IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

FLORIDA ROOF SPECIALISTS, INC.,
a Florida corporation,

Plaintiffs,

Case No.: 2024-001865-CO

v.

GLORIA A. ARTHUR, an individual

Defendant.
_____/

Defendant's Motion to Dismiss with Prejudice Subject to Reservation to Counter-sue Plaintiff (filed March 26, 2024)
July 18, 2024 at 10:30 a.m.
before *the Honorable John Carassas*

Florida Roof Specialists v. Arthur
***Case No.:* Case No.: 2024-001865-CO**
July 18, 2024 at 10:30 a.m.

TAB **NOTICE, MOTION & COMPLAINT**

1. **Notice of Hearing (filed May 8, 2024)**

2. **Defendant's Motion to Dismiss with Prejudice Subject to Reservation to Counter-sue Plaintiff (filed March 26, 2024)**

3. **Plaintiff's Complaint (and Exhibit A to Motion to Dismiss)**
   - Exhibit A Warranty Deed
   - Exhibit B 09/20/2022 Executed Customer/Contractor Agreement
   - Exhibit C Initial Estimate ($12,732.85)
   - Exhibit D Citizen's Estimate ($10,239.40)
   - Exhibit E Selection Sheet (signed 11/8/22)
   - Exhibit F 11/08/2022 Notice of Commencement (recorded Book 22267, Page 237)
   - Exhibit G Inspection History (approved 03/07/2023)
   - Exhibit H FRS Invoice No. 31-453-1 (outstanding balance owed to Plaintiff – $9,173.39)
   - Exhibit I Final Estimate 03/23/2023 on behalf of Minorcan Construction Group - $23,025.031
   - Exhibit J Citizen's 04/06/2023 O&L Payment ($897.87)
   - Exhibit K Claim of Lien dated 5/12/23 (Book 22439, Page 1575)
   - Exhibit L Contractor's Final Payment Affidavit dated 5/19/2023

4. **Case Law and Other References**

- *Rosenberg v. Lawrence*, 541 So.2d 1204 (Fla. 3rd DCA 1988)
- *Office Pavilion South Fla., Inc. v. ASAL Products, Inc.*, 849 So.2d 367 (Fla. 4th DCA 2003)
- *Innkeepers Intern. Inc. v. McCoy Motels, Ltd.*, 324 So.2d 676, (Fla. 4th DCA 1975
- *Harris v.* Gonzalez, 789 So.2d 405 (Fla. 4th DCA 2001)
- *Hunt Ridge at Tall Pines, Inc. v. Hall,* 766 So. 2d 399 (Fla. 2d DCA 2000)
- Fla. Stat. § 626.854(20)

5. **Notice of Filing Supplemental Authority (filed July 11, 2024)**

- *Terrell Martin v. Jack Yanks Construction Company*, 650 So.2d 120 (Fla. 3d DCA 1995); and
- *The Gables 1 Townhouses, Inc. v. Sunmark Restoration, Inc.,* 687 So.2d 6 (Fla. 3d DCA 1996).

Filing # 197885687 E-Filed 05/08/2024 01:33:22 PM

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Defendant.
_____/

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing will be held before The Honorable John Carassas on **July 18, 2024 at 10:30 a.m.**, or as soon thereafter as same may be heard, on:

Defendant's Motion to Dismiss Complaint with Prejudice, Subject to Reservation to Counter-Sue Plaintiff

Time Reserved: One (1) Hour

The hearing will be conducted via Zoom at the following Link:

https://zoom.us/j/98252559100?pwd=ZGVGNVFTWDlnYlduM0wyMWtwUkFrdz09

Meeting ID: 982 5255 9100
Passcode: 045411

Dial by your location +1 786 635 1003 US (Miami)
Find your local number: https://zoom.us/u/aC7Cj8lnx

The undersigned attorney ☒ will be / ☐ will ***not*** be securing the services of a court reporter.

PLEASE BE GOVERNED ACCORDINGLY.

[SIGNATURE LINE ON NEXT PAGE]

Respectfully submitted,

BUTLER WEIHMULLER KATZ CRAIG LLP

/s/J. Pablo Caceres, Esq.

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Counsel for Defendant, Gloria A. Arthur, individually

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by electronic notification generated by Florida's e-Portal system on May 8, 2024:

Daniel M. Copeland
Attorney At Law, P.A.
9310 Old Kings Road South, Suite 1501
Jacksonville, FL 32257
Attorney for Plaintiff

/s/J. Pablo Caceres, Esq.
J. PABLO CACERES, ESQ.

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

FLORIDA ROOF SPECIALISTS, INC.,
a Florida corporation,

Plaintiffs,

Case No.: 2024-001865-CO

v.

GLORIA A. ARTHUR, an individual

Defendant.
_____/

DEFENDANT'S MOTION TO DISMISS COMPLAINT WITH PREJUDICE, SUBJECT TO RESERVATION TO COUNTER-SUE PLAINTIFF

Defendant, GLORIA A. ARTHUR, an individual ("Arthur"), by and through undersigned counsel, moves to dismiss the Complaint with prejudice for failure to state a cause of action, subject to a reservation of a right to countersue Plaintiff for amounts owed to Arthur and other possible claims, stating as follows:

I. Summary

Based on the allegations of the Complaint and its exhibits, and nothing more, the Complaint against Arthur should be dismissed with prejudice for failure to state a cause of action, for several reasons:

1. The Contract is illusory because Plaintiff controls whether it performs;
2. The Contract is illusory because essential elements of price and scope of work are not part of the Contract;
3. The Complaint is unenforceable as an illegal, unlicensed public adjusting agreement;
4. The Complaint and its exhibits establish that the Contract amount at $10,239.40 and/or that Arthurs only out-of-pocket cost is $2,500; and
5. The Complaint establishes that Plaintiff owes Arthur $2,724.75.

