

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

CASE NO.: 5:19-cv-78-RH/MJF

JOSEPH LAMONICA,

Plaintiff,

v.

HARTFORD INSURANCE COMPANY
OF THE MIDWEST,

Defendant.

/

**PLAINTIFF'S RESPONSE TO DEFENDANTS MOTION *IN LIMINE* TO PRECLUDE
PLAINTIFF FROM INTRODUCING WITNESSES AND EVIDENCE NOT RELEVANT
TO THE RESIDENCE PREMISES [D.E. 119]**

COMES NOW Plaintiff, JOSEPH LAMONICA, by and through the undersigned counsel and hereby states as follows in his Response to the Defendant's Motion *in Limine* to Preclude Plaintiff from Introducing Witnesses and Evidence not Relevant to the Residence Premises [D.E. 119].

1. As detailed in the Plaintiff's Response [D.E. 110} to the Defendant's Motion for Partial Summary Judgment [D.E. 97], the Defendant knowingly promised and induced the Plaintiff into detrimentally believing that the "Residence Premises" as defined in the policy of insurance included his secondary vacation/family residence that he owned and insured with the Defendant as such for at least a decade before Hurricane Michael.
2. Hence, and per the equitable doctrine of estoppel and waiver, the Plaintiff's detrimental reliance (i.e. Hurricane Michael damages that directly arose and ensued in the years that followed) per the Defendant's promises and voluntary acceptance of coverage are material

facts that may be disputed and subject to being evidenced per the at issue witnesses (who fully documented and photographed the direct and ensuing damages after the loss) and exhibits.

MEMORANDUM OF LAW

A. The Doctrines of Waiver and Estoppel are Applicable

The at issue elements of estoppel are: (1.) the Defendant's pre-loss and post-loss promises as to the material fact that the policy of insurance provided coverage for the Plaintiff's secondary vacation/family residence, including the personal property within; (2.) the Plaintiff's reasonable reliance on the Defendant's stated promises; (3.) and the Plaintiff's detrimental reliance on the Defendant's stated promises. *Lloyds Underwriters at London v. Keystone Equip. Fin. Corp.*, 25 So. 3d 89, 93 (Fla. 4th DCA 2009); *Mobile Med. Indus v. Quinn*, 985 So.2d 33, 35-36 (Fla. 1st DCA 2008). Estoppel and waiver are both doctrines of equity that are designed to prevent injustice¹, the distinctions being that waiver does not require a showing of detrimental reliance, but instead requires a showing that the Defendant knowingly chose to insure and extend coverage for the Plaintiff's secondary residence. *Id.*

In moving for summary judgment [D.E. 97] on the issue of estoppel and waiver, the Defendant relied on *Arguelles v. Citizens Property Ins. Corp.*, 278 So. 3d 108 (Fla. 3rd DCA 2019). The holding is patently inapplicable from a factual standpoint since the court's decision was predicated on the fact that the insurer had no knowledge that the insured was no longer

¹ As testified by the Defendant's very own corporate representative, the Defendant's very own website states that it insures homeowner's such as the Plaintiff who maintain a non-primary residence. [D.E. 103, Exhibit E at 100:23-25; 101:1-25; 103:3-14; 104:8-13, 25; 105:1-22]. <https://www.thehartford.com/aarp/homeowners-insurance/homeowners-insurance-for-a-second-home>

using the insured home as a residence. In this case, and with the Defendant's knowledge, the Plaintiff used the insured home for no other reason than a vacation and family residence, and at all times for a least a decade before the loss, the Defendant was on notice of the Plaintiff's residency status and agreed to extend coverage for the residence and the personal property. [D.E. 103, Exhibit A at 70:1-25; 71:1-9; Exhibit E at 100:23-25; 101:1-25; 103:3-14; 104:8-13, 25; 105:1-22]; *Id.*

For the foregoing reasons, and to the extent that it does not prove cumulative or unnecessary, the Plaintiff respectfully reserves the right to rely upon the referenced witnesses and exhibits to establish the necessary elements of waiver and estoppel. With that said, it is reasonably anticipated that the presentation of witnesses and exhibits in relation to damages will be largely undisputed and/or exceedingly limited.

CONCLUSION

WHEREFORE, the Plaintiff respectfully requests this Court deny Defendant's Motion *in Limine* to Preclude Plaintiff from Introducing Witnesses and Evidence not Relevant to the Residence Premises Motion for Partial Summary Judgment [D.E. 97], and any other relief this Court deems just and proper under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April 2021, I electronically filed the forgoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of parties who not authorized to receive electronically Notices of Electronic Filing.

/s/ Jose P. Font, Esq.
Jose P. Font, Esq.
Florida Bar No.: 0738719
jfont@fontnelson.com
FONT & NELSON, PLLC
200 S. Andrews Ave, Suite 501
Ft. Lauderdale, Florida 33301
Telephone: (954) 248-2920
Facsimile: (954) 248-2134
Co-Counsel for Plaintiff

SERVICE LIST

Perry R. Goodman, Esq.
Brooke D. Oransky, Esq.
Brian M. McKell, Esq., and
MOUND COTTON WOLLAN & GREENGRASS LLP
101 N.E. Third Avenue, Suite 1500
Fort Lauderdale, Florida 33301
Email(s): bmckell@moundcotton.com; boransky@mountcotton.com;
pgoodman@moundcotton.com
Counsel for the Defendant, Hartford Ins. Co. of the Midwest

Daniel Cruz, Esq.
FBN: 31023
THE DIENER FIRM, P.A.
8751 W. Broward Boulevard, Suite 404
Plantation, FL 33324
Telephone: (954) 541-2117
Facsimile: (954) 541-2195
Email(s): service@dienerfirm.com; daniel@dienerfirm.com; and jess@dienerfirm.com
Co-Counsel for the Plaintiff, Joseph Lamonica