IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2014-001359-SP-21
SECTION: HI01
JUDGE: Milena Abreu

Quintana Chiropractic Center
Plaintiff(s) / Petitioner(s)

vs.

State Farm Automobile Ins Co
Defendant(s) / Respondent(s)
_____/

ORDER GRANTING DEFENDANT'S AMENDED MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the Court on May 27, 2020 for hearing of the Defendant's Amended Motion for Final Summary Judgment, and the Court's having reviewed the Motion, the entire Court file, and the relevant legal authorities; having heard argument; having made a thorough review of the matters filed of record; and having been sufficiently advised in the premises, the Court finds as follows:

I. BACKGROUND AND UNDISPUTED FACTS

1. On or about, May 22, 2014, Glen V. Quintana, D.C., P.A. d/b/a Quintana Chiropractic Center, (hereinafter referred to as the "clinic") filed this lawsuit to recover personal injury protection ("PIP") benefits allegedly due for medical services provided to the Claimant, Dejan Jevremov (hereinafter referred to as the "claimant"), under an automobile insurance policy by State Farm and governed by the Florida No-Fault ("PIP") Statute, section 627.736, Florida Statutes (2012) ("§ 627.736").

2. The Claimant is covered for the accident under an automobile insurance policy issued by State Farm. Said policy also contained a deductible of $500.00 in PIP coverage.
3. On or about July 16, 2013, the Claimant allegedly sustained injuries in an automobile accident.
4. Pursuant to an assignment of benefits provided by the Claimant, the Plaintiff submitted bills to State Farm totaling $8,350.00 (the "Bills") for medical services allegedly rendered to the Claimant from July 16, 2013, through October 8, 2013.
5. State Farm allowed $6,049.56 and paid the Plaintiff $4,439.65, for the amounts billed by the Plaintiff in the Bills. This amount equals eighty percent (80%) of the total allowable medical expenses calculated pursuant to the schedule of maximum charges set forth in § 627.736 (5)(a)1 and 5 (2013) and (the "Schedule of Maximum Charges"). Plaintiff's bills were subject to the full deductible amount of $500.00 in this case.

II. SUMMARY JUDGMENT STANDARD AND FINDINGS

6. This Court, on summary judgment, will grant a party's motion unless the record demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Athans v. Soble, 553 So. 2d 1361 (Fla. 2d DCA 1989). In this PIP breach of contract action where an insured (or assignee) seeks recovery from an insurer based on a refusal to pay for medical services, the insured bears the burden of proof on the essential elements of its case. See State Farm Mut. Auto. Ins. Co. v. Sestile, 821 So. 2d 1244 (Fla. 2d DCA 2002).
7. This Court is equally aware of its duty to apply binding precedent from the governing courts to include, in this instance, the Second District Court of Appeal. This principle compels the disposition of the respective motions.
8. Notably, the Second District Court of Appeal has already ruled that State Farm's policy

form 9810A–the policy form at issue here–clearly and unambiguously elects to limit reimbursement payments to the schedule of maximum charges described in Florida Statutes § 627.736(5)(a)(1)-(5). State Farm Mut. Auto. Ins. Co. v. MRI Associates of Tampa, Inc., 252 So. 3d 773 (Fla. 2d DCA 2018), review granted, SC18-1390, 2019 WL 3214553 (Fla. July 17, 2019) [Park Place MRI].

9. As stated by the Second District in Park Place MRI, "The policy defines a reasonable charge as follows:

> Reasonable Charge, which includes reasonable expense, means an amount determined by us to be reasonable in accordance with the No-Fault Act, considering one or more of the following:
>
> …
>
> Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, if the coding policy or payment methodology does not constitute a utilization limit.

Id. at 775.