This Motion relies only on the facts arising from the "four corners" of the Complaint including the exhibits. Connecting the dots within the Complaint reveals that Plaintiff's quest to take and sell Arthur's home is a *travesty*.

II. Background

A. The Complaint[1]

1. Plaintiff is a roofing company suing Arthur to foreclose on her home (Count I) and for breach of contract (Count II). Plaintiff claims Arthur did not pay what she allegedly owed for roofing services that were allegedly embodied by a September 20, 2022, Customer/Contractor Agreement (the "Contract").[2] The Complaint alleges that "Plaintiff commenced performance of its work pursuant to *the Contract*" on January 26, 2023. (emphasis added).[3] But the Complaint is silent about what the Contract and several exhibit documents show—that this transaction involved a property insurance claim with Citizens Property Insurance Corporation ("Citizens"), which made certain payments on the claim.[4]

2. Plaintiff replaced Arthur's roof.[5] The Complaint attaches the "re-roof" permit for the work Plaintiff says it performed under the Contract.[6] The construction lien is based on only that roof replacement work.[7] Nothing else.

---

[1] *See* Exhibit A to this Motion, Complaint (including exhibits).

[2] Complaint, Exhibit B.

[3] Complaint, para. 17.

[4] Complaint, Exhibit D.

[5] Complaint, para. 19.

[6] Complaint, Exhibit F.

[7] Complaint, Exhibit L.

3. The Complaint incorporates the Contract, an Invoice,[8] and other documents that form the basis for the lawsuit and the lien. But despite all of this, the Complaint borders on the nonsensical in its failure to answer a simple question:

What was the agreed price and what was the agreed scope of work under the Contract?

Neither the Complaint nor the Contract provide any answers.

B. <u>The Deceptive Invoice: The Basis for the Complaint</u>

4. The Complaint alleges amounts owed on an Invoice *rather than the Contract sued upon*. Specifically, Plaintiff claims that an "outstanding balance of $9,173.39" is owed,[9] without citing any Contract price for the work that backs up that contention:

> 20. Subsequent to the completion of its work under the Contract, Plaintiff provided Defendant with its Invoice No. 31-453-1 (the "Invoice") crediting Defendant with payments received through the 8th day of February 2023. In addition to crediting Defendant for payments received, Defendant was also given a credit of $3,612.24 for work Plaintiff did not perform. The outstanding balance owed to Plaintiff is $9,173.39. Defendant has failed and refused to pay the monies owed to Plaintiff, breaching the Contract. A copy of said Invoice is attached hereto as **Exhibit "H"** and incorporated by reference herein.
>
> 21. On or about the 23rd day of March 2023, on behalf of Plaintiff, Minorcan Construction Group, Inc., provided Defendant with its final estimate (the "Final Estimate") of the Replacement Cost Value ("RCV") of the roof to be $23,025.03. A copy of the Final Estimate is attached hereto as **Exhibit "I"** and incorporated by reference herein.

[8] Complaint, Exhibit H.

[9] Complaint, para. 20.

Note that paragraph 21 above refers to a March 23, 2023, Minorcan Construction Group, Inc. ("Minorcan") estimate of $23,025.03.[10] There is no discussion whatsoever in the Complaint as to how this "estimate" created *after* the roof was replaced relates to anything owed by Arthur under the Contract signed *before* work commenced.

5. Plaintiff's "Invoice" falsely outlines the basis for Plaintiff's attempt to recover $9,173.39 and foreclose on Arthur's house. None of the Invoice charges or figures in the Invoice excerpt below were part of the September 20, 2022 Contract that is the foundation for this lawsuit. As will be revealed later in the Motion, they are fabricated figures as far as the Contract is concerned—they do not specifically exist within the Contract, and they did not exist at the time of the Contract. The figures were generated months later, and there is no allegation that Arthur agreed to them:

INSURANCE CLAIM	
Net Insurance Claim (ACV)	$6,068.68
Deductible	$2,500.00
Recoverable Depreciation	$1,670.72
O&L (PWI)	$897.87
Subtotal: Insurance Claim	**$11,137.27**
WORK NOT DOING	
Satellite System (FRS Xactimate line 23-24)	-$225.21
Gutter/Downspout (FRS Xactimate line 25)	-$180.76
Nook (FRS Xactimate lines 31-38)	-$1,441.69
Living Room (FRS Xactimate lines 39-46)	-$1,205.25
Debris Removal (FRS Xactimate line 47)	-$288.10
Labor Minimums (FRS Xactimate lines 48-49)	-$271.23
Subtotal: Work Not Doing	**-$3,612.24**

[10] Complaint, Exhibit I.

SUPPLEMENT	
FRS Xactimate 3.23.23	$11,887.76
Subtotal: Supplement	**$11,887.76**
Grand Total	**$19,412.79**

6. The Invoice, in a word, is *deceptive*. As borne out by the Complaint exhibits, the Invoice charges above reflect a wrongful manipulation of and inclusion of values that Plaintiff unilaterally created—*there is no allegation that Arthur agreed to these numbers*. Plaintiff manufactured the $11,887.76 "Supplement" within the Invoice by using figures from a March 2023-created "FRS Xactimate 3.23.23" which is a reference to the Minorcan estimate[11] dated March 23, 2023. The $11,887.76 figure does not appear in that estimate anywhere, much less the Contract.

