

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

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 2015AP000031XXXXMB  
L.T. NO.: 2014SC002510XXXXMB

24/7 WATER RESORATION (A/A/O  
GARY FROONJIAN & LINDA ROMEO  
FROONJIAN),  
Appellant,

v.

GEOVERA ADVANTAGE INSURANCE  
SERVICES, INC., GEOVERA SPECIALTY  
INSURANCE COMPANY,  
Appellee.

Opinion filed: **JUN 16 2016**

Appeal from the County Court in and for Palm Beach County,  
Judge Ted Booras

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***ON REHEARING***

PER CURIAM.

We grant Appellant's Motion for Rehearing and the parties' joint Motion to Supplement the Record, withdraw the opinion issued April 25, 2016, and substitute the following in its place.

Appellant/Plaintiff, 24/7 Water Restoration ("24/7"), appeals the trial court's order granting final summary judgment in favor of Appellee/Defendant, GeoVera Specialty Insurance Company ("GeoVera"). 24/7 raises multiple issues on appeal. We find that the trial court did not err in granting GeoVera's Motion for Final Summary Judgment and therefore affirm as to all issues.

We write separately to address 24/7's arguments that (1) GeoVera failed to pay the additional \$1,226.81 awarded by the appraisal panel; and (2) GeoVera confessed to judgment. "As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal." *Sunset Harbor Condominium Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005). In order to be preserved for appeal, "an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation . . ." *Id.* (quoting *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985)).

In this case, it is apparent from the record that 24/7 never raised these arguments in the proceedings below. With respect to the first issue, the arguments in 24/7's Complaint and Cross-

Motion for Summary Judgment (“Cross-Motion”)<sup>1</sup> are not specific to what it is now arguing on appeal. In the Cross-Motion, it states, “24/7 was not listed as a payee on the \$8,128.34 undisputed amount of loss check issued by Defendant **despite its notice of 24/7’s assignment**. See affidavit of Pablo Iparraguirre.” (emphasis added). That affidavit, attached to the Cross-Motion, stated in paragraph 10 that “24/7 was not listed as a payee on the \$8,128.34 undisputed amount of loss check issued post appraisal by Defendant **despite its notice of 24/7’s assignment**.” (emphasis added). Additionally, 24/7’s Complaint stated in part:

28. Defendant has failed and/or refused to make full payment.

29. That Defendant’s **refusal to pay the full amount of the services rendered** by the Plaintiff was contrary to the terms of the policy and/or Florida law and was a breach of said contract of insurance.

30. The Plaintiff has been damaged by the Defendant’s breach of said contract of insurance by not having been compensated for the services rendered to the insured property

(emphasis added). Thus, 24/7 argued below that it was not paid for the services that it billed for, and therefore, pursuant to the assignment of benefits, it was entitled to be listed as a payee on **all** of the checks issued to the homeowners, whether it was for water mitigation services or not.

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<sup>1</sup> After the Court’s original opinion in this case issued, 24/7 filed an Agreed Motion to Supplement the Record in conjunction with its motion for rehearing, seeking to supplement the record with the Notice of Hearing for its Cross-Motion for Summary Judgment. We grant the motion and consider the notice of hearing as part of the record; however, it does not change our analysis. The record remains clear that the Cross-Motion for Summary Judgment was never ruled upon. 24/7 now argues for the first time in its Motion for Rehearing that it was error for the trial court to enter final summary judgment before the hearing on its Cross-Motion. 24/7 asserts that this Court should “reverse for further proceedings in the trial court as to the other issues 24/7 raised but was not able to argue, namely that GeoVera never paid 24/7 the amount Plaintiff owed to 24/7.” Even if 24/7’s Cross-Motion had been set for hearing and had been denied by the trial court, its argument regarding the failure to pay the additional \$1,226.81 awarded by the appraisal panel still was not preserved because, as we find *infra*, the argument in the Cross-Motion was not specific to what it are now argues on appeal.

24/7 never argued below that the \$8,128.34 post-appraisal<sup>2</sup> check issued to the homeowners included the \$1,226.81 that the appraisal panel awarded for water mitigation services. Rather, 24/7 made that argument for the first time on appeal. Therefore, the issue was not properly preserved for appeal.

With respect to the second issue, 24/7 never made any reference to a “confession of judgment” in the proceedings below. As such, this issue was not properly preserved for appeal.

The trial court’s entry of final summary judgment is AFFIRMED. Appellant’s “Amended Motion for Appellate Attorney’s Fees” is DENIED.

GILLEN, BRUNSON, and HAFELE, JJ. concur.

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<sup>2</sup> Appraisal was completed and GeoVera issued the \$8,128.34 check to the homeowners prior to 24/7 filing its Cross-Motion for Summary Judgment. Therefore, 24/7 could have, and should have, raised the issue below.