

IN THE SUPREME COURT OF FLORIDA

Case No. SC23-1540

GOVERNMENT EMPLOYEES INSURANCE COMPANY, ET AL.,
Appellants,

v.

GLASSCO, INC., ET AL.,
Appellees.

**REPLY BRIEF OF APPELLANTS GOVERNMENT
EMPLOYEES INSURANCE COMPANY, GEICO INDEMNITY
COMPANY, AND GEICO GENERAL INSURANCE COMPANY**

On a Certified Question from the United
States Court of Appeals for the Eleventh Circuit
Case No. 23-11056

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Plaintiffs-Appellants Government Employees Insurance Company, et al. respectfully submit this reply in connection with the Eleventh Circuit's certified questions.

Defendants-Appellees Glassco, Inc., et al.'s arguments, and the parallel arguments raised by amicus curiae AEPI on Glassco's behalf, lack merit for multiple reasons – not least because they would permit repair shops to use their own violations of the Repair Act to circumvent the Act's remedial provisions. Accordingly, the Court should answer both certified questions in the affirmative.

First, and contrary to Glassco's representations (Glassco Br., 1-14), there is ample evidence regarding the nature and purpose of Glassco's Repair Act violations. For example, evidence demonstrating that Glassco failed to provide GEICO's insureds with estimate waivers, estimates, or invoices, and unlawfully subcontracted all repair work without notice to or consent from the GEICO insureds. See, e.g., ECF 125, 13-25; ECF 134, 12-19; ECF 140, 9-13 (citing Glassco and its associates' own deposition testimony regarding these issues).¹

¹ Glassco contends that it had no obligation to provide any estimates to GEICO's insureds, because the insureds never had to pay for the

The evidence also demonstrates that Glassco was not a genuine repair shop at all, as it did not employ anyone to repair windshields, maintained no repair facilities/equipment, and existed for the purpose of flooding the county courts with lawsuits to seek large fee settlements from insurers. See, e.g., ECF 125, 14; ECF 140, 9-10 (citing deposition testimony from Glassco and its associates).²

Indeed, Glassco itself acknowledges that it has inundated Florida county courts with more than 1,700 piecemeal collections lawsuits against GEICO alone, leaving aside the massive number of suits that Glassco has filed against other insurers.³ See Glassco Br.,

repairs and so the cost of the repairs did not exceed \$100 “to the customer”. See Glassco Br., p. 37. In fact, Glassco had GEICO insureds sign work orders/assignments of benefits specifying that the insureds had to pay any charges that were not paid by GEICO. See, e.g., ECF 126-1, 5, 6, 270.

² Glassco falsely suggests that the District Court’s denied GEICO’s summary judgment motion for “lack of evidence”. See Glassco Br., fn. 1. In fact, the District Court held that disputed fact questions, and its interpretation of the Repair Act (which GEICO challenges as set forth in this briefing), precluded summary judgment for GEICO. See ECF 148, 49-54.

³ For instance, the Hillsborough County Court docket indicates that Glassco has hundreds of pending collections actions against insurers other than GEICO in that county, alone.

13-14. As GEICO noted in its initial brief, the Legislature recently enacted legislation to address such practices by companies like Glassco, and – along the way – specifically referenced the burden that the overwhelming volume of glass collections lawsuits has placed on Florida courts. See SC/SB 1002 Bill Analysis and Fiscal Impact Statement, Fla. Senate, at 3 (April 11, 2023).

In any case, Glassco’s “evidentiary” arguments, while incorrect, are superfluous – in responding to these certified questions, GEICO respectfully submits that this Court, like the Eleventh Circuit, should assume that Glassco did, in fact, violate the Repair Act as GEICO alleges. See Glassco Inc., 85 F.4th at 1142 (“[F]or purposes of this appeal and certification, we assume that GEICO’s alleged Repair Act violations occurred.”)