7. Simple math shows that Plaintiff arbitrarily took the total Minorcan estimate (which included roof and non-roof work) of $23,025 and subtracted the so-called "Insurance Claim" figure of $11,137.27, to arrive at the invoice "Supplement" of $11,887.76 only after the work was already done, not before. The Contract does not authorize any of this calculation.

8. The "Supplement" label in the Invoice excerpt is deceptive because, per the Complaint exhibits,[12] there was no supplemental or unexpected work performed. Plaintiff merely imposed a "Supplement" charge on its own whim. And the $19,818.76 roof replacement charge on page 4 of the Minorcan estimate contradicts Plaintiff's own earlier,

[11] Complaint, Exhibit I.

[12] *See, e.g.,* Exhibit E, Selection Sheet that indicates no "Upgrades/extras."

so-called Initial Estimate of $12,732.85.[13] And, even Plaintiff's Initial Estimate, as will be seen later, is irrelevant to the Contract amount for roof replacement.

9. The line items under the Invoice's "Work Not Doing" also are irrelevant to this motion to dismiss.[14] However, they do support amounts owed to Arthur because they show Plaintiff did not perform the work Citizens had included in its scope of loss and the payment it made on the claim. Plaintiff improperly kept monies allocated for work Plaintiff did not do.

B. The September 20, 2022, Contract

10. The September 20, 2022, Contract is not a binding agreement. Nothing about the Contract reflects a typical agreement to perform roofing work. Instead, Plaintiff drafted the Contract to control and leverage, illegally, a homeowner's insurance claim. In so doing it never bound Arthur to a specified agreed Contract price and scope—essential terms that would be the core of any binding roofing contract and any resulting lawsuit. This is fatal to its claim for breach of contract and the construction lien.

1. No Specific Scope of Work or Price in the Contract

11. The September 20, 2022, Contract has no specified agreed price, no agreed scope of work. The Contract begins oddly with a vague "TOTAL INVESTMENT SUMMARY" introduction that does not obligate Arthur to pay anything or Plaintiff to do anything. Instead of delineating a scope of work and the price for such work, the provision

[13] Complaint, Exhibit C.

[14] With some knowledge of construction estimates, the Invoice's Supplement charge and the "credits" can be discerned. Within the Minorcan estimate, Plaintiff took the pricing for work it decided it would not do and used that pricing as the basis for the credits. Citizens included such work in its scope of loss and payment, and Plaintiff improperly kept Citizens' payments for work it did not do by arbitrarily inflating the roof replacement charges after the fact and claiming it was applying those amounts to the unpaid balance.

refers to concepts foreign to roofing contracts like "replacement cost value" ("RCV") as well as documents not part of the Contract, like a document referenced as an "insurance 'scope of loss'":

> TOTAL INVESTMENT SUMMARY – It is agreed upon the amount of the contract shall be based on the amount equal to full replacement cost value as stated on insurance "scope of loss" including deductible and all upgrades, supplements, extra charges and/or settlements unless otherwise noted.

12. A similar contract amount provision appears later and confirms that the "insurance company's Scope of Loss" controls the "dollar amount of the contract":

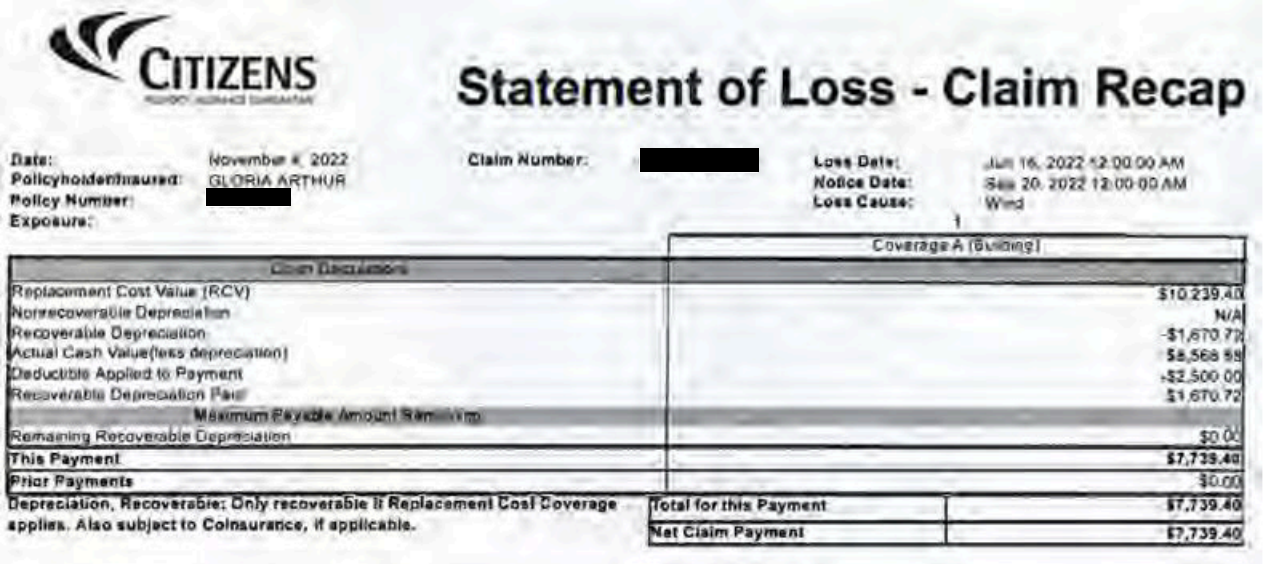
> The *dollar amount of the contract* is the amount approved on the insurance company's final Scope of Loss plus any upgrades and/or overhead and profit.

