IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

GALE FORCE ROOFING AND
RESTORATION, LLC,

Plaintiff,

v.

AMERICAN INTEGRITY INSURANCE
COMPANY OF FLORIDA,

Defendant.
_______________________________________/

Case No. 22-CC-022246

Division J

ORDER GRANTING MOTION TO DISMISS

BEFORE THE COURT is Defendant's motion to dismiss the amended complaint for lack of standing because the assignment agreement fails to comply with § 627.7152 of the Florida Statutes. Doc. 22. Plaintiff filed a response (Doc. 24), and both parties appeared for a hearing on January 6, 2023. Because the elements required by § 627.7152(2)(a)(2) are not contained within a single, unified provision in the assignment agreement, it is invalid and unenforceable, and the case must be dismissed. § 627.7152(2)(d).

I. INTRODUCTION.

In this property insurance claim, American Integrity argues that the assignment agreement from its insured to Gale Force fails to comply with § 627.7152 in two ways.[1] First, by failing to contain "a provision" in the form prescribed by

[1] Section 627.7152 sets forth the requirements for "any instrument by which post-loss benefits under a residential property insurance policy . . . are assigned or transferred, or acquired in any manner, in

§ 627.7152(2)(a)(2). And second, by including contradictory language that defeats the agreement's indemnification provision required by § 627.7152(2)(a)(7).

II. § 627.7152(2)(a)(2).

This motion turns on the interpretation of subdivision (2)(a)(2). When interpreting a statute, Florida courts adhere to the "supremacy-of-text principle." *Boyle v. Samotin*, 337 So. 3d 313, 317 (Fla. 2022) (quoting *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020)). That is, "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Ham*, 308 So. 3d at 946 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). In determining what a statute means, "every word employed . . . is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Adv. Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157–58 (1833)). The goal "is to arrive at a 'fair reading' of the text by 'determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language,

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whole or in part, to or from a person providing services including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the property or mitigating against further damage to the property." § 627.7152(1)(b). The amended complaint alleges (¶ 13) that all of its attachments constitute one "assignment agreement." And the parties agree that for the purposes of this motion, all pages attached to the amended complaint must be construed as a single assignment agreement. *Cf. Kidwell Grp., LLC v. United Prop. & Cas. Ins. Co.*, 343 So. 3d 97, 97 (Fla. 4th DCA 2022) ("[T]he statute's plain language requires that at the time the assignment of benefits is signed, the assignor must be provided with a list of the itemized services to be performed by the assignee, as well as the costs thereof.").

would have understood the text at the time it was issued.'" *Ham*, 308 So. 3d at 947 (quoting Scalia & Garner, *Reading Law* at 33).

"As always when 'determining the meaning of a statutory provision,' the Court 'looks first to its language, giving the words used their ordinary meaning.'" *Health Freedom Defense Fund, Inc. v. Biden*, 599 F. Supp. 3d 1144, 1157 (M.D. Fla. 2022) (quoting *Artis v. Dist. of Columbia*, 138 S. Ct. 594, 603 (2018)). We therefore start with the text of the statute:

> (2)(a) An assignment agreement must:
>
> . . . .
>
> 2. Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the agreement, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

§ 627.7152(2)(a)(2).[2] The plain language of § 627.7152 requires that an assignment agreement contain a provision allowing the assignor to rescind the agreement and notifying the assignor that:

1. The rescission is without penalty or fee, and
2. The notice of rescission must be in a particular form:
    a. written;
    b. signed by the assignor;

[2] "An assignment agreement that does not comply with this subsection is invalid and unenforceable." § 627.7152(2)(d).

c. submitted by the assignor to the assignee; and

d. submitted within a certain time:

i. within 14 days after execution of the agreement;

ii. at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed; or

iii. at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

See id. American Integrity argues that the assignment agreement does not include a single, unified provision containing all of the language required by (2)(a)(2).

