to repairs.”. On October 2, 2014, the insurer issued a check to Earl Stewart Toyota for \$3,680.56. After receiving the insurer’s check, Earl Stewart Toyota continued to perform repairs on the insured’s vehicle, without notifying the insurer, and then billed the insurer for \$5,884.26.

On October 15, 2015, Earl Stewart Toyota filed an Amended Complaint against the insurer for a breach of contract arising out of the insurer’s failure to pay the full amount of Earl Stewart Toyota’s estimate for repair work of the vehicle. On February 22, 2016, the insurer filed a Motion for Summary Judgment (“Motion”), alleging that it was entitled to summary judgment because Earl Stewart continued to perform repairs on the insured’s vehicle based on its supplemental estimate and in contravention of language contained in the insurer’s estimate that

“all supplements must be pre-approved” and “supplemental charges may be subject to rejection” and in violation of policy language requiring Earl Stewart Toyota’s cooperation “in the investigation, settlement, or defense of any claim or suit.”

This Court rejects the insurer’s argument that the language contained in the supplemental estimate requiring pre-approval for repairs bound Earl Stewart Toyota because this language was contained only in the supplemental estimate, and not in the policy itself. Therefore, this language does not constitute a contractual duty on the part of Earl Stewart Toyota. Additionally, issues of material fact remain with respect to whether The Standard Fire Insurance Company’s proposed estimate would have fully paid for the loss covered by the policy. Such issues of material fact include whether The Standard Fire Insurance Company’s estimate properly called for the installation an aftermarket energy absorber, a used left quarter panel salvaged from a junkyard, and an aftermarket rear bumper cover. 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).

Accordingly, we **REVERSE** the lower court’s grant of summary judgment in favor of The Standard Fire Insurance Company because issues of material fact remain. Earl Stewart Toyota’s Motion for Appellate Attorneys’ Fees is **GRANTED** conditioned upon its prevailing in the lower court. Additionally, The Standard Fire Insurance Company’s Motion for Appellate Attorneys’ Fees is **GRANTED** conditioned upon its prevailing in the lower court, and the lower court’s determination that the proposal for settlement entitled The Standard Fire Insurance Company to fees under section 768.79, Florida Statutes.

SASSER, HAFELE, AND OFTEDAL, JJ., concur.

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO: 502016AP900115CAXXMB  
L.T. NO: 502015SC000953XXXXNB

STEWART AGENCY, INC. d/b/a  
EARL STEWART TOYOTA OF  
NORTH PALM BEACH, a/a/o Victoria Lyons  
Appellant,

v.

THE STANDARD FIRE  
INSURANCE COMPANY,  
Appellee.

Opinion/Decision Filed: JUN 13 2017

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

Appealed: May 3, 2016

DATE OF PANEL: April 17, 2017

PANEL JUDGES: SASSER, HAFELE, AND OFTEDAL

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:

) DISSENTING:

) CONCURRING SPECIALLY:

) With/Without Opinion

) With/Without Opinion

DATE:

J.

J.

J.

DATE:

J.

J.

J.

DATE:

J.

J.

J.

*[Handwritten signatures and dates]*  
6/7/17  
6/9/17  
6/9/17