(emphasis added). But there is no Scope of Loss alleged to be in existence at the time of the September 20, 2022, Contract.

2. "Insurance Company Scope of Loss" Sets the Replacement Cost Value and the "dollar amount of the contract" at $10,239.40, assuming the Contract is enforceable.

13. The Complaint incorporates, albeit it did not exist at the time, the Contract's referenced "insurance scope of loss" or the "insurance company's final Scope of Loss," which is a November 4, 2022, "Statement of Loss – Claim Recap" ("Statement of Loss").[15] The Statement of Loss is the "scope of loss" document contemplated by the TOTAL INVESTMENT SUMMARY and the other provision quoted above because it sets forth a "replacement cost value" and it was issued by the "insurance company." And Plaintiff saw fit to attach it to the Complaint as relevant to the breach of contract claim:

[15] Complaint, Exhibit D, Statement of Loss – Recap.



CITIZENS

Statement of Loss - Claim Recap

Date: November 4, 2022
Policyholder/Insured: GLORIA ARTHUR
Policy Number: [redacted]
Exposure:

Claim Number: [redacted]

Loss Date: Jun 16, 2022 12:00:00 AM
Notice Date: Sep 20, 2022 12:00:00 AM
Loss Cause: Wind

Claim Calculations	Coverage A (Building)
Replacement Cost Value (RCV)	$10,239.40
Nonrecoverable Depreciation	N/A
Recoverable Depreciation	-$1,670.72
Actual Cash Value(less depreciation)	$8,568.68
Deductible Applied to Payment	-$2,500.00
Recoverable Depreciation Paid	$1,670.72
Maximum Payable Amount Remaining	
Remaining Recoverable Depreciation	$0.00
This Payment	**$7,739.40**
Prior Payments	$0.00

Depreciation, Recoverable: Only recoverable if Replacement Cost Coverage applies. Also subject to Coinsurance, if applicable.

Total for this Payment	**$7,739.40**
Net Claim Payment	**$7,739.40**

14. Putting "two and two together," and taking the Complaint allegations and exhibits at face value, the Contract price of Plaintiff's roof repair work is the "replacement cost value" of $10,239.40 per the Statement of Loss above and per the "TOTAL INVESTMENT SUMMARY."

15. Again, the Contract is illusory and unenforceable. But *if* the Contract were enforceable and *if* the insurance company's Statement of Loss can set the Contract price, *that price is* ***$10,239.40*****.** However, this lawsuit falsely rests on Arthur's alleged failure to pay some other arbitrary price unsupported by any allegation or exhibit to the Complaint.

3. An Unenforceable, Illusory Contract Based on Mere *Hope*

16. Fundamentally, the September 20, 2022, Contract does not reflect a binding agreement for roofing work. Instead, the Contract is based on a mere *hope* that Plaintiff will choose to accept Citizens' payment for roof work that is not priced or described in the Contract. The Contract reflects a *hope* that Citizens will agree to pay (minus the deductible) an amount not specified in the Contract but only *later* unilaterally "estimated" by Plaintiff and presented to Citizens.

17. Of course, these *hopes*, these *contingencies*, never materialized. Instead, as the Complaint suggests, Citizens did not pay Plaintiff's *unilaterally demanded* amount for the roof work. Plaintiff's unilaterally-set and demanded price for the roof work cannot be the basis for a binding agreement between Plaintiff and Arthur when Citizens decides not to pay it.

a. At Least Two Expressed Contract Contingencies Doom the Contract.

18. The front of the Contract contains at least two contingencies or conditions completely out of Arthur's control, rendering the Contract illusory. If Citizens denies payment of the claim entirely, *i.e.*, for *any* of what Plaintiff *unilaterally* demands for Plaintiff's scope of work, the Contract declares the Contract terminated in such instance:

> **THE CONTRACT SHALL BE AUTOMICALLY TERMINATED SHOULD THE INSURANCE COMPANY DENY THE CLAIM AND NO OTHER RECOURSE IS OPTIONAL SUCH AS APPRAISAL, SETTLEMENT OR SUIT.**

(emphasis in original). Thus, no contract exists if Citizens *later* denies the roof damage insurance claim prepared by Plaintiff. Citizens' future decision to accept or deny the claim controls the contract's viability. Plaintiff does not want any part of the work if Citizens denies coverage (which did not happen). In such instance, Arthur is left to find another roofer. Again, this is not your typical roofing contract that allows a roofer to simply walk away from a signed agreement.

19. The Contract contemplates a second contingency when Citizens accepts coverage for the work but does not pay "enough" of what Plaintiff only *later* unilaterally demands for the work. Language on the front side of the Contract declares, right after

"**THE TERMS AND CONDITIONS,**" that the Contract is contingent on whatever Plaintiff unilaterally decides is not "enough funds" for the work:

> ….Florida Roof Specialists, Inc….. and [Arthur] agrees [sic] to enter into this Contract *based on the contingency* that Company *will receive enough funds* to complete the project *from the insurance carrier* plus applicable deductible and non-recoverable depreciation from the Customer which is all to be paid to the Company *unless otherwise specified in writing and attached herein*.