A. Paragraph 3 of the terms and conditions does not contain all of the information required by subsection (2)(a)(2).

Gale Force first suggests that paragraph 3 of the "terms and conditions" appended to the assignment agreement satisfies the requirements of subsection (2)(a)(2):

> **3. Customer Cancellation.** The Customer may cancel this contract without any charge from the Company by delivering to the Company a written, signed, and dated notice stating "I, [Customer's Full Name], hereby cancel my contractual agreement with Gale Force Roofing and Restoration LLC." The signed, written, dated revocation must be received by the Company on or before midnight of the fourteenth (14th) day after the execution of this agreement, or 30 days after the execution of this Agreement if the Company has not begun substantial work on the Property. In the event the Customer fails to timely cancel this Agreement, Customer agrees the Company shall be entitled to payment for the work already performed on the Property. The Customer and the Company agree that neither shall be permitted to cancel/rescind this agreement after the commencement of substantial work on the Property; and, in the event that any party does cancel this agreement after installation has commenced, the non-canceling party shall be entitled to all damages, including consequential damages, and reasonable attorney's fees and costs.

Doc. 18 at 11. There is no dispute that this provision meets most of the requirements. But it does not contain language allowing the assignor to rescind by submitting a notice "at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed." § 627.7152(2)(a)(2).

American Integrity argues that omission is fatal to the assignment. Gale Force, on the other hand, sees the two final timing requirements as mutually exclusive. That is, Gale Force contends that an assignee may include *either* a provision allowing rescission within 30 days after work is scheduled to commence if there is no substantial performance, *or*, if the agreement does not contain a commencement date, a provision allowing rescission within 30 days after execution of the agreement when substantial work has not begun. According to Gale Force, if the assignment contains a commencement date, then the provision need only include the former proviso. But if it does not contain a commencement date, only the latter is required.

I disagree for two reasons. This reading of the statute requires the addition of the conjunction *or either* between the 14-day time-period and the first 30-day time period. In other words, Gale Force would read the statute as requiring the provision to include the following timing requirements:

1. within 14 days after execution of the agreement, ***<u>or either of the following two options</u>***:

    a. at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, ***<u>or</u>***

    b. at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

But the statute contains only one *or* separating the second and third clauses. The Legislature's use the conjunction *or* creates three equal alternatives, each of which must be included. Scalia & Garner, *Reading Law* at 116 ("Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives.").

Second, the two 30-day deadlines are not mutually exclusive, as Gale Force argues. The final clause applies when there is no commencement date in the agreement. And the preceding clause is tied to the date work "is scheduled to commence." Both could apply in the same case. Work may be "scheduled to commence" on a certain date even if the assignment agreement does not "contain a commencement date." The parties may, for example, agree on a commencement date at some point following execution of the assignment agreement, or it may be listed in a services agreement that is not incorporated into or captured by the assignment agreement. For that reason, the Legislature allows the assignor to rescind the agreement in any of the three time-periods listed in the statute. The assignee must therefore give notice of all three possibilities by including a provision that lists *all* of them.

Context also informs this analysis. Words acquire meaning through the context in which they are used with a view to their place in the overall statutory scheme. *King v. Burwell*, 576 U.S. 473, 486 (2015); *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). *See Health Freedom Defense Fund*, 599 F. Supp. 3d at 1158–59. To determine the meaning a word must bear in a particular context, a court "must rely on the statute's context, including the surrounding words, the stat-

ute's structure and history, and common usage at the time," considering all available tools of statutory interpretation. *Health Freedom Defense Fund*, 599 F. Supp. 3d at 1159 (citing *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019)).[3]

The very next subsection, (2)(a)(3), contains similar syntax, requiring the assignment agreement to

> Contain a provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer within 3 business days after the date on which the assignment agreement is executed or the date on which work begins, whichever is earlier. . . .

§ 627.7152(2)(a)(3). No reasonable reader would construe that subsection as allowing the assignee to determine whether the date of the assignment or when work begins is earlier and include only that deadline in the required provision. No, the assignment must contain the language specified, no matter how the assignee decides to comply with it.