Second, GEICO’s federal action is not a “SLAPP” suit, as Glassco suggests. See Glassco Br., 2-4. In fact, the District Court rejected Glassco’s anti-SLAPP motions. See ECF 148, 6-16, 36-37. Then, in granting GEICO leave to amend its Complaint to facilitate the present appeal, the District Court indicated that the law regarding the Repair Act is unsettled, and certification could be warranted to resolve the issues. See ECF 183, 3-4 (“This court, of

course, cannot certify questions to the Florida Supreme Court, unlike the Eleventh Circuit, and district courts within the circuit have routinely confronted similar Repair Act claims without binding precedent to apply. ... Thus, clarification ... about the scope of Florida law appears advantageous to all.”)

Even so, Glassco seizes on a lone comment during oral argument by one judge on the Eleventh Circuit panel, positing that there was “SLAPP conduct going on here”. See Glassco Br., 3-4. However, Glassco omits that this same judge wrote the order certifying the present questions, noting that the legal issues presented by GEICO’s claims were “unsettled” and “important”, and that “[w]hen there is substantial doubt about the correct answer to a dispositive question of state law, a better option is to certify the question to the state supreme court.” Gov’t Emps. Ins. Co. v. Glassco Inc., 85 F.4th 1136, 1147 (11th Cir. 2023).

At bottom, the District Court rejected Glassco’s anti-SLAPP motions, and the District Court and Eleventh Circuit found that GEICO’s Repair Act arguments justified an appeal and these certified questions. Accordingly, this case is not an improper SLAPP suit.

Third – and contrary to Glassco’s representations (Glassco Br., 4-12) – Glassco’s alleged success in county court collections litigation does not resolve the certified questions.⁴ Nor do the handful of federal district court decisions that Glassco cites. County court decisions are not binding precedent. See, e.g., State v. Riley, 698 So.2d 374, fn. 1 (Fla. 2d DCA 1997). Nor do federal district court decisions control.

Rather, both the District Court and the Eleventh Circuit observed in the decisions leading to these certified questions that the law regarding GEICO’s Repair Act claims is unsettled, there is no binding precedent to apply, and there is “substantial doubt” regarding the proper resolution of the claims.

Fourth, Glassco contends that the Repair Act provides a cause of action to a “customer”, not an insurer, contains no “voiding penalty”, and so – pursuant to the supremacy-of-text principle – an errant repair shop may violate the Act and nonetheless collect on its

⁴ Glassco’s contention that GEICO should have advised the District Court that Glassco’s county court collections lawsuits were “related” to GEICO’s federal action (see Glassco Br., 13-14) has no bearing on the certified questions and is incorrect. C.f., Gov’t Emps. Ins. Co. v. AFO Imaging, Inc., 2021 U.S. Dist. LEXIS 46652 at * 17 (M.D. Fla. 2021)(federal anti-fraud lawsuit not parallel to, and did not substantially overlap with, defendants’ county court collections proceedings).

charges from a customer's insurer. See Glassco Br., 22, et seq. Glassco is mistaken.

Rather, since Osteen v. Morris was decided in 1986, intermediate appellate courts have held that shops violating material provisions of the Repair Act may not collect on their charges, from anyone, even in quantum meruit. This is because a contrary result “would necessarily circumvent the very dictates of the statute by enabling a motor vehicle repair shop to ignore the statutory requirements” Osteen, 481 So.2d at 1290; see also FGAP Inv. Corp. v. A1 Body & Glass of Coral Springs, LLC, 325 So.3d 1006, 1008 (Fla. 4th DCA 2021)(citing Osteen, and holding that where repair shop fails to substantially comply with the Repair Act, “it may not enforce a lien to secure payment or proceed under a theory of implied contract.”); 1616 Sunrise Motors, Inc. v. A-Leet Leasing of Florida, 547 So.2d 267 (Fla. 4th DCA 1989)(rejecting shop's argument that, although its Repair Act violations precluded recovery from the “customer”, it could nonetheless recover from a non-“customer”).