10. The Second District stated that the State Farm policy tracked the limitation set forth in section 627.736(5)(a)(1)–the schedule of maximum charges. Id. at 775. In the absence of an inter-district conflict, the Second District Court of Appeal decision in Park Place MRI is binding on all Florida trial courts, including this one. See Pardo v. State, 596 So. 2d 665 (Fla. 1992).
11. Park Place MRI further states, "[b]ecause the State Farm policy includes mandatory language expressly limiting reimbursement for reasonable medical expenses to the schedule of maximum charges set forth in section 627.736(5)(a)(1)(a)-(f), we conclude

that it is sufficient to place insureds and service providers on notice as required by section 627.736(5)(a)(5)" (Emphasis supplied). Id. at 778.

12. As such, State Farm's policy form 9810A properly notified the insured and service providers of its intent to expressly limit reimbursement to the schedule of maximum charges set forth in the Florida No-Fault Act and its intent to utilize Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, exactly what it did in this case.
13. Accordingly, consistent with Park Place MRI's finding that the 9810A policy form provides proper notice of its election to utilize the schedule of maximum charges as set forth in Florida Statute 627.736(5)(a)1., and the undisputed facts before the Court, State Farm is entitled to judgment as a matter of law.
14. In addition, any ancillary arguments presented by Plaintiff in this case which have not been specifically and timely plead; specifically, Plaintiff's failure to timely raise the issues related to the application of the deductible, this Court has determined that said issue has been excluded/stricken from its findings in this case.
15. Florida law is clear that a party is bound by the issues as framed in the pleadings, and the Complaint must be pled with sufficient particularity to permit the Defendant to prepare its defense. See Assad v. Mendell, 550 So. 2d 52, 53 (Fla. 3d DCA 1989). This principle is so ground in the law that the Florida Supreme Court has held that where a claim is not pled with sufficient particularity for the opposing party to prepare a defense, the plaintiff is precluded from recovery on the unplead claim. Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp., 537 So. 2d 561 (Fla. 1988).
16. Like in Healthy Sunrise Inc.. a/a/o Erick Burgos, v. Allstate Indemnity Co., 27 Fla. L. Weekly Supp. 191a (Miami-Dade Cty. Ct. March 25, 2019), Plaintiff did not raise the deductible issue in the complaint which was filed on May 22, 2014. Throughout the six years that this case has been in litigation, the deductible issue was not raised by Plaintiff in any pleadings. Further, Plaintiff waited five years to propound any discovery on the

issue of the deductible (July 31, 2019) and did not seek leave of court to propound said discovery until May 27, 2020. Accordingly, because the deductible issue was not timely raised by Plaintiff's counsel, said argument has been excluded and this Court has not taken any consideration as to the manner in which the deductible was applied to Plaintiff's bills, as this issue has been improperly pled and/or waived by Plaintiff. See Sunbeam Television Corp. v. Mitzel, 83 So. 2d 865, 875 (Fla. 3d DCA 2012) [37 Fla. L. Weekly D183a] (when a plaintiff pleads one claim but tries to prove another, it is error for a trial court to allow the plaintiff to argue the unplead issue at trial.)

III. CONCLUSIONS

17. Accordingly, and over Plaintiff's objections, Defendant's Amended Motion for Final Summary Judgment is GRANTED.
18. It is ORDERED and ADJUDGED that for the above stated findings, reasons and cited case law, and over Plaintiff's objections, Final Judgment is entered in favor of State Farm Mutual Automobile Insurance Company and against Plaintiff, Glen V. Quintana, D.C., P.A. d/b/a Quintana Chiropractic Center, as assignee of Dejan Jevremov.
19. The Plaintiff, Glen V. Quintana, D.C., P.A. d/b/a Quintana Chiropractic Center, as assignee of Dejan Jevremov, shall take nothing by this action and the Defendant, State Farm Mutual Automobile Insurance Company, shall go hence without day.
20. This court reserves jurisdiction to entertain any motions regarding an award of attorney's fees and/or taxable costs in favor of the Defendant.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 8th day of June, 2020.

2014-001359-SP-21 06-08-2020 11:39 AM
Hon. Milena Abreu

COUNTY COURT JUDGE
Electronically Signed

Final Order as to All Parties SRS #: **12** (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

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