I am not at liberty to add or remove language from a statute. That is the Legislature's prerogative. Because Gale Force's argument edits the statute, I decline to adopt it.

B. The required elements of (2)(a)(2) must be contained within a single, unified provision. They may not be spread between two different documents.

That does not end the story, however. Gale Force next contends that even if paragraph 3, alone, does not suffice, the requirements of (2)(a)(2) may be collected

[3] *See also United States v. Williams*, 553 U.S. 285, 294 (2008) (A word in a statute may be "given more precise content by the neighboring words with which it is associated.").

from two separate portions of the agreement: paragraph 3 and the 18-point notice on page 2 of the document titled "Assignment Agreement," taken verbatim from another part of the statute, § 627.7152(2)(a)(6):

> You are agreeing to give up certain rights you have under your insurance policy to a third party, which may result in litigation against your insurer. Please read and understand this document before signing it. You have the right to cancel this agreement without penalty within 14 days after the date this agreement is executed, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property. However, you are obligated for payment of any contracted work performed before the agreement is rescinded. This agreement does not change your obligation to perform the duties required under your property insurance policy.

Doc. 18 at 6 (caps removed). No doubt, this provision contains all three timing elements required by § 627.7152(2)(a)(2). But it does not contain the requirement that the notice of rescission be in writing and signed by the assignor. Gale Force says, no problem, those elements are found in paragraph 3 of the terms and conditions, so reading the two provisions together, the assignment agreement meets the statutory standard. American Integrity pushes back, arguing that "*a* provision" means "*one* provision," and all of the elements required by (2)(a)(2) must be contained within a single, unified provision in the assignment agreement—not spread throughout.

I find American Integrity's argument more persuasive. The context and language of the statute suggest that the Legislature intended the required elements of (2)(a)(2) to be contained within a single, unified provision in the assignment agreement. If the Legislature believed that notice requirements could be spread throughout the agreement, it would have eliminated "Contain a provision that," so that the

statute read, "An assignment agreement must . . . allow the assignor to rescind . . ." But that is not what the Legislature did. They qualified that right, and gave the assignee an obligation to place those rights within "a provision"—that is, one single provision.

The United States Supreme Court recently addressed a similar issue, reaching the same conclusion. In *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), the Court concluded that the term "*a* notice to appear" means one "single document containing the required information, not a mishmash of pieces with some assembly required." *Id.* at 1480 (emphasis added). The Court's analysis is persuasive here. Just as in *Niz-Chavez*, the structure, context, and language of § 627.7152 suggest that the elements of subsection (2)(a)(2) be contained in *one* provision—unified and not strewn across what could be a lengthy document or set of documents. *See Niz-Chavez*, 141 S. Ct. at 1482 ("[T]he aim is to supply an affected party with a single document highlighting certain salient features of the proceedings against him. No one contends those documents may be shattered into bits . . . ."). *Cf. State v. Watts*, 462 So. 2d 813, 814 (Fla. 1985) ("We specifically contrasted the article 'a' with the article 'any' by pointing out that federal courts have held that the term 'any firearm' is ambiguous with respect to the unit of prosecution and must be treated as a single offense with multiple convictions and punishments being precluded.")[4]; *Schmidt v. State*, 310 So. 3d 135, 136–37 (Fla. 1st DCA 2020) ("The use of the noun 'violation' along with the indefinite article 'a' before the second mention of the word 'violation'

[4] Citing *Grappin v. State*, 450 So. 2d 480, 482 (Fla. 1984).

requires a reading of 'violation' as a singular noun."); *Banuelos v. Barr*, 953 F.3d 1176, 1181 (10th Cir. 2020) ("The stop-time rule refers to 'a notice to appear,' using the singular article 'a.' This article ordinarily refers to one item, not two.").

