

IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE #: COCE 15-000599

JUDGE: STEPHEN J. ZACCOR  
DIV. 54

STATE 2 STATE RESTORATION , INC.  
a/a/o Curline Dixon

Plaintiff,

vs.

FLORIDA PENNINSULA INSURANCE  
COMPANY,

Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR FRAUD ON THE  
COURT**

This cause came before the court on October 8, 2015 on Defendant's Motion to Dismiss for Fraud. State 2 State Restoration, Inc. (*hereinafter* the Plaintiff) filed a breach of contract suit against Florida Peninsula (*hereinafter* the Defendant) for breach of contract for unpaid homeowner's insurance benefits. The Plaintiff is an assignee of the policy holder, Curline Dixon, who suffered a loss due to a water event. The Defendant filed its Motion to Dismiss alleging the Plaintiff fraudulently misrepresented the facts in order to sustain this lawsuit.

After reviewing the pleadings, the affidavit of Curline Dixon, the evidence, the remainder of the record, and after hearing argument of counsel for the parties, the court makes the following findings of fact and conclusions of law.

## FACTS

Curline Dixon's home is insured by the Defendant. Ms. Dixon suffered a water loss on September 10, 2014 due to a pipe and roof leak. She contacted a Public Adjuster who arranged for the Plaintiff to provide dry-out services. Ms. Dixon assigned her rights under her homeowner's policy to the Plaintiff and authorized them to perform the dry-out services. On September 10, 2014 the Plaintiff began the dry-out procedure and installed several de-humidifiers and fans throughout the Ms. Dixon's home. The Plaintiff did not return to her home until September 13, 2014. The Plaintiff advised Ms. Dixon they would return the next day (September 14, 2015) to remove the equipment, however no one showed up. Ms. Dixon called the Plaintiff on the evening of September 15, 2014 to inquire when someone would retrieve the equipment. The Plaintiff informed her someone would arrive later in the evening, but no one did. Ms. Dixon's Public Adjuster called her on the evening of September 15, 2014 and informed her someone from the Plaintiff corporation had been waiting at her home since 5:00 P.M. to pick up the equipment. She knew this to be untrue as she was home the entire time waiting for the Plaintiff.

Finally, on September 16, 2014 the Plaintiff arrived at Ms. Dixon's home to retrieve their equipment. She expressed her displeasure with the services rendered and was advised to fill out a "Certificate of Completion and Satisfaction Form." Ms. Dixon filled out the form, signed and dated it. Although Ms. Dixon cannot recollect exactly what she wrote on the form, she knows she indicated there "was only one visit to my home in between September 10, 2014 and September 16, 2014."

The Plaintiff submitted an invoice to the Defendant for \$7,542.55 for services rendered. During discovery, the Plaintiff submitted a "Daily Humidity Record:"<sup>1</sup>

**Daily Humidity Record**

Job Name: CURLINE DIXON

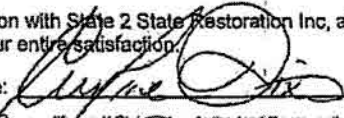
Area: LAUNDRY ROOM - KITCHEN - HALL CLOSET - GARAGE

Inspection Date/Time	Outside Temp	Outside RH	Outside Q.P.P.	Inside Temp	Inside RH
09/10/14	81.3°	77.3%		80.0°	69.8%
09/11/14	85.8°	59.8%		75.3°	63.3%
09/12/14	81.9°	61.3%		76.8°	59.6%
09/13/14	98.0°	81.6%			
09/14/14					
09/15/14	82.7°	69.4%		82.5°	34.0%

which purportedly shows the home was inspected on six separate dates.

The Plaintiff also submitted a copy of the "Certificate of Completion and Satisfaction Form"

This is to certify the repairs/ mitigation with State 2 State Restoration Inc, at the above noted property have been completed to our entire satisfaction.

Authorized Signature:   
(Injured/ Claimant or Authorized Represent)  
 Printed Name: Curtine Dixon  
 Date: 09/16/14

Additional Comments:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

State 2 State Restoration Inc.  
 Representative/ Technician Signature:   
 Printed Name: OSCAR R O ARCIA

The copy contains no comment by Ms. Dixon and clearly appears to have been altered. There is the remnant of a letter underneath the letters "na" in the word additional. The lines appear to have been redrawn as if the original lines were erased when Ms.

<sup>1</sup> Portions of the document have been redacted to prevent disclosure of personal information.

Dixon's comments were erased. The Plaintiff provided no evidence to counter Curline Dixon's affidavit.

## ANALYSIS

The law is clear that a trial court has the inherent authority to dismiss actions based on fraud and collusion as well as to strike sham pleadings. Such a power is indispensable to the proper administration of justice because no litigant has a right to trifle with the courts. It is a power, however, which should be cautiously and sparingly exercised and only upon the most blatant showing of fraud, pretense, collusion or other similar wrongdoing.

*Young v. Curgil*, 358 So. 2d 58, 59 (Fla. 3d DCA 1978)(*internal citations omitted*). Dismissal should be a sanction of last resort and only appropriate when there has been a "blatant showing of fraud, pretense, collusion, or other similar wrongdoing." *DiStefano v. State Farm Mut. Auto. Ins. Co.*, 846 So.2d 572 (Fla. 1<sup>st</sup> DCA 2003). When clear and convincing evidence shows a party has "set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by... hampering the presentation of the opposing party's claim or defense," dismissal is the appropriate remedy. *Id.*

This is a breach of contract lawsuit alleging the Defendant did not pay for covered services that were actually performed. The Defendant presented credible evidence that all of the services billed for were not performed. The Plaintiff presented no evidence. The Defendant's evidence clearly and convincingly shows the Plaintiff submitted proof of dates of service where no work was actually performed. Knowingly billing an insurance company for work that never occurred is fraud. See §817.234(1), Fla. Stat. 2014. The Plaintiff exacerbated the fraud by doctoring a document (the "Certificate

of Completion and Satisfaction Form”) that contained evidence contradicting their assertion they appeared at Ms. Dixon’s home on six sequential days. In other words, they hampered the Defendant’s ability to present a defense. The altering of a document to prevent the court from finding out the truth is an “unconscionable scheme ... calculated to interfere with” this Court’s ability to impartially adjudicate the matter.

The Defendant clearly and convincingly showed the Plaintiff billed the Defendant for work never performed, used the court system to collect money for work never performed, and doctored documentary evidence in order to prevent this Court from finding out the truth.

Accordingly, the Defendant’s Motion to Dismiss the Complaint with Prejudice is **GRANTED.**

DONE AND ORDERED, in Chambers, at Fort Lauderdale, Broward County, Florida, this 13<sup>th</sup> day of October, 2015.

  
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County Judge  
Stephen J. Zaccor

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