(emphasis added). Effectively, Plaintiff's later-created price for its later-determined scope of work controls whether Citizens pays "enough funds" and whether Plaintiff decides to perform under the Contract. This, among other things, makes the contract illusory. Arthur never agreed to Plaintiff's unilaterally-demanded price that could be the basis for whether Citizens paid enough for roof replacement. But regardless, Plaintiff replaced the roof, so Plaintiff waived this condition assuming the Contract were enforceable, which it is not.[16]

4. The "Partial Settlement" and Scope of Work Provision

20. Per the Contract, Plaintiff solely controls another essential term—the scope of work it must perform—again rendering the Contract illusory as well as an illegal public adjusting contract. The Contract several lines down on the front page, provides Plaintiff with the unilateral option to partially settle with the insurance company, with the Plaintiff's estimate delineating the scope of work (*but not the price*) that includes non-roof work that was never done. This is the first time the Contract attempts to define a scope of work, again improperly relying on a document—Plaintiff's September 22, 2022, Initial Estimate—that did not exist at the time of the September 20, 2022, Contract:

[16] Note that the provision above states that any change to the contingency requirement contemplates a *separate* document "attached" to the Contract. In other words the contingency can be changed only with a separate agreement. And this provision does not mention "partial settlements" with the insurance company. It addresses only a situation where not enough funds—as deemed solely by Plaintiff—is received. More on the "partial settlements" later.

> If a *partial settlement* is accepted the *scope of work* shall be the contractor's estimate submitted to the insurance carrier. Any/all deductibles and non-recoverable depreciations are the responsibility of the customer and will be paid by the customer to Company before work begins.

(emphasis added). This provision contemplates that Plaintiff and the insurance company have agreed on a scope of work and a price (Citizens' scope of loss RCV) before work begins. That agreement is called a "partial settlement." It is called a "partial settlement" because after Plaintiff agrees with the insurance company on the scope of work and the replacement cost value (discussed earlier), Plaintiff expects only one additional payment—the deductible amount payment from Arthur.[17]

21. Assuming the Contract's enforceability, this "partial settlement" provision was triggered per the Complaint allegations and exhibits. Plaintiff obviously partially settled with Citizens because Citizens issued its replacement cost value in the scope of loss on November 4, 2022, and Plaintiff began the process of replacing the roof four days later on November 8, 2022, when Plaintiff and Arthur signed a Selection Sheet confirming Arthur's out-of-pocket liability for only the deductible and nothing more, especially not any future Invoice "Supplement."

22. Therefore, the "dots" in the Contract "connect" and obligate Plaintiff to do any work *only* upon a partial settlement with Citizens, and then at most[18] *only* for the "replacement cost value" of $10,239.40 in the insurance company's scope of loss for the scope of work outlined in any pre-work estimate by Plaintiff.

---

[17] Non-recoverable depreciation was not an issue as the depreciation, per Exhibit D was recoverable.

[18] Actually, as will be discussed later, the Citizens' scope of loss replacement cost value should be lower as it reflects amounts for work Plaintiff did not perform.

23. The “dots” of the Complaint “connect” to show that on January 26, 2023, Plaintiff began replacing Arthur’s roof and was contractually obligated to perform in accordance with the scope of work outlined in its pre-work, September 22, 2022, Initial Estimate, and for, at most, the replacement cost value set forth in Citizens’ November 4, 2022, scope of loss, not any Initial Estimate or Minorcan Estimate. And as explained later, a Selection sheet confirms Arthur’s obligation for only the deductible of $2,500.[19]

5. The Inapplicable Upgrades, Additional Work Provision

24. The only other possibly relevant provision on the Contract front page—the Additional Work provision—does not apply. This provision that applies to make Arthur liable to pay only when an insurance company does not approve upgrades or other additional work, *i.e.*, work other than the re-roof work here. And any in event, as will be discussed later, the Selection Sheet signed by Arthur and Plaintiff confirms that there were no upgrades or other additional work not approved by Citizens.

6. The Contract Terms on the Reverse Side Change Nothing

25. The Contract continues with more oddities on the reverse side. To the average reader, the front page sets forth all of the material terms of the Contract, with two brief references to the back page. Indeed, the bulk of the Contract language on the front page is encompassed by text boxes and begins with “**THE TERMS AND CONDITIONS**” as if every important term is on the front page and encompassed within those text boxes.

26. But the reverse side begins with another “TERMS” reference that purports to *erase* an unspecified “contingency clause”—a major term—that exists on the front:

