

IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION

CERTIFIED WINDSHIELD, LLC
a/a/o GABOR WENDLER,

CASE NO.: 15-CC-031840

DIVISION: I

Plaintiff,

v.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

FINAL JUDGMENT FOR PLAINTIFF

THIS MATTER came before the Court for Non-Jury Trial on March 10, 2016, on Plaintiff's breach of contract action arising out of damage to the Defendant's insured's windshield. Having considered the evidence, testimony, argument presented, and being otherwise fully advised, the Court finds:

Plaintiff alleged Defendant breached the insurance contract by not paying the full amount of its bill, which it argued is the "prevailing competitive price" as defined in the policy because Plaintiff is a competent and conveniently located repair facility, used parts of like kind and quality in repairing/replacing the covered loss, and Defendant could have secured the price billed from Plaintiff. Defendant argued that because it is able to show Defendant could secure a price lower than the amount it paid to Plaintiff, what it deems to be the "prevailing competitive price," Defendant did not breach the contract.

Initially, the Court addresses two evidentiary issues raised by the parties: (1) the authenticity of the Assignment of Benefits; and (2) the admission of Defendant's Exhibits 1 and 2. Plaintiff's standing in this matter is shown by the Assignment of Benefits contained in Plaintiff's Exhibit 2, which was admitted into evidence at trial without contemporaneous

objection from the Defendant. *See* Tr. Trans. 18:11–19:7 (Mar. 10, 2016). Defendant raised the authentication of the Assignment in its ore tenus Motion for Summary Disposition at the close of Plaintiff’s case. The authenticity requirement of Florida Statutes section 90.901 is met “by evidence sufficient to support a finding that the matter in question is what the proponent claims.” Additionally, once “admitted, the opposing party then can challenge its genuineness.” *ITT Real Estate Equities, Inc. v. Chandler Insurance Agency*, 617 So. 2d 750 (Fla. 4th DCA 1993). The Assignment contained in Plaintiff’s Exhibit 2 is sufficient to meet the requirements of section 90.901. Additionally, there is no record evidence contesting the genuineness of the Assignment and the signature contained therein. Therefore, the evidence before this Court establishes Plaintiff’s standing.

The Plaintiff objected to the introduction of Defendant’s Exhibits 1 and 2—invoices offered in support of Defendant’s position—for lack of proper predicate. The Court finds that the proper predicate was established through detailed testimony. *See* Tr. Trans. 67:18–78:9 (Mar. 10, 2016); *see also Channell v. Deutsche Bank National Trust Co.*, 173 So. 3d 1017 (Fla. 2d DCA 2015); *Nationstar Mortgage, LLC v. Berdecia*, 169 So. 3d 209 (Fla. 5th DCA 2015); *Bank of New York v. Calloway*, 157 So. 3d 1064 (Fla. 4th DCA 2015). Therefore, Plaintiff’s objection is overruled and Defendant’s Exhibits 1 and 2 are admitted.

As noted by the parties, at issue in this matter is the meaning of language in the insurance policy’s “Limit of Liability” provision contained in Section III – Physical Damage Coverages—specifically the definition of “prevailing competitive price.” The Court finds that the policy language is ambiguous and shall be construed in favor of the Plaintiff. *See* Or. Granting Pl’s Amend. Mot. for S.J., *Certified Windshield, LLC, a/a/o George Hart v. GEICO General Insurance Company*, (Fla. Hillsborough Cty. Ct. Apr. 1, 2016) (Case No.: 15-CC-031547).

This Court finds that Plaintiff has proven by greater weight of the evidence that the Plaintiff is a “competent and conveniently located repair facility,” that Plaintiff used parts of “like kind and quality” in making the repair/replacement of the insured’s windshield, and that Defendant could have secured the price Plaintiff billed; therefore, Plaintiff billed the prevailing competitive price in this matter. Because the parties agree that Plaintiff billed Defendant \$386.73 and that Defendant paid \$264.49, Defendant breached the insurance policy in this matter by failing to pay Plaintiff’s bill, the prevailing competitive price, in full.

Based on the foregoing, it is therefore **ORDERED AND ADJUDGED** that Judgment is entered in favor of the Plaintiff, CERTIFIED WINDSHIELD, LLC, a/a/o GABOR WENDLER. Plaintiff shall recover from the Defendant, GEICO GENERAL INSURANCE COMPANY, the amount of \$122.24, which shall bear interest at the statutory rate, for which let execution issue. The Court retains jurisdiction to determine entitlement to and the amount of attorney’s fees, if any, and costs in this matter.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this _____ day of April, 2016.

Electronically Conformed 4/14/2016

HONORABLE JOELLE ANN OBER
County Court Judge

Copies to:

Anthony Prieto, Esquire

Lindsey R. Trowell, Esquire