

IN THE SUPREME COURT OF FLORIDA

JOHN ROBERT SEBO, individually and as
Trustee under Revocable Trust Agreement of
John Robert Sebo dated November 4, 2004, et al.,
Petitioner,

Case No.: SC14-897
App. Case No.: 2D11-4063
L.T. Case No.: 07-0054 CA
Consolidated with 07-1539 CA

v.

AMERICAN HOME ASSURANCE
COMPANY, INC.,
Respondent.

_____ //

**PETITIONER’S RESPONSE TO
RESPONDENT’S MOTION FOR REHEARING AND CLARIFICATION**

Petitioner John Robert Sebo (“Sebo”), pursuant to Rule 9.330 of the Florida Rules of Appellate Procedure, respectfully asks this Court to deny Respondent’s Motion for Rehearing and Clarification for the following reasons.

**This Court definitively decided that the concurrent causes
of Sebo’s loss were “independent”.**

The Respondent’s Motion for Rehearing and Clarification (“AHAC’s M-Rehearing”) filed by American Home Assurance Company, Inc. (“AHAC”) contends – incredibly – that this Court “overlooked” the issue of whether the concurrent causes of Sebo’s loss were dependent or independent. [AHAC’s M-Rehearing p.2]. AHAC’s contention is incredible because this Court noted that:

... the focus of AHAC’s argument on appeal to the Second District was the improper application of the CCD based on the dependent nature of the perils.

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Sebo v. American Home Assurance Co., 2016 WL 7013859 *6, fn. 2 (Fla. Dec. 1, 2016) (emphasis added). Moreover, the introductory paragraph of this Court’s “Discussion” of the issues states:

We conclude that when *independent perils* converge and no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine.

Id. at *2 (emphasis added). Thus, this Court most certainly did not “overlook” the issue of whether the causes were dependent or independent.

Furthermore, by specifically stating that “we ... approve the rationale of the Third District in *Wallach*,”¹ this Court necessarily and definitively determined that the concurrent causes of Sebo’s loss (which were identical to the concurrent causes of the loss in *Wallach*) were independent. In *Wallach*, the Third District noted that the “prime or efficient cause” theory “offers little analytical support where it can be said that but for the joinder of *two independent causes* the loss would not have occurred” and the court explained its preference for the concurrent cause doctrine with the following example:

Where weather perils combine with human negligence to cause a loss, it seems logical and reasonable to find the loss covered by an all-risk policy even if one of the causes is excluded from coverage.

Wallach, 527 So. 2d at 1388 (emphasis added). This language from *Wallach* is precisely on point in the present case, as Sebo’s loss resulted from “weather perils”

¹ *Wallach v. Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988).

(wind and rain) combined with “human negligence” (negligent construction). [R1-9; R18641-18642; R21578A-21578I].

In the opinion in *Sebo*, this Court noted that *Wallach* cited *Safeco Ins. Co. v. Guyton*, 692 F.2d 551 (9th Cir. 1982),² and the court in *Guyton* explained:

We believe Safeco misconceives what the *Partridge*³ court meant by ‘independent concurrent causes.’ As the Policyholders note, ***the twin causes in Partridge were independent only in the sense that each cause had an independent origin, not that they did not interact with one another to cause the loss.*** (emphasis added).

This Court applied the reasoning of *Partridge* to this case, explaining:

As in *Partridge*, there is no reasonable way to distinguish the proximate cause of Sebo’s property loss—the rain and construction defects acted in concert to create the destruction of Sebo’s home. As such, it would not be feasible to apply the EPC doctrine because no efficient cause can be determined. As stated in *Wallach*, “[w]here weather perils combine with human negligence to cause a loss, it seems logical and reasonable to find the loss covered by an all-risk policy even if one of the causes is excluded from coverage.”

Sebo, 2016 WL 7013859 *5 (quoting *Wallach*, 527 So. 2d at 1388).

In summary, AHAC’s argument that this Court “overlooked” and did not decide the issue of whether the causes of Sebo’s loss were dependent or independent cannot be taken seriously in light of the facts that this Court’s opinion: noted that “the focus of AHAC’s argument” was “based on the dependent nature of the perils” (*Id.* at *6, fn. 2); approved “the rationale” of *Wallach* (*Id.* at *4); applied the

² *Sebo*, 2016 WL 7013859 at *4.

