

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10302
Non-Argument Calendar

AIG PROPERTY CASUALTY COMPANY,

Plaintiff-Appellant,

versus

ECO MARINE SOLUTIONS, INC.,
CUSTOM ELECTRICAL, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:24-cv-00722-SPC-NPM

Before BRASHER, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

This appeal is an insurance dispute arising from a yacht fire. AIG Property Casualty Company appeals the district court's grant

of summary judgment in favor of Eco Marine Solutions, Inc., and Custom Electrical, Inc., that dismissed AIG's claims. AIG argues that the district court erroneously based its conclusions on the premise that the 2014 National Electrical Code, rather than the 2017 National Electrical Code, governs the statutory and contractual obligations at issue in the dispute. After careful review, we affirm the district court.

I.

In May 2020, Jeffrey McMillin and Eco Marine contracted for the construction of a new dock behind McMillin's Florida home. Eco Marine agreed to complete the project "in the most workmanlike and substantial manner" and "in accordance with all local codes, laws, ordinances and regulations." Dkt. No. 45-1 at 1.

On December 14, 2020, Eco Marine submitted an application for a dock construction permit from Lee County, which was granted. Eco Marine handled the dock construction work but subcontracted the electrical work to Custom Electrical. The dock passed its final inspection on October 19, 2021.

On February 17, 2023, a fire started on McMillin's yacht while it was in the waterway behind his home. The yacht was declared a constructive total loss, and AIG, McMillan's insurance company, paid him \$1,800,000.00. AIG therefore became subrogated to McMillin's rights and interests arising from the yacht's destruction.

26-10302

Opinion of the Court

3

AIG filed a complaint in federal court against Eco Marine and Custom Electrical in August 2024. It alleges that Custom Electrical installed a circuit breaker on the dock that did not comply with the Florida Building Code and that the non-compliant circuit breaker caused the fire. AIG presses five claims in total. The first three claims all sound in breach of contract. Specifically, AIG represents that Eco Marine breached the May 2020 contract “by failing to build and erect the dock and electrical system in compliance ‘with all local codes, laws, ordinances and regulations’”; by violating the express warranty that it would “complete the Project ‘in the most workmanlike and substantial manner’”; and by violating the “implied warranty of workmanlike performance.” Dkt. No. 36 ¶¶ 23–28. Claims four and five, against Eco Marine and Custom Electrical, respectively, are brought under Florida Statutes section 553.84, which provides a standalone cause of action for violations of the Florida Building Code. FLA. STAT. § 553.84 (2001).

The parties filed cross-motions for summary judgment. Both Eco Marine and Custom Electrical admitted that the circuit breaker Custom Electrical installed did not comply with the 2017 National Electrical Code. But because that edition did not take effect in Florida until after Eco Marine applied for the dock construction permit, they contended that the 2014 National Electrical Code governed their obligations instead. And under that edition, the installed circuit breaker was compliant.

AIG did not appear to contest that the circuit breaker was compliant with the 2014 National Electrical Code. But, pointing

out that the 2017 National Electrical Code took effect prior to the project's completion, AIG contended that the 2017 edition—not the 2014 edition—governed Eco Marine's and Custom Electrical's obligations.

The district court granted summary judgment for Eco Marine and Custom Electrical. It reasoned that “[t]he building code Defendants are required to follow is the code in effect at the time of the permit application for the project, not when the permit was issued or when the project was completed.” Dkt. No. 63 at 6. As a result, the court concluded, the circuit breaker complied with the applicable building regulations, and Eco Marine therefore did not breach its contractual duties. Likewise, in the absence of a Florida Building Code violation, AIG's section 553.84 claims failed too.

II.

We review *de novo* “a district court's rulings on cross-motions for summary judgment, and the facts are viewed in the light most favorable to the non-moving party on each motion.” *Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1317 (11th Cir. 2021). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a).

26-10302

Opinion of the Court

5

III.

We agree with the district court that Eco Marine and Custom Electrical are entitled to summary judgment. The only question is whether Eco Marine and Custom Electrical were required to follow the 2017 National Electrical Code when they built the dock. Because they were not, the district