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CLERK OF THE CIRCUIT COURT  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI DADE COUNTY FLORIDA  
CIVIL DIVISION

GENERAL JURISDICTION DIVISION

CASE NO.: 10-53623 CA 25

MARIA MOMBLAN,

Plaintiff,

v:

AMERICAN INTEGRITY INSURANCE  
COMPANY OF FLORIDA,

Defendant.

**ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

THIS CAUSE came before this Honorable Court on August 2, 2011, on Defendant, AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA's (hereinafter referred to as "AMERICAN INTEGRITY") Cross-Motion for Summary Judgment with Regards to Fraud Defenses. This Honorable Court has considered the parties' written submissions, pertinent case law and argument by counsel; and makes the following findings of fact and conclusions of law:

**FACTUAL AND PROCEDURAL BACKGROUND**

This lawsuit stems from a policy of homeowners insurance issued by AMERICAN INTEGRITY to Plaintiff, Maria Momblan, policy number ADF166034, effective dates May 18, 2009 to May 18, 2010, related to a single dwelling home located at 14245 SW 164<sup>th</sup> Terrace, Miami, Florida 33177 (hereinafter referred to as "subject insured property").

AMERICAN INTEGRITY issued a payment in the amount of \$14,956.60 (hereinafter referred to as "subject check") under the policy of insurance made payable to Ms. Momblan, the Additional Insured Mortgagee, as well as the Public Adjuster, based on Plaintiff's claim

submitted to AMERICAN INTEGRITY that the subject property had suffered damages as a result of vandalism allegedly caused by tenants.

Following deposit of the Coverage A check into Ms. Momblan's checking account, Ms. Momblan then submitted an additional estimate in the amount of \$168,920.57, which far exceeded the initial inspection amount, in the form of a supplemental claim for additional damages.

Upon receipt of Plaintiff's supplemental claim, AMERICAN INTEGRITY conducted an additional inspection of the subject property and learned that as of that date, no repairs had been made. AMERICAN INTEGRITY also learned that the tenants had converted the subject property into a complex marijuana grow house, which included "pirated electricity" and "faux walls", among other things. AMERICAN INTEGRITY's subsequent inspection resulted in an estimate in the amount of \$104,706.71.

Despite Ms. Momblan reporting that tenants occupied the subject property, Ms. Momblan continued to receive the Florida Power and Light bill for the subject insured property. The bills were not sent to the subject insured property. Instead, Ms. Momblan received those bills at her place of residence 2040 SW 127<sup>th</sup> Avenue, Miami, Florida.

Based on the criminal nature of the damages sustained to the property, Plaintiff's continued receipt of the electricity bill during the tenant occupancy period, Plaintiff's failure to conduct any repairs on the subject property despite having received the subject check, and Plaintiff's submission of the supplemental claim, AMERICAN INTEGRITY was obligated pursuant to Florida Statutes §626.989 and §626.9891 to conduct an investigation into the facts and circumstances surrounding Plaintiff's claim, including the supplemental claim.

During its investigation, AMERICAN INTEGRITY learned that the Coverage A check was deposited into Ms. Momblan's account without the Additional Insured Mortgagee's signature.

Ms. Momblan initially testified that as of the time of the Examination Under Oath in July 2010, she had not spent the insurance proceeds and that they remained in her bank account. She further testified that she understood that she had received the insurance funds to make the repairs to the home and that the money was given to her to "fix everything that was broken in the home."

Later, she changed her testimony and admitted that she had in fact spent the money. However, she first testified, under oath, that she had *only used the insurance proceeds to pay her mortgage on the property.*

However, when confronted with proof that she had spent the money, she *finally* admitted that she had used AMERICAN INTEGRITY's funds to purchase a new vehicle and to go gambling at a casino, among other things. On one day, March 29, 2010, four days after depositing the insurance check into her Chase account, Ms. Momblan withdrew in excess of \$1,500.00 of the insurance proceeds to gamble at Miccosukee Casino.

During her Examination Under Oath, Ms. Momblan initially testified that she owned one vehicle, a 2007 or 2008 Honda Accord that she had purchased approximately three years prior to the Examination Under Oath. Despite initially testifying that she had not spent any of the insurance proceeds, and later changing her testimony to state that she had only spent the insurance proceeds to pay the mortgage on the subject insured property, she eventually admitted that she had in fact used the insurance proceeds on May 3, 2010, to purchase a vehicle, a Toyota or Mazda "Yaris", for \$9,500.00.

During Ms. Momblan's Examination Under Oath, she initially testified that she has ownership interest in only two real properties: the subject insured property located at 14245 Southwest 164<sup>th</sup> Terrace, and her current residence located at 2040 Southwest 127<sup>th</sup> Avenue, Miami, Florida 33175. However, later during the Examination Under Oath, when confronted with her Chase bank statement, Ms. Momblan admitted that she owns a third property located at 1300 Southwest 129<sup>th</sup> Avenue, Miami, Florida. Furthermore, despite initially testifying that she had not spent any of the insurance proceeds, and later changing her testimony to state that she had only spent the insurance proceeds to pay the mortgage on the subject insured property, she eventually admitted that she had in fact used the insurance proceeds to pay \$670.00 toward the property located on Southwest 129<sup>th</sup> Avenue.

In furtherance of her fraudulent and inconsistent testimony, toward the conclusion of her Examination Under Oath, Ms. Momblan attempted to explain that she knew the insurance proceeds were supposed to be used to repair the home, but that she "borrowed" the money because she "knew she was going to be able to put it back" by winning at the casino. Specifically, she testified that she "had a feeling" she was going to win at the casino. She testified that she had won \$7,000.00 from the casino and was "storing it" at her house.