³ *State Farm Mutual Auto. Ins. Co. v. Partridge*, 514 P.2d 123 (Cal. 1973).

reasoning of *Partridge* (*Id.* at *5); explained that “it is appropriate to apply the concurring cause doctrine” when “independent perils converge” (*Id.* at *2), and concluded by quashing the Second District’s opinion, which allowed the trial court’s application of the concurrent cause doctrine to stand. (*Id.* at *6). Accordingly, AHAC’s Motion should be denied.

This Court did not hold “that settlement amounts *must* be offset against the judgment”.

After arguing in its M-Rehearing that this Court “overlooked” an issue that it specifically and repeatedly addressed, AHAC argues in its section titled “Motion for Clarification” that this “Court clearly held that settlement amounts *must* be offset against the judgment.” [AHAC’s M-Rehearing p.5]. But this Court made no such holding. On the issue of a post-judgment offset, this Court simply said:

Nothing in our decision [in *Saleeby*]⁴ affects the ability of a trial court *to consider* the amount of settlements as a post-judgment offset. We remand for reconsideration of this issue.

Id. at *5. Saying that nothing in *Saleeby* “affects the ability of a trial court *to consider* the amount of settlements as a post-judgment offset” is obviously a far cry from *holding* “that settlement amounts *must* be offset against the judgment.” *Id.* at *5; [AHAC’s M-Rehearing p.5] (emphasis added).

⁴ *Saleeby v. Rocky Elson Construction, Inc.*, 3 So. 3d 1078 (Fla. 2009).

As explained in Sebo's Motion for Rehearing and Clarification ("Sebo's Motion"), Sebo never argued and the trial court never determined that *Saleeby* affected the ability of a trial court to consider the amount of settlements as a post-judgment offset. [Sebo's Motion ¶1-2; T11:15-19; T278-283]. In fact, as explained in Sebo's Motion, the trial court did consider AHAC's post-judgment request to offset the amount of settlements, and the trial court rejected that for reasons that had nothing to do with *Saleeby*. [Sebo's Motion ¶1-4; T278-293; R19891-19899].

Because this Court incorrectly believed that the trial court determined "that *Saleeby* precluded AHAC from presenting the settlement amounts to offset the judgment", clarification is needed about what, if anything, remains to be done in connection with the post-judgment offset issue, as discussed in Sebo's Motion.

Conclusion

Sebo respectfully asks this Court to deny AHAC's M-Rehearing, and he requests clarification as set forth in Sebo's Motion. Otherwise, consistent with this Court's conclusion to "quash the Second District's opinion below" and remand for the limited purpose of considering post-judgment offsets, Sebo asks this Court to bring this case to a conclusion in light of the facts that: his claims were denied by AHAC more than ten years ago [R9674-9678]; this case has been pending against AHAC for over seven years [R8723-8818]; and Mr. Sebo is 80 years old [T2351:16-17; T2352:3].

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Motion is in Times New Roman 14-point font and is therefore in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

By: /s/ Edward K. Cheffy
Edward K. Cheffy
FBN: 393649

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December 2016, pursuant to Fla. R. Jud. Admin. 2.516, Administrative Order AOSC13-7, and AOSC 13-49, a true and correct copy hereof was electronically filed and will be served via the Florida Courts E-Filing Portal to: RAOUL G. CANTERO, ESQ., DAVID P. DRAIGH, ESQ. and RYAN A. ULLOA, ESQ., White & Case, LLP, 2000 South Biscayne Blvd., Ste. 4900, Miami, FL 33131, rcantero@whitecase.com, ldominguez@whitecase.com, ddraigh@whitecase.com, mgauldin@whitecase.com, rulloa@whitecase.com, and miamilitigationfileroom@whitecase.com; ANTHONY RUSSO, ESQ. and EZEQUIEL LUGO, ESQ., Butler Pappas Weihmuller Katz Craig LLP, 777 S. Harbour Island Boulevard Ste. 500, Tampa, FL 33602, arusso@butlerpappas.com, eservice@butlerpappas.com, and elugo@butlerpappas.com; and JANET L. BROWN, ESQ. and SUSAN B. HARWOOD, ESQ., Boehm Brown Harwood, P.A., 1060 Maitland Center Commons Blvd., Ste. 365, Maitland, FL 32751, jbrown@boehmbrown.com and sbharwood@boehmbrown.com.

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