

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

UNIVERSAL PROPERTY & CASUALTY
INSURANCE COMPANY,

Appellant,

v.

Case No. 5D21-1841
LT Case No. 2017-CA-021169

ANDRE MOTIE, PERSONAL
REPRESENTATIVE OF THE
ESTATE OF ANIRUDE MOTIE,

Appellee.

Opinion filed March 4, 2022

Appeal from the Circuit Court
for Brevard County,
Curt Jacobus, Judge.

Paulo R. Lima and Elizabeth K.
Russo, of Russo Appellate Firm,
P.A., Miami, for Appellant.

Matthew G. Struble and Christine M.
Deis, of Struble, P.A., Indialantic, for
Appellee.

SASSO, J.

Appellant, Universal Property & Casualty Insurance Company (“Universal”), appeals the final judgment entered after a jury returned a verdict in favor of the appellee, Andre Motie (“the personal representative”). Universal argues that the trial court erred when it found, as a matter of law, that any breach by Anirude Motie (“Motie”) of the insurance policy conditions was immaterial thereby directing a verdict for the personal representative on the issue of liability. We agree and reverse.

This appeal arises out of a property insurance dispute between Universal and Motie, whose home was insured by Universal, after Motie reported to Universal that his home had been damaged in a storm. The dispute ultimately proceeded to trial, where Universal argued that Motie failed to comply with three of the post-loss conditions in the insurance policy (the “Policy”) required for filing suit. Specifically, it alleged that Motie failed to: (1) provide “prompt” notice of the loss; (2) protect the property from further damage; and (3) provide Universal with requested records and documents. The failure to comply with these conditions, according to Universal, constituted a breach of the Policy and precluded Motie from recovering for his loss.

Relevant to Universal's defenses, the jury was presented with evidence that Motie failed to report the loss to Universal for 103 days after the hurricane that allegedly caused the damage to Motie's home. The jury was also presented with evidence that Motie failed to protect the property from further damage because he did not hire anyone to perform dry out services and because the leaks went unaddressed for months. Finally, the jury heard evidence that Motie failed to provide Universal with requested estimates and documents, including his own repair estimate, either by providing them prior to suit or in response to Universal's requests.

Following the presentation of evidence by both parties, the personal representative moved for directed verdict arguing the facts were undisputed that any breach by Motie was immaterial. The trial court agreed and determined there was no material breach as a matter of law.

Based on the trial court's rulings, liability was established and the sole question on the verdict form asked: "What amount of money do you find from the greater weight of the evidence to be the amount of [Motie's] covered damages under the Universal Policy of Insurance?" The jury awarded \$37,528.24 after subtracting the Policy deductible.

The sole issue presented by this appeal is whether the trial court erred in directing a verdict in favor of the personal representative. A trial court's

ruling on a motion for directed verdict is reviewed de novo. *21st Century Centennial Ins. Co. v. Thyng*, 234 So. 3d 824, 826 (Fla. 5th DCA 2017). A motion for directed verdict shall be granted “only if no view of the evidence could support a verdict for the nonmoving party and the trial court therefore determines that no reasonable jury could render a verdict for that party.” *Scott v. TPI Rests., Inc.*, 798 So. 2d 907, 908 (Fla. 5th DCA 2001) (citing *Blake v. Hi-Lu Corp.*, 781 So. 2d 1122, 1123 (Fla. 3d DCA 2001)).

Upon review, we conclude that the evidence presented was sufficient such that a reasonable jury could have returned a verdict in favor of Universal. Viewed in the light most favorable to Universal, a reasonable jury could have determined that Motie’s delay in reporting the damage, failure to obtain dry out services, and failure to provide requested documents were not immaterial breaches.

We also reject the personal representative’s argument of invited error. The personal representative argues that because Universal initially moved for directed verdict, arguing the undisputed facts showed that Motie’s breach “was material,” it cannot now argue that the trial court erred in directing verdict in the opposite direction by finding the breach was “immaterial.” While Universal may have suggested to the trial court that it could decide the issue of whether Motie materially breached the Policy as a matter of law, Universal

did not invite the trial judge to find specifically that Motie's policy breaches were immaterial. Indeed, Universal objected immediately upon the trial court making this determination. As a result, Universal did not induce the specific ruling at issue. See *S & I Invs. v. Payless Flea Mkt., Inc.*, 36 So. 3d 909, 914 (Fla. 4th DCA 2010) (rejecting argument that party invited error as to court's determination as a matter of law when "the adverse ruling, itself, was not invited"); *Zanoletti v. Norle Props., Corp.*, 688 So. 2d 952, 954 (Fla. 3d DCA 1997) ("Invited error occurs here when the appellant somehow induced the *specific ruling* by her affirmative action or inactivity." (emphasis added) (citations omitted)).

In sum, we conclude that the trial court erred in directing verdict in favor of the personal representative and that the error was not invited. As a result, we vacate the judgment and remand for a new trial.

REVERSED and REMANDED for further proceedings.

TRAVER and NARDELLA, JJ., concur.