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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

HERITAGE PROPERTY & CASUALTY INS. CO.
a Florida corporation,
as subrogee of FRANK DELBIANCO,

Plaintiff,

Case No.:

v.

Division:

FERMAN MOTOR CAR COMPANY, INC.
a Florida corporation,

Defendant./

ORIGINAL COMPLAINT

The Plaintiff, HERITAGE PROPERTY & CASUALTY INS. CO. (“Heritage”), a Florida corporation, as subrogee of FRANK DELBIANCO (“INSURED”), sues Defendant, FERMAN MOTOR CAR COMPANY, INC. (“FERMAN”), a Florida corporation, and alleges:

ALLEGATIONS OF JURISDICTION

1. This is an action for damages exceeding \$30,000.00, exclusive of interest, court costs, and attorneys’ fees.

2. HERITAGE is an Florida corporation, licensed by and authorized to do business in the State of Florida, and writes, *inter alia*, automotive insurance policies throughout Florida.

3. Florida *in personam* jurisdiction is properly exercised over FERMAN, because, *inter alia*, FERMAN has the necessary “minimum contacts” with Florida necessary to satisfy Due Process requirements as set forth by one or more of the following personal jurisdiction provisions codified in F.S.A. § 48.193, to wit:

(1)(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; (b) Committing a tortious act within this state; (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state; and/or FERMAN (2) is engaged in substantial and not isolated activity within this state.

Additionally, FERMAN, a Florida corporation, “resides” in Florida and Florida courts have personal jurisdiction over all Florida residents. *E.g.*, Patten v. Mokher, 184 So. 2d 29, 30 (Fla. 1938); Haueter-Herranz v. Romero, 975 So. 2d 511, 516 (Fla. 2d DCA 2008).

4. Venue is proper in Pinellas County, Florida because the cause of action accrued in Orange County, to wit: 3006 Ashland Ter., Clearwater, FL 33761.

GENERAL ALLEGATIONS

5. At all times material and relevant hereto, INSURED owned a home located at 3006 Ashland Ter., Clearwater, FL 33761 (the “Premises”).

6. At all times material and relevant hereto, the Premises were insured by HERITAGE against certain losses by virtue of the INSURED – HERITAGE insurance policy # HOH277237 (“Policy”), a copy of which is attached hereto as Exhibit “A.” At all times material and relevant hereto, the Policy was in full force and effect.

7. On July 16, 2020, INSURED experienced an engine stall when he drove his 2018 BMW 430i (“Vehicle”) through a puddle.

8. INSURED had the Vehicle towed to FERMAN’s facility to have the issue with the Vehicle diagnosed and repaired. FERMAN’s mechanics diagnosed the Vehicle’s engine was hydro locked, removed the old engine, and installed a new one.

9. Upon completion of the repairs, INSURED retrieved the vehicle from FERMAN on July 31, 2020.

10. The following day, August 1, 2020, while the Vehicle was parked at the Premises, a fire originated from the engine compartment of the Vehicle, causing significant damage to the Premises.

11. Subsequent investigation revealed that fire was caused by FERMAN’s poor workmanship while servicing the Vehicle. Specifically, FERMAN, negligently and improperly connected the unfused positive battery cable to the Vehicle’s starter during FERMAN’s recent service of the vehicle. All other causes of the fire were conclusively ruled out.

12. As a result of FERMAN's negligence and the resulting fire damage to the Premises and pursuant to the terms and conditions of the Policy, HERITAGE paid \$727,426.25, including INSURED's \$2,500.00 deductible, to repair, replace and otherwise restore the Premises and INSURED to their pre-loss condition, and HERITAGE is subrogated to the rights of INSURED by the Policy and operation of law, and seeks \$727,426.25, plus pre-judgment interest, court costs, and all other fees and costs allowable by the governing law.

13. Any conditions precedent have either occurred, been fulfilled, or have been waived.

COUNT I: NEGLIGENCE

14. HERITAGE reiterates and realleges paragraphs 5 through 13 as if more fully set forth herein.

15. FERMAN's employees and/or servant agents owed a duty to INSURED to, *inter alia*, use reasonable care while servicing the Vehicle, and to service the Vehicle in accordance with industry standards and manufacturer instructions.

16. Because HERITAGE stands in the shoes of its INSURED, any duty owed to the INSURED, was likewise owed to HERITAGE.

17. FERMAN's employees and/or servant agents breached the above duties by negligently, carelessly, and improperly connecting the unfused positive battery cable to the Vehicle's starter.

18. FERMAN's breaches caused damage and loss to the Premises, for which HERITAGE paid to repair.

19. As the sole direct and proximate legal and factual cause of FERMAN's negligence, the Premises were damaged, damaging HERITAGE to the extent of \$727,426.25, including INSURED's \$2,500.00 deductible, plus interest, court costs, and all other costs associated with the collection of this sum.

WHEREFORE, Plaintiff, HERITAGE PROPERTY & CASUALTY INSURANCE COMPANY, demands a judgment against Defendant, FERMAN MOTOR CAR COMPANY, INC., for restitution, compensatory damages, pre-judgment interest, court costs and all other damages and sums legally recoverable to which HERITAGE is entitled as a matter of law, and demands trial of all issues so triable.

Dated this 2nd day of May, 2022.

GROELLE & SALMON, P.A.

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