

29<sup>TH</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NUMBER: 90,855

DIVISION: "E"

GREG AND KELLY PALIARO

VERSUS

LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION, POWELL  
INSURANCE AGENCY, INC., and ANDREW POWELL

\_\_\_\_\_ date filed

\_\_\_\_\_ Deputy Clerk

**FILED**

**REASONS FOR JUDGMENT ON EXCEPTIONS**

JUN -5 2023  
Clerk of Court  
ST. CHARLES PARISH LA  
*[Signature]*

Presented to the Court are three exceptions raised by Louisiana Citizens Property Insurance Corporation ("Citizens") to the petition of intervention filed by Safe Pack, LLC ("Safe Pack"). Citizens asserts the dilatory exception of improper cumulation of actions and improper joinder of parties pursuant to Louisiana Code of Civil Procedure article 926(7) and the peremptory exceptions of no right of action under Louisiana Code of Civil Procedure article 927(6) and no cause of action under Louisiana Code of Civil Procedure article 927(5). For the reasons set forth herein, each exception is denied.

The above entitled and numbered cause was instituted by Greg Paliaro and Kelly Paliaro (collectively referred to as "the Paliaros") arising from property damage sustained as a result of Hurricane Ida on August 29, 2021. In their petition, Paliaros seek to recover property damages, penalties, attorney's fees, and general damages from defendants Citizens as well as Powell Agency, Inc., and Andrew Powell.

Material to the exceptions before the Court is Citizen's policy number 640514 issued to the Paliaros for insurance coverage of their residence at 316 Nottaway Drive, Destrehan, Louisiana. Contained in the policy is an endorsement to the section entitled "Conditions", item number 21, (sometimes hereafter referred to as "the assignment prohibition endorsement") which reads:

Post-loss assignment of rights, benefits, or claims arising under this policy are prohibited.

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In a document dated June 21, 2022, Greg Paliaro executed a contract with Safe Pack for "... pack out, contents cleaning, inventory, and valuation, and or storage services ..." As consideration, Greg Paliaro granted an assignment of "... all insurance rights, benefits, proceeds, and causes of action under (the Citizens policy) ..." Safe Pack filed its petition of intervention on February 17, 2023, seeking enforcement of that assignment against Citizens to recover its fee for services to the Paliaros. Further, Safe Pack asserts claims against Citizens under Louisiana Revised Statutes 22:1892 and 22:1973.

Citizens relies on the assignment prohibition endorsement in support of its exceptions of improper joinder and/or improper cumulation, no cause of action, and no right of action.

The petition for intervention asserts causes of action for recovery of property damages under an insurance policy. Additionally, Safe Pack asserts a cause of action for statutory damages, penalties, and attorney's fees arising from Citizens' performance of the insurance contract. Each is a recognized cause of action under Louisiana law.

In *Koehl v. RLI Ins. Co*, No. 22-CA-370 (05/24/2023), 2023 La. App. LEXIS 865, the Louisiana Fifth Circuit Court of Appeal defines the peremptory exception of no right of action analysis.

The peremptory exception of no right of action tests whether the plaintiff has the capacity or legal interest in enforcing the right asserted. La. C.C.P. art. 927 A(5). Moreover, an action can only be brought by a person having a real and actual interest, which he asserts. La. C.C.P. art. 681. An exception of no right of action assumes that the petition states a valid cause of action and questions whether the plaintiff in the particular case has a legal interest in the subject matter of the litigation. The defendant raising the exception has the burden of proving the exception. 3218 *Magazine, L.L.C. v. Lloyds of London*, 08-727 (La. App. 5 Cir. 2/25/09), 10 So. 2d 242, 242.

Safe Pack seeks enforcement of an assignment received from the insured against their insurer. Citizens asserts the assignment received by Safe Pack is prohibited by contract.

Louisiana law authorizes assignment of all rights except those pertaining to strictly personal obligations. La. C.C. art. 2642. An assignment conveys only those rights possessed by the assignor to the assignee. *Pontchartrain Gardens, Inc. v. State Farm Gen. Ins. Co.*, 07-7962 (U.S.D.C., E.D. La. 06/13/2009), 2009 U.S. Dist. LEXIS 3734. Rights conveyed are those possessed by the assignor at the time of assignment. *Id.* A claim to recover property damages and penalties under Title 22 of the Louisiana Revised Statutes are assignable rights under Louisiana law. *Id.*

While assignment of rights is authorized, Louisiana law also permits contractual prohibitions against assignment. La. C.C. art. 2653.

Rights cannot be assigned when the contract from which it arises prohibits the assignment of that right. Such a prohibition has no effect against an assignee who has no knowledge of its existence. *Id.*

Simply stated, an assignee without knowledge of the assignment prohibition is permitted to seek enforcement of the contractual rights possessed by the assignor at the time of assignment. *Pontchartrain Gardens Inc. v. State Farm Gen. Ins. Co.*, supra.

In its petition for intervention, Safe Pack avers it did not possess knowledge of the contractual assignment prohibition contained in the Citizens insurance policy. Further, Safe Pack's intervention contains allegations supporting the Paliaros' claims under Louisiana Revised Statutes 22:1892 and 22:1973 arising before the assignment. Finally, rights asserted by the Paliaros' petition and those rights asserted by Safe Pack's intervention flow from the insurance policy issued by Citizens and arise from damages caused by Hurricane Ida. No controverting evidence is presented in support of the no right of action exception.

Accordingly, the Court will render judgment herewith denying the dilatory exception of improper joinder and/or improper cumulation as well as the peremptory exceptions of no cause of action and no right of action.

DONE AND SIGNED in chambers this 5<sup>th</sup> day of June 2023.



Judge Timothy S. Marcel  
2023.06.05 19:34:38 -05'00'

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Judge Timothy S. Marcel

**SERVICE INSTRUCTIONS**

Please serve:

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