Pursuant to the subject policy of insurance issued by AMERICAN INTEGRITY, Dwelling Form AICC 17 09 07, CONDITIONS, page 4 of 8 provides, in pertinent part, as follows:

3. **Concealment or Fraud** is deleted and replaced by the following:

3. **Concealment or Fraud**

With respect to all persons insured under this policy, we provide no coverage for loss if, whether before or after a loss, one or more persons insured under this policy have:

- a. Intentionally concealed or misrepresented any material or fact or circumstance;
- b. Engaged in fraudulent misconduct; or
- c. made false statements;

relating to this insurance.

AMERICAN INTEGRITY moved for Summary Judgment based on Ms. Momblan's improper handling of the insurance proceed check, her material misrepresentations and fraudulent testimony at the Examination Under Oath, and ultimate admission that she did not use the funds for their intended purposes but nevertheless submitted a subsequent claim for supplemental damages to AMERICAN INTEGRITY, all in violation of the Concealment and Fraud provision of the insurance contract.

Plaintiff also moved for Summary Judgment as to Fraud, based on argument that there was no evidence to support that Ms. Momblan knowingly deposited the insurance check without the proper endorsements, and that there was no evidence to support that Ms. Momblan had any knowledge of the marijuana grow house.

### **LEGAL ANALYSIS**

#### **A. Check Fraud Issue**

Whether Ms. Momblan had intent to deposit the check without the proper endorsements and to fail to notify her mortgage company of the subject claim are questions of fact for the jury to determine.

#### **B. Vandalism Issue**

Whether Ms. Momblan had knowledge of the tenants' use of the AMERICAN INTEGRITY insured property as a marijuana grow house, acquiesced to the tenants utilizing the

property as a marijuana grow house, or was a co-conspirator to growing marijuana are relevant factual issues that require presentation to a jury.

**C. Ms. Momblan's Fraudulent Conduct and Material Misrepresentations**

Provisions in insurance policies voiding coverage in the event of fraud, concealment, or misrepresentation by the insured are valid and enforceable under Florida law, and an insurer is not required to show prejudicial reliance on the material misrepresentation in order to void coverage. *See e.g., Lopes v. Allstate Indemnity Co.*, 873 So.2d 344, 346 (Fla. 3<sup>rd</sup> DCA 2004) (citing *Schneer v. Allstate Indem. Co.*, 767 So.2d 485, 489 (Fla. 3<sup>rd</sup> DCA 2000); *Valdez v. Consolidated Prop. and Cas.*, 762 So.2d 1034 (Fla. 3<sup>rd</sup> DCA 2000); *American Reliance Ins. Co. v. Kiet Invs., Inc.*, 703 So.2d 1190 (Fla. 3<sup>rd</sup> DCA 1997); *Wong Ken v. State Farm Fire & Cas. Co.*, 685 So.2d 1002, 1003 (Fla. 3<sup>rd</sup> DCA 1997); *American Employers' Ins. Co. v. Taylor*, 476 So.2d 281 (Fla. 1<sup>st</sup> DCA 1985)).

Ms. Momblan knew that the initial proceeds received from AMERICAN INTEGRITY were intended to be used for repairs to the home. Additionally, Ms. Momblan does not own the residence free and clear of encumbrances and mortgages. Therefore, Ms. Momblan does not have the option to use the initial insurance proceeds intended for the repair of the property for unauthorized purposes such as gambling at a casino, purchasing a vehicle or paying for an unrelated property. Despite her unauthorized use of the insurance proceeds, Ms. Momblan then further perpetuated her fraudulent behavior by submitting a supplemental claim in excess of \$100,000.00. Ms. Momblan's action of squandering the original proceeds and failing to utilize them for their intended purpose is material to the supplemental claim, as it provides a basis upon which the insured would need to inflate the supplemental demand. *Wong Ken*, 685 So. 2d at 1003.

Ms. Momblan also made numerous blatantly false statements during her Examination Under Oath testimony, including initially denying spending any of the initial insurance proceeds, then admitting to spending it *but only* to pay toward the subject insured property mortgage, when in fact she had spent the proceeds on gambling, purchasing a car that she initially denied owning, and on an unrelated property that she initially denied owning. These willfully false statements also constitute grounds for exclusion of coverage pursuant to the fraud and concealment provision of the policy. *Lopes*, 873 So.2d at 346.

### **CONCLUSION**

Ms. Momblan's unauthorized spending of the insurance proceeds on things unrelated to home repair; subsequent submission of a supplemental claim for additional money despite not using the funds initially provided for their intended purpose; and Plaintiff's material false statements made during her Examination Under Oath constitute material misrepresentations and willful false statements that constitute fraud and preclude coverage under the insurance contract's fraud exclusion. *Wong Ken*, 685 So. 2d at 1003.

Based on the foregoing, it is therefore

ORDERED as follows:

1. Plaintiff's Motion for Summary Judgment as to Fraud is DENIED;
2. Defendant's Motion for Summary Judgment as to Fraud related to Plaintiff's handling of the insurance check for the initial claim is DENIED;
3. Defendant's Motion for Summary Judgment as to Fraud related to Plaintiff's unauthorized spending of the insurance proceeds on things unrelated to home repair; subsequent submission of a supplemental claim for additional money despite not using the funds initially provided for their intended purpose; and

fraudulent and material misrepresentations made during Plaintiff's Examination  
Under Oath is GRANTED;

4. Fee entitlement and amount is reserved, pursuant to the expired Proposal for  
Settlement served upon Plaintiff by Defendant.

DONE AND ORDERED at Miami, Miami-Dade County, Florida, this 19<sup>th</sup> day of

Sept., 2011.

  
The Honorable Beatrice Butchko  
Circuit Court Judge

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BEATRICE BUTCHKO  
CIRCUIT COURT JUDGE