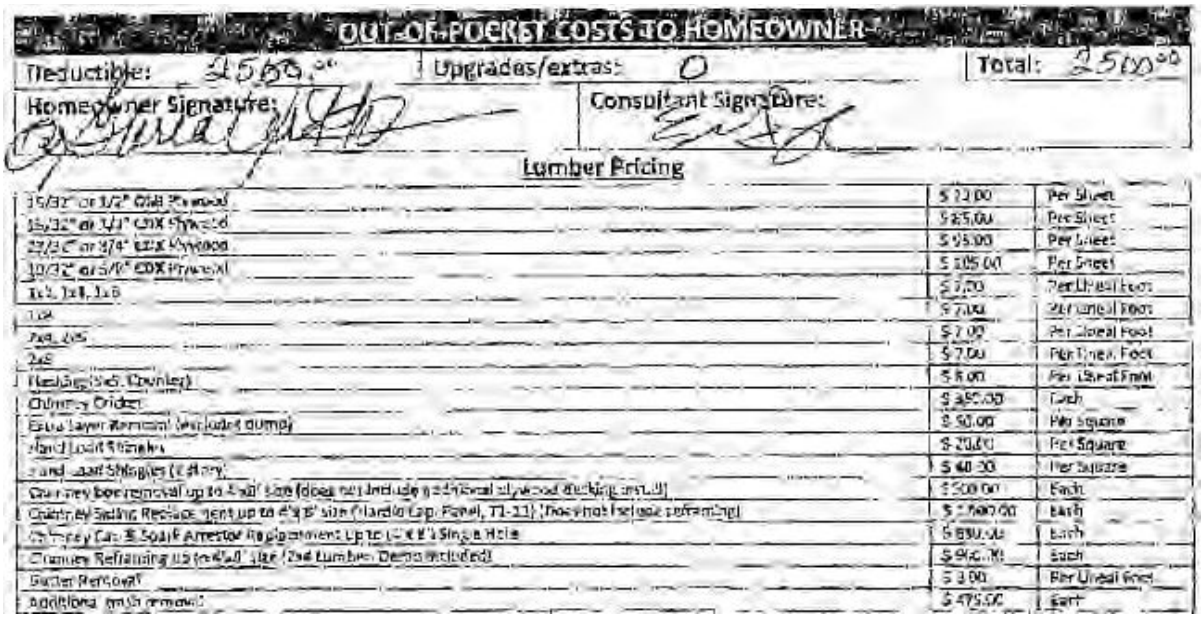
[19] Complaint, Exhibit E.

> TERMS: If the insurance company approves the claim for any amount, and or a settlement is reached the contingency clause on the front side of this contract is removed from this contract.

The only reason for Plaintiff to prominently display an important term on the front side of a contract only to have remove it by buried, fine print on the back is to mislead homeowners like Arthur. This language is ambiguous because it does not specifically identify the contingency being removed. But even if it could be identified, the illusory nature of the contract remains, as well as the price and scope of work outlined on the front. The reverse side terms do not affect the existing fatal flaws of the Contract.

7. Plaintiff's Selection Sheet Confirms Arthur's Out-of-Pocket Liability of Only $2,500

27. The fully executed Selection Sheet proves that Arthur's liability is limited to $2,500. Attached to the Complaint is a November 8, 2022, Selection Sheet, *signed by both parties*, that includes the following provision, declaring that Arthur's "OUT OF POCKET COSTS" was only $2,500, with "0" dollar responsibility for upgrades:



OUT-OF-POCKET COSTS TO HOMEOWNER

Deductible: 2500.00 | Upgrades/extras: 0 | Total: 2500.00

Homeowner Signature: | Consultant Signature:

Lumber Pricing

15/32" or 1/2" OSB Plywood	$ 22.00	Per Sheet
15/32" or 1/2" CDX Plywood	$ 25.00	Per Sheet
23/32" or 3/4" CDX Plywood	$ 35.00	Per Sheet
30/32" or 5/8" CDX Plywood	$ 105.00	Per Sheet
1x4, 1x8, 1x6	$ 7.00	Per Lineal Foot
1x8	$ 7.00	Per Lineal Foot
2x4, 2x6	$ 7.00	Per Lineal Foot
2x8	$ 7.00	Per Lineal Foot
Flashing (Incl. Counter)	$ 6.00	Per Lineal Foot
Chimney Chase	$ 850.00	Each
Extra Layer Removal (excludes dump)	$ 50.00	Per Square
Hand Load Shingles	$ 20.00	Per Square
Hand Load Shingles (Heavy)	$ 40.00	Per Square
Chimney Base removal up to 8'x8' size (does not include additional plywood decking install)	$ 500.00	Each
Chimney Siding Replacement up to 4'x8' size (Hardie Lap Panel, T1-11) (Does not include reframing)	$ 1,000.00	Each
Chimney Cap & Spark Arrestor Replacement Up to 18"x18" Single Flue	$ 850.00	Each
Chimney Reframing up to 4'x4' size (2x6 Lumber, Demo Included)	$ 950.00	Each
Gutter Removal	$ 3.00	Per Lineal Foot
Additional mesh removal	$ 475.00	Each

28. The November 8, 2022, Selection Sheet is an agreement that sets Arthur's liability at $2,500 out-of-pocket. There were "zero" upgrades or extras. Whatever the earlier Contract described would be Arthur's obligation for payment, the Selection Sheet clarified, superseded, or otherwise set it by agreement at $2,500. The Selection Sheet, above the signature line, states that Arthur will be invoiced presumably the $2,500 figure above and that she is expected pay within ten days of the invoice. Nothing suggests that she will be responsible for more. And the Minorcan Estimate does not reveal any additional work that was done to replace rotted wood or any other work on the Selection Sheet.

C. The Complaint Allegations Contradict the Contract and Exhibits.

1. The Complaint Alleges Irrelevant, Estimated RCV Amounts.

29. The Complaint allegations are at odds with the Contract and Complaint exhibits. The Complaint in paragraph 13 refers to Plaintiff's Initial Estimate for "RCV" of $12,732.85," an estimate Plaintiff created only after the Contract. But it is not, evidently, the basis for the lawsuit. And it is irrelevant to any Contract amount. Indeed, the Contract declares that the "scope of loss" from the insurance company dictates the replacement cost value and that sets the Contract amount, not any Initial Estimate, or any estimate, by Plaintiff. So, the Initial Estimate referenced by the Complaint can be ignored in any discussion of Arthur's payment obligation under the Contract. If anything, the Complaint's reference to the Initial Estimate confirms the unilateral nature of Plaintiff's demanded price.