Glassco tries to distinguish these cases – especially Sunrise Motors (see Glassco Br., 49-52) – by arguing that “[e]ach of these cases stands for the proposition that a repair shop cannot either

enforce any lien rights or recover on a bond if the shop is not in ‘substantial compliance’ with the Repair Act”, and that “[t]hese cases are inapposite because Glassco has not attempted to enforce any lien against any customer” Id.

Glassco is incorrect. In fact, Sunrise Motors denied recovery based on Osteen, and noted that – in Osteen – the court held that a repair shop had to comply with the Repair Act “before a repair company can claim a lien or otherwise recover for the repairs.” Sunrise Motors, at fn. 1. In other words, Glassco’s artificial “distinction” is meaningless: A shop’s failure to comply with the Repair Act not only precludes it from claiming any lien, but also precludes recovery in any other manner. See, e.g., FGAP Inv. Corp., 325 So.3d at 1008 (“Where a motor vehicle repair shop fails to substantially comply with the provisions of the Act, it may not enforce a lien to secure payment or proceed under a theory of implied contract.”)

In fact, various of the cases GEICO cites, including Osteen, Safari Tours, Inc. v. Pasco, 255 So.3d 415, 417 (Fla. 3d DCA 2018), and Gonzalez v. Tremont Body & Towing, Inc., 483 So.2d 503 (Fla. 3d DCA 1986), do not reference the lien statute at all. See, e.g., Gonzalez, 483 So.3d at 504 (making no mention of lien statute, and

instead holding that non-compliant repair shop could not recover on its charges in quantum meruit).⁵

Glassco also argues that America Atlantic Transmission v. Nice Car, Inc., 112 So. 3d 639 (Fla. 4th DCA 2013) disproves GEICO's supposed "notion that the holding of Sunrise Motors authorizes a 'non-customer' to bring a cause of action under the Repair Act". Glassco Br., 30-32.

Yet, Sunrise Motors did not involve any direct claim under the Repair Act at all. Rather, in Sunrise Motors, a non-compliant repair shop filed suit against a car rental agency to recover the costs of repairs and storage. The shop – much like Glassco – argued that: (i) the Repair Act precluded the shop from holding the "customer" liable for the repairs; (ii) the agency did not meet the statutory definition of

⁵ Glassco cites two cases in which courts held that repair shops could recover on their charges. See Glassco Br., 53-55, citing Lieberman v. Collision Specialists, Inc., 526 So. 2d 102 (Fla. 4th DCA 1987) and KT's Kar Kare, Inc. v. Laing, 617 So. 2d 325 (Fla. 4th DCA 1993). These cases are inapposite as, in both instances, the shop was in complete or substantial compliance with the Repair Act. Neither of these cases dealt with a situation like this one, where Glassco was not in compliance at all with several material provisions of the Repair Act, let alone "substantial compliance". Indeed, the Pasco decision distinguished these two cases on this very basis. Id., 255 So.3d at 417.

“customer”; and therefore (iii) the shop could recover the costs of the repair from the agency, even if its Repair Act violations precluded recovery from the customer, himself. Id. However, the Fourth District Court of Appeals rejected that argument, holding:

the requirements of the [Repair Act] cannot be avoided by permitting recovery by the errant repair shop against an owner-lessor who may not be a “customer” within the definition portion of the Act. The repair transaction involved herein is one that is covered by the Act. A holding to the contrary would undermine the purposes of the Act.

Id.

In other words, regardless of whether a non-“customer” may assert an affirmative claim for damages under the Repair Act, a shop that materially violates the Repair Act may not collect on its charges, from anyone, whether pursuant to a lien or in any other manner. Either a “customer” or a non-“customer” should be able to assert Repair Act violations as a defense to a claim for payment.