Gale Force essentially argues the indefinite article *a* should be treated as "any," but that construction is not tenable. The statute cannot be plausibly read as requiring the assignment agreement to "contain *any number of* provisions that allow the assignor to rescind." In this particular context, the ordinary reader would only read (2)(a)(2) as requiring the elements within a single subsection. Like Gale Force, Justice Kavanaugh's dissent in *Niz-Chavez* argued, "the word 'a' is sometimes used to modify a single thing that must be delivered in one package, but it is sometimes used to modify a single thing that can be delivered in multiple installments, rather than in one installment." *Niz-Chavez*, 141 S. Ct. at 1491–92 (Kavanaugh, J., dissenting). But a *provision* is not comparable to any of the dissent's examples that may be delivered in multiple installments: a job application, a manuscript, or even a complete contract. *Id.* (Kavanaugh, J., dissenting). In most of the cases where the article *a* refers to multiple items, the "legislature had otherwise shown an intent to refer to multiple items." *Banuelos*, 953 F.3d at 1182 n.2. Not so here.

III. § 627.7152(2)(a)(7).

American Integrity next argues that the assignment agreement does not satisfy subsection (2)(a)(7). I disagree with this argument. The assignment agreement

(Doc. 18 at 5) contains the indemnification language required by the statute.[5] *See* § 627.7152(2)(a)(7), Fla. Stat. (2020). And the allegedly offending provision in the Acceptance of Contract document does not directly contradict the indemnification language in a manner that would require both to be read out of the assignment agreement, nor does it frustrate the purpose of the indemnification language.[6]

IV. CONCLUSION.

This order may seem semantic, focused on two small words: *or* and *a*. "But words are how the law constrains power." *Niz-Chavez*, 141 S. Ct. at 1486. For the reasons stated above, the assignment agreement does not "[c]ontain a provision that allows the assignor to rescind the assignment agreement" in the form required by § 627.7152(2)(a)(2). The assignment agreement is therefore "invalid and unenforceable." § 627.7152(2)(d). Because the assignment agreement is invalid, Gale Force lacks standing, and the case must be dismissed without prejudice and without leave to amend.[7] Accordingly,

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[5] *See* Doc. 18 at 5 ("Contractor shall indemnify and hold harmless the Customer from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to this Assignment prohibit, in whole or in part, the assignment of benefits.").

[6] *See* Doc. 18 at 9 ("Customer agrees to hold the Company harmless for damage of any kind, including damage caused by any third-party subcontractor(s), such as dumpster companies or material suppliers, or damage caused by vibrations or other normal construction effects (i.e. falling pictures or light fixtures, small cracks, or nail pops in drywall, etc.).").

[7] Dismissal for lack of standing is not an adjudication on the merits, so despite common practice utilizing the term "with prejudice," dismissal is without prejudice and without leave to amend. *Brown v. M&T Bank*, 183 So. 3d 1270, 1270–71 (Fla. 5th DCA 2016*). See generally Nationstar Mortg., LLC v. Glisson*, 286 So. 3d 942, 944 (Fla. 2d DCA 2019); *Hughes v. Lott*, 250 F.3d 1157, 1161–62 (11th Cir. 2003); *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1094 n.7 (11th Cir. 1996) ("A dismissal 'without prejudice' refers to the fact that the dismissal is not on the merits, not whether the dismissal is final and appealable.") (citing 9 MOORE'S FEDERAL PRACTICE ¶ 11.13[1] n.30*)*; *Solis v. CitiMortgage, Inc.*, 700 F. App'x 965, 967 (11th Cir. 2017) ("Generally, an involuntary dismissal of a complaint without prejudice is a final, appealable order. Thus a dismissal without prejudice that closes the case without granting the plaintiff leave to amend or re-file is a final order.") (citations omitted).

1. Defendant, American Integrity Insurance Company of Florida's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice for Lack of Standing for Failure to Comply with Fla. Stat. § 627.7152 (Doc. 22) is GRANTED.

2. The Amended Complaint (Doc. 18) is DISMISSED without prejudice and without leave to amend.

3. The Clerk may CLOSE the file.

DATED this 13th day of January, 2023.

Electronically Conformed 1/13/2023
J. Logan Murphy

J. Logan Murphy
Hillsborough County Judge

Copies to Counsel of Record VIA JAWS