30. Then, the Complaint raises the irrelevant March 23, 2023, Minorcan estimate for $23,025.03, nearly double Plaintiff's "Initial Estimate." This estimate is

completely foreign to the Contract as the basis for any Contract amount. Yet, it is inexplicably the basis for breach of contract.

31. As stated previously, the suspected reason for the Contract and the Invoice for such arbitrary additional amounts is to force an insured like Arthur to pursue an inflated insurance claim. If that does not work, Arthur's house, through a construction lien, would be ripe for the taking.

III. Argument

A. Plaintiff Cannot Prove Breach of Contract Because the Contract Is Unenforceable

1. The Contract is Illusory.

a. Plaintiff controls the price and scope.

The Contract that is the foundation of Plaintiff's breach of contract action is entirely illusory. Whether Plaintiff is obligated under the Contract to do any work depends solely on the price it alone sets for the work, with no agreement by Arthur on the price. If Plaintiff is not satisfied with a proposed payment by Citizens for the Scope of Work it creates, the Contract contingencies provide Plaintiff an "out" from performing. "Where one party retains to itself the option of fulfilling or declining to fulfill its obligations under the contract, there is no valid contract and neither side may be bound." *Rosenberg v. Lawrence*, 541 So.2d 1204, 1206 (Fla. 3rd DCA 1988). The Fourth District Court of Appeal deemed as illusory a contract that was devoid of price and quantity. *See Office Pavilion South Fla., Inc. v. ASAL Products, Inc.*, 849 So.2d 367, 370 (Fla. 4th DCA 2003). "Without the ensuing quantity term or price term, however, this 'mutual promise' is illusory and unenforceable." *Id*.

Likewise, Plaintiff's contract does not contain any specified scope of work or price. It is up to Plaintiff to create a scope of work later and it is up to Plaintiff to accept a price from the insurance company for such scope of work. Arthur does not have the right to hold Plaintiff to any promise on such essential terms as scope of work and price. The contract is illusory and lacks any real consideration.

The Contract's reference to future documents containing certain essential terms does not change its illusory nature. Metaphorically speaking, "blanks" were left for the Contract price and scope of work when it cited documents that did not exist at the time of the Contract. *See Innkeepers Intern., Inc. v. McCoy Motels, Ltd.*, 324 So.2d 676, 678 (Fla. 4th DCA 1975) ("As a general rule, presence of blanks in a contract is fatal to the enforcement if the blanks occur in a provision dealing with an essential term of the contract."). Price and scope of work are essential terms to agreements like the Contract, and they did not exist when Arthur signed it.

2. The Contract Amounts to an Illegal Public Adjusting Contract.

The Contract is illegal and unenforceable because, as extensively discussed, it authorizes Plaintiff to settle the claim or part of the claim with the insurance company, a public adjusting activity specifically prohibited by Florida law. Generally, "[a] contract which violates a provision of the constitution or a statute is void and illegal and will not be enforced in our courts." *Harris v. Gonzalez*, 789 So.2d 405, 409 (Fla. 4th DCA 2001). Florida Statutes Section 626.854(20 states:

> (20) Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed and appointed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

> (c) Offer to initiate or negotiate a claim on behalf of an insured;

The crux of the Contract is to allow Plaintiff to insert itself into the insurance claim and settle all or parts of it in exchange for being hired to do the work. Plaintiff is not a mere vendor attempting to sell a roof replacement to Arthur for a specific price. Rather, Plaintiff is "estimating" or "adjusting" what it will submit to the insurance company as a fair price for the roof loss or repair. Then, as the Contract references, attempt to settle that amount with the insurance company. That is what a public adjuster does, fundamentally.

The Contract even contemplates Plaintiff not performing work that is specifically part of the insurance claim it prepares for Arthur. Unless it is acting as a public adjuster, why is Plaintiff involved in estimating work it has no intention of performing? That is the act of public adjusting, and Plaintiff is not acting as a mere roofer. Therefore, the Contract is illegal and cannot be enforced.

B. The Complaint and Exhibits Establish that Plaintiff is Owed Nothing.

This Motion relies entirely on the Complaint and the exhibits to the Complaint. The facts reflected in the exhibits prevail over the factual assertions of the Complaint. Where the allegations in the complaint are contradicted by the complaint's attached exhibits, the plain meaning of the exhibits control and may be the basis for a motion to dismiss. *See Hunt Ridge at Tall Pines, Inc. v. Hall,* 766 So. 2d 399, 401 (Fla. 2d DCA 2000) ("Where complaint allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss."). The exhibits provide all of the information necessary to dismiss the Complaint against Arthur, as well as support a counterclaim.

1. The Contract Amount is, at most, $10,239.40, which was fully paid.

Assuming the Contract is enforceable, the Contract amount is limited to, at most, $10,239.40, the replacement cost value in Citizens' scope of loss. That amount should be lower, actually, because it included amounts for work Plaintiff did not do. Nevertheless, Plaintiff has been paid in full as the Invoice shows that Plaintiff received a total of $10,239.40. As a matter of law, Arthur did not breach.

2. The Fully-Executed Selection Sheet Confirmed Arthur's Sole Out-of-Pocket Liability for $2,500, Which Plaintiff Admits Was Paid.