In this context, Nice Car is inapplicable. There, a repair shop (“AAT”) repaired a vehicle, but the vehicle owner never paid for the repairs, resulting in ATT issuing a “Notice of Claim of Lien” pursuant to Fla. Stat. 713.585. Id., at *2. Nice Car – which financed the vehicle – posted a bond to cover the repair costs, and sought to take

possession. Id. However, AAT refused to release the vehicle, claiming Nice Car was not a “customer” under the lien provision of the Repair Act. Id. at *3. The trial court ordered AAT to release the vehicle, but the 4th DCA ruled in AAT’s favor, noting that Sunrise Motors was of “no precedential value”. Id. at *9. However, the Nice Car court obviously was not suggesting that Sunrise Motors had no precedential value in general – only in relation to the case before the court, which featured a totally different set of facts. Specifically, Nice Car dealt with who could obtain possession of a vehicle when a repair shop asserts a lien, not whether a shop can collect for repairs despite its violation of the Repair Act, as in Sunrise Motors, and in the present case. In fact, there was no violation of the Repair Act in Nice Car at all.

As this Court recently reaffirmed, the Legislature – when adopting a new version of a law – “is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version.” Sheffield v. R.J. Reynolds Tobacco Co., 329 So.3d 114, 123 (Fla. 2021). In this context, the Legislature has amended the Repair Act several times since Osteen was decided in 1986, and those amendments make clear that the Legislature adopted, with some modifications, the consistent judicial

construction of the statute precluding recovery to a non-compliant shop.

Glassco makes much of the fact that the Repair Act was amended in 1993 to add Section 559.921(7), which provides that “[i]f, in any proceeding brought pursuant to this part, it is determined that the repairs and costs thereof were in fact authorized, orally or in writing, the repairs were completed in a proper manner, and the consumer benefited therefrom, then the enforcing authority ... may award the reasonable value of such repairs.” See Glassco Br., 21, 46-48.

Glassco contends that this amendment indicates the absence of a “voiding penalty”, but what it actually indicates is that: (i) the Legislature adopted the prior judicial construction of the Repair Act precluding recovery to non-compliant shops; but (ii) carved out a discretionary exception to that general rule, whereby a shop might nonetheless recover in only those cases where, notwithstanding the Repair Act violations, the repairs/costs were authorized, the repairs were completed properly, and the customer benefited.

Relatedly, though Glassco contends that the maxim “expressio unius est exclusio alterius” supports its argument (Glassco Br., 44),

it actually supports GEICO's position: By amending the Repair Act to include a provision contemplating that a non-compliant shop might recover on its charges only under a specific set of circumstances (e.g., where repairs/costs were authorized, completed properly, and the customer benefitted), the Legislature precluded recovery by non-compliant shops in cases – like this case – where the costs were not authorized, and where the repairs were not completed in a proper manner.⁶

In this context, Glassco ignores a qualifying aspect of the supremacy-of-text principle, namely that “every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.” Ham v. Portfolio Recovery Assocs., LLC, 308 So.3d 942, 946-947 (Fla. 2020). As this Court noted, “[i]t would be a mistake to think that our law of statutory interpretation requires interpreters to

⁶ The cases cited by Glassco are inapposite. See Glassco Br., 44-45, citing QBE Ins. Corp. v. Chalfonte Condo. Apt. Ass'n, 94 So.3d 550 (Fla. 2012)(no indication Legislature intended to penalize non-compliance with statute); Dascott v. Palm Beach Cnty., 988 So.2d 47 (Fla. 4th DCA 2008)(statute did not imply that monetary damages were available as remedy for violation); Fla. Med. & Inj. Ctr., Inc. v. Progressive Express Ins. Co., 29 So.3d 329 (Fla. 5th DCA 2010)(nothing in statute suggested existence of proposed remedy).

make a threshold determination of whether a term has a ‘plain’ or ‘clear’ meaning in isolation, without considering the statutory context and without the aid of whatever canons might shed light on the interpretive issues in dispute.” Conage v. United States, 346 So.3d 594, 598 (Fla. 2022) see also State v. McKenzie, 331 So.3d 666, 673 (Fla. 2021)(although the relevant statute did not expressly provide mechanism whereby court could correct failure to timely designate defendant as a sex offender, it could belatedly impose the sex offender designation, because “implication of such a restriction [on an untimely sex offender designation] is unreasonable given the whole statutory context”).

