County Civil Court: CIVIL PROCEDURE—Summary Judgment. The trial court correctly found a provision in Appellee's insurance policy to be unambiguous and to limit Appellee's liability to the prevailing competitive price for glass repairs as defined by the policy. The order granting summary judgment in favor of Appellee is affirmed and the motion for attorney's fees is granted. *Superior Auto Glass of Tampa Bay, Inc. v. Geico General Ins. Co.*, No. 14-AP-0007-WS (Fla. 6th Cir. App. Ct. November 30, 2015).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

SUPERIOR AUTO GLASS OF
TAMPA BAY, INC., a/a/o/ Jeb Shaffer,
Appellant,

v.

GEICO GENERAL INSURANCE CO.,
Appellee.
_____/

UCN: 512014AP0007APAXWS
Appeal No: 2014-AP-0007-WS
L.T. No: 2010-SC-2045-WS

On appeal from County Court,

Honorable Paul Firmani,

Gray Proctor, Esq.,
Michael Grossman, Esq.,
for Appellant,

Stephen Maher, Esq.,
Frank Zacherl, Esq.,
Vanessa Septien, Esq.,
for Appellee.

ORDER AND OPINION

The Court finds no error with the trial court's order granting summary judgment in favor of Appellee, finding a provision in Appellee's insurance policy to be unambiguous and to clearly limit Appellee's liability to the "prevailing competitive price" for glass repairs as defined by the policy. The order of the trial court is affirmed.

STATEMENT OF THE CASE AND FACTS

Appellant appeals an order granting summary judgment in favor of Appellee in an action for breach of contract pursuant to a post-loss assignment of policy benefits. On July 7, 2010, Jeb Shaffer, the insured pursuant to an insurance policy with Appellee, suffered windshield damage to his vehicle and executed an assignment in favor of Appellant to post-loss benefits to be paid by Appellee for repairs to the windshield. Appellant submitted an invoice to Appellee in the amount of $505.79 for the replacement and installation of the windshield. Appellee responded it was liable for no more than $353.56 for the repair, the price Appellee alleged it could secure for the repair at a competent, conveniently located repair shop, based on policy language which provides that Appellee's liability for glass repairs is limited to the prevailing competitive price, defined in the policy as the price Appellee "can secure from a competent glass repair facility conveniently located to [the insured] at the time you make your claim."

Appellee moved for summary judgment, claiming the policy clearly limits liability as provided, and submitted price quotations from repair facilities for amounts less than what was charged by Appellant to repair the windshield damage. The trial court found no ambiguity in the policy language at issue, and found the record demonstrated no fact issue as to whether Appellee's repair shops were not competent or conveniently located, and met the relevant industry standards.

STANDARD OF REVIEW

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). This Court reviews the trial court's order granting summary judgment pursuant to a de novo standard of review. *Id. See Dahly v. Dep't of Children and Family Servs.*, 876 So. 2d 1245, 1248 (Fla. 2d DCA 2004).

LAW AND ANALYSIS

Appellant claims the trial court incorrectly interpreted the policy language and the policy should be read as providing the consumer the right to compensation for glass

repair in an amount charged by any competent, conveniently located repair facility selected by the consumer, and that Appellee failed to demonstrate it paid a prevailing competitive price for glass replacement of like kind and quality. Section three of the insurance policy (Physical Damage Coverages) provides in relevant part:

> LIMIT OF LIABILITY
>
> The limit of our liability for *loss*:
>
> 1. is the *actual cash value* of the property at the time of the *loss*;
> 2. will not exceed the cost to repair or replace the property, or any of its parts, with other of like kind and quality . . . .
>
> . . .
>
> 6. for glass repair or replacement, is not to exceed the prevailing competitive price. This is the price we can secure from a competent glass repair facility conveniently located to *you* at the time *you* make *your* claim. Although *you* have the right to choose any glass repair facility or location, the limit of liability for *loss* to window glass is the cost to:
>
> a) repair; or
>
> b) replace
>
> such glass but will not exceed the prevailing competitive price. If the glass is replaced, then the cost will be paid at the prevailing competitive price for replacement. At *your* request, we will identify a glass repair facility that will perform the repairs at the prevailing competitive price.

Despite this provision, Appellant maintains the policy does not include a clearly articulated limitation of liability, and the policy language does not support Appellee's right to unilaterally set the repair price. Appellant contends the policy obligates Appellee to pay whatever price the insured can secure from any competent, conveniently located repair facility. The policy provides the consumer the right to select the repair facility, and therefore Appellee is obligated to pay that facility whatever price it can secure. At the summary judgment stage, all facts must be viewed in the light most favorable to the non-moving party, and there can be no doubt as to whether an issue of material fact exists. *See Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985). A trial court's interpretation of contract provisions is reviewed by this Court de novo. *See Chandler v. GEICO Indem. Co.*, 78 So. 3d 1293, 1296 (Fla. 2011).

Courts must construe "insurance contracts . . . in accordance with the plain language of the policy." *Swire Pacific Holdings v. Zurich Ins. Co.*, 845 So. 2d 161, 165 (Fla. 2003). A policy provision is not rendered ambiguous by its complexity or the requirement of analysis for application. *Id.* And, when "the insurer has defined a term used in the policy in clear, simple, non-technical language," the meaning of that language should control. *State Farm Fire and Cas. Ins. Co. v. Deni Assocs. of Fla., Inc.*, 678 So. 2d 397, 401 (Fla. 4th DCA 1996). The policy defines "prevailing competitive price" as the price Appellee "can secure from a competent glass repair facility conveniently located." Appellant contends the policy should expressly define "prevailing competitive price" as "the lowest price Appellee can secure," or other similarly limiting definitions, in order to achieve Appellee's construction of the policy language.

In the alternative, Appellant claims the policy language is ambiguous and should be construed against the insurer as the drafter of the policy. *See Chandler*, 78 So. 3d at 1300. Appellant contends this Court should give the phrase "prevailing competitive price" a normal meaning of a fair and reasonable price, and that pursuant to this definition Appellee failed to demonstrate entitlement to summary judgment by conclusively establishing that the price Appellee was willing to pay is not unreasonably low or obtained by using inferior materials. Appellant contends the price offered by Appellee is not prevailing, competitive, or based on repairs using materials of like kind and quality.

Appellant contends the price generated by Appellee is based on use of the cheapest glass available and is of inferior quality. Appellant contends the Court should reference the National Auto Glass Specifications (NAGS) for a reasonable price of repair, and that the amount set by Appellee is obtained by securing large discounts from Appellee's in-network repair shops. Appellant contends Appellee did not provide any evidence of average market price for similar repairs, and therefore summary judgment was granted in error.

Appellee responds that the trial court correctly granted summary judgment, finding the terms of the policy control the dispositive issue in this case, and Appellant failed to demonstrate any issue of material fact sufficient to withstand summary judgment. The trial court correctly found the policy language was not ambiguous, and

that Appellee complied with the policy terms as stated. The trial court correctly found it unnecessary to impose a reasonableness requirement to the term "prevailing competitive price," as the policy clearly defined the term, and the definition did not violate public policy pursuant to § 627.7288, Fla. Stat. Appellant did not demonstrate a material issue of fact as to whether the providers Appellee contracts with were unqualified, not competent, or used substandard materials. The trial court properly rejected the argument that the NAGS repair price should be used, which would be contrary to policy language agreed on by the parties.

Appellee contends it complied with the unambiguous terms of the policy by paying the prevailing competitive price pursuant to the policy language. Appellant's contention that the policy should require Appellee to pay whatever amount is billed by a competent repair shop is contrary to policy language and would reach a result contrary to the parties' intentions evidenced by that language. Appellant's argument that Appellee obtains prices by using substandard glass to make repairs is not supported by the record. The trial court correctly found Appellant did not demonstrate any of the providers Appellee contracted with used substandard materials or were unqualified.

The policy language clearly limits Appellee's liability to the prevailing competitive price as defined by the policy. The trial court correctly found the terms unambiguous and that Appellant failed to demonstrate an issue of material fact. Appellee demonstrated compliance with the policy terms and was entitled to judgment as a matter of law.

MOTION FOR ATTORNEY'S FEES

Appellee filed a motion for attorney's fees pursuant to Fla. R. App. P. 9.400(b) and § 768.79, Fla. Stat. The trial court below awarded attorney's fees to Appellee pursuant to the statute. Absent "an expressed contrary intent, any provision of a statute or of a contract . . . providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal." § 59.46, Fla. Stat. *See Westfield Ins. Co. v. Mendolera*, 647 So. 2d 223 (Fla. 2d DCA 1994). The motion for attorney's fees is granted, and the trial court is hereby directed to determine a reasonable amount of attorney's fees.

CONCLUSION

The record demonstrates no issue of material fact and that Appellee was entitled to summary judgment as a matter of law. The order of the trial court is hereby AFFIRMED. Appellee's Motion for Attorney's Fees is GRANTED.

It is ORDERED AND ADJUDGED that the order of the trial court is AFFIRMED.

It is FURTHER ORDERED that the Motion for Attorney's Fees is hereby GRANTED, with the trial court to determine a reasonable amount of appellate attorney's fees.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 30th day of November, 2015.

Original order entered on November 30, 2015, by Circuit Judges Linda Babb, Shawn Crane and Daniel D. Diskey.