Also, the November 8, 2022, Selection Sheet could not be clearer in limiting Arthur's out of pocket liability at $2,500 for the work, which is entirely consistent with the Contract. The Selection Sheet confirmed there were no extras and certainly no future "Supplement" triggered by a March 2023 Minorcan estimate. Plaintiff cannot sign a Selection Sheet on November 8, 2022, to confirm Arthur's $2,500 liability for the reroof, perform the reroof in January 2023, and then Invoice Arthur far more than that amount. This is just a terribly deceptive business practice.

C. Plaintiff Was Overpaid $2,724.75.

The Complaint and the exhibits establish that Plaintiff owes Arthur $2,724.75. Plaintiff improperly kept payments for work it did not do. Per the Contract, Citizens' scope of loss replacement cost value dictates the cost. And amounts within that replacement cost value should be removed if Plaintiff did not do the work included within those amounts. That replacement cost value is $7,514.65 per the Citizens' estimate that was part of the scope of loss.

Dwelling Roofing

1329.00 Surface Area — 13.29 Number of Squares
152.99 Total Perimeter Length — 46.51 Total Ridge Length

	QUANTITY	UNIT	TAX	RCV	AGE/LIFE	COND.	DEP %	DEPREC.	ACV
1	Tear off, haul and dispose of comp. shingles - Laminated								
	13.29 SQ	64.99	0.00	863.72	18/30 yrs	Avg.	NA	(0.00)	863.72
2	[illegible]								
	[illegible]								
	This item did not previously exist or expands the scope of repairs, but is required by current building codes. The code upgrade cost is payable when incurred, subject to limits.								
3	[illegible]								
	[illegible]								
	This item did not previously exist or expands the scope of repairs, but is required by current building codes. The code upgrade cost is payable when incurred, subject to limits.								
4	Roofing felt - 30 lb								
	13.33 SQ	51.21	16.03	698.66	18/20 yrs	Avg.	80% [M]	(183.21)	515.45
5	Asphalt starter - universal starter course								
	93.01 LF	2.38	3.32	224.68	18/20 yrs	Avg.	80% [M]	(37.95)	186.73
6	Drip edge								
	152.99 LF	3.35	12.96	525.48	18/35 yrs	Avg.	51.43%	(95.20)	430.28
7	Laminated - comp. shingle rfg. - w/out felt								
	14.67 SQ	298.29	139.86	4,515.77	18/30 yrs	Avg.	60%	(1,198.83)	3,316.94
8	Flashing - pipe jack								
	1.00 EA	57.53	1.03	58.56	18/35 yrs	Avg.	51.43%	(7.57)	50.99
9	Roof vent - turtle type - Metal								
	1.00 EA	85.68	2.00	87.68	18/35 yrs	Avg.	51.43%	(14.71)	72.97
10	Continuous ridge vent - aluminum								
	46.51 LF	11.32	13.61	540.10	18/35 yrs	Avg.	51.43%	(99.98)	440.12
Totals: Dwelling Roofing			**188.81**	**7,514.65**				**1,637.45**	**5,877.20**
Total: Source - EagleView Roof			**188.81**	**7,514.65**				**1,637.45**	**5,877.20**

Plaintiff admits (per the Invoice) that it received $7,739.40 on December 26, 2022, and $2,500 (paid by Arthur directly), for a total of $10,239.40. Subtracting Citizens' replacement cost value from the total payments Plaintiff received results in an overpayment of $2,724.75.

IV. CONCLUSION

The Complaint should be dismissed because the contract is illusory and illegal. And, in any event, the Complaint establishes that Plaintiff is not owed anything, and has

been overpaid. Subject to Arthur's possible counterclaim to recover amounts due from Plaintiff and other causes of action, the Complaint should be dismissed with prejudice.

WHEREFORE, Defendant, Gloria A. Arthur, prays that this Court dismiss the Complaint with prejudice, subject to a possible counterclaim, and for such further relief this Court deems appropriate.

Respectfully submitted,

BUTLER WEIHMULLER KATZ CRAIG LLP

/s/ J. Pablo Caceres

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Facsimile: (813) 281-0900
Counsel for Defendant, Gloria A. Arthur, individually

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served by electronic notification generated by Florida's e-Portal system on March 26, 2024:

Daniel M. Copeland
Attorney At Law, P.A.
9310 Old Kings Road South, Suite 1501
Jacksonville, FL 32257
Attorney for Plaintiff

/s/ J. Pablo Caceres
J. PABLO CACERES

da Roof Specialists Inc
1 Sunbeam Rd. Suite 2
sonville, FL 32257

Gloria Arthur
[redacted]

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING AND SHALL EXPIRE AND BECOME NULL AND VOID HEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

STATE OF FLORIDA
COUNTY OF Pinellas

BEFORE ME, the undersigned notary public, personally appeared Jeremey Rogero who was duly sworn and says that he is the President - Florida Roof Specialists, Inc Lienor, whose address is: **4949 Sunbeam Rd, Suite 2, Jacksonville, FL 32257**, and that in accordance with a contract with, lienor furnished labor, materials, and services for a roofing contract on the following described real property Pinellas County, Florida:

SUN COAST ESTATES LOT 80

Described as: [redacted]

owned by Gloria Arthur of a total value of $ 19,412.79, of which, there remains unpaid in the amount of $ 9,173.39 and furnished the first of the items on 01/26/2023, and the last of the items on 03/04/2023 and that the lienor is in privity to the contract with Gloria Arthur

Jeremey Rogero
Florida Roof Specialists, Inc