Likewise, Glassco and AEPI are asking the Court to construe the Repair Act unreasonably given the whole statutory context. Accordingly, the Court should answer the second certified question affirmatively, and hold that a repair shop that violates the Act in the manner alleged by GEICO is not entitled to recover on its charges, from anyone.

The conclusory arguments raised by AEPI as amicus curiae do not affect this analysis. AEPI contends that it supposedly would place “untold numbers of consummated and pending [repair] transactions

in jeopardy” if this Court were to hold – in accordance with Florida intermediate appellate authority going back decades – that a non-compliant repair shop may not collect on its charges. AEPI Br., pp. 5-6. However, this putative “jeopardy” has been around for decades, since Osteen in 1986. When the Legislature enacted post-Osteen amendments to the Act, it adopted Osteen and its progeny’s construction precluding recovery by a non-compliant shop, subject to exceptions under particularized circumstances (e.g., pursuant to Section 559.923(7)). Accordingly, AEPI’s argument that a shop can operate in flagrant violation of the Repair Act’s remedial provisions, yet nonetheless collect on its charges, lacks merit.

Likewise, AEPI’s arguments that an insurer lacks standing to “interfere” with transactions between its insureds and a shop, and that holding a non-compliant shop ineligible to collect on its charges would “invalidate” contracts between the shop and insureds, lacks merit. See AEPI Br., pp. 19-24. AEPI does not identify the terms of any purported contracts between insureds and shops, and – in fact – the only transaction that occurs between an insured and a shop under these circumstances occurs when an insured assigns their insurance benefits to the shop in exchange for repairs. However,

where a shop violates the Repair Act, it loses the right to collect on its charges, even in quantum meruit, and the customer can still retain the benefit of the repairs. See, e.g., Osteen, supra; Gonzalez, supra. In that setting, though an insured may assign to the shop his or her right to reimbursement for a windshield repair, there is – fundamentally – nothing to reimburse: The insured has no liability to pay anything and has simply assigned a valueless claim to the shop.

Fifth, Glassco does not convincingly rebut GEICO’s arguments that contract enforcement, public policy, and equitable principles should preclude recovery by a shop that violates material provisions of the Repair Act. See, e.g., Fla. House of Representatives v. Crist, 999 So.2d 601, 616 (Fla. 2008)(“an agreement which cannot be performed without violating ... a ... statutory provision, is illegal and void.”)

Instead, Glassco cites federal decisions, which stand for the general proposition that a “statutory violation renders contracts unenforceable only where the statute expressly or impliedly so provides.” Glassco Br., 43, fn. 11. However – as discussed above – the Legislature adopted the prior judicial construction of the Repair Act that generally precludes recovery to non-compliant shops, subject to potential exceptions. Thus, the Repair Act does “expressly

or impliedly” provide that non-compliant shops may not enforce repair contracts or recover on their charges in quantum meruit.

For these reasons, as well, the Court should answer the second certified question in the affirmative.

Sixth, the first certified question also should be answered affirmatively. As discussed in GEICO’s initial brief, Glassco violated the Repair Act by – inter alia – failing to provide any written estimates to anyone, and thereby prevented any “customer” who could assert any cause of action under the statute from coming into existence. Under such circumstances, Glassco should not be permitted to use its own violations of the Repair Act to insulate itself from liability for those violations.⁷

Glassco nonetheless argues that the supremacy-of-text principle mandates this perverse outcome. However, the supremacy-of-text principle allows for interpretive leeway and resort to other

⁷ Glassco and AEPI contend that non-complaint shops nonetheless could face administrative/regulatory penalties for their Repair Act violations. See Glassco Br., 33-34; AEPI Br., 24. However, as discussed in GEICO’s initial brief, the existence of an administrative remedy cannot be read to insulate Glassco from liability to GEICO, especially where the remedy does not protect the party that paid the non-compliant shop for the non-compensable repairs.

principles of statutory construction where the relevant context provides some grounds for it. See, e.g., Ham, supra; Conage, supra; McKenzie, supra; see also State v. Knighton, 235 So.3d 312, 316 (Fla. 2018)(“the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.”) Here, the approach advanced by Glassco should be avoided, because it would render the Repair Act’s private cause of action meaningless.

Glassco, like the District Court, contends this is not the case, because – in the event no one fits the statutory definition of “customer” set forth in Section 559.903(2) – the only “reasonable interpretation” is that the “customer” with a right to sue under the Repair Act should be defined as the person who, under Section 559.905, “requests a motor vehicle repair shop to perform repair work on a motor vehicle”. See Glassco Br., 35, quoting ECF 59, 10. Glassco then argues that, because it was GEICO’s insureds, rather than GEICO, who requested that Glassco perform repairs, it is

GEICO's insureds – rather than GEICO – who are the only “customers” with a right to sue. Id.⁸

However, if the Court were to take this approach, then it also should find that an insurer that pays a repair claim for an insured “customer” is subrogated to any Repair Act claim the customer may have. See, e.g., Fayad v. Clarendon Nat'l Ins. Co., 899 So. 2d 1082, 1086 (Fla. 2005)(insurer that pays insured's claim or loss becomes subrogated to the insured's cause of action).

Nonetheless, Glassco contends that “it is improper to rely on equitable principles to interpret a statute”. Glassco Br., 41-42. But GEICO is not asking the Court to resort to equitable principles to interpret the word “customer”. Rather, GEICO is asking the Court to find that, if an insurer pays a repair shop on behalf of an insured “customer”, then the insurer is subrogated to any Repair Act claim the insured may have.

⁸ Glassco also contends that “there is no generally accepted dictionary definition for the word ‘customer’ that includes the customer’s insurer.” Glassco Br., 33. In fact, dictionaries define “customer” as “one who purchases a ... service” (www.merriam-webster.com). An insurer that pays for a repair therefore would fall within this definition.

In this context, the first certified question asks whether an insurer can assert a claim under the Repair Act where – as here – a shop violates the Repair Act by failing to provide any written estimates, to anyone, and thereby prevents anyone from ever qualifying as a “customer” as that term is defined in the statute. As the Eleventh Circuit made clear, the phrasing in the certified questions “should not restrict the Supreme Court of Florida's consideration of the problems posed by this case”. Glassco Inc., 85 F.4th at 1148.

Accordingly, GEICO respectfully submits that the first certified question should be answered in the affirmative, because – upon paying for the repair work – the insurer is subrogated to any Repair Act claim the insured may have. This would avoid the untoward outcome advocated by Glassco and AEPI, in which an errant repair shop could prevent the existence of any “customer”, and avoid liability to any “customer”, by its own violations of the Repair Act.

CONCLUSION

For the reasons set forth herein, the certified questions should be answered in the affirmative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 19, 2024, a true and correct copy of the foregoing was filed with the of court via the Florida Courts E-Filing Portal, which will send a link to counsel of record via electronic mail as directed below:

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I HEREBY CERTIFY that this computer-generated brief is printed in Bookman Old Style 14-point font, and further complies with the applicable font and formatting requirements of Rule 9.045, Florida Rules of Appellate Procedure. I further certify that the word count for the foregoing brief is 3,902, as indicated by the word count of the word-processing system used to prepare this document, and complies with the word count limits in that it does not exceed 4,000 words (excluding the words in any caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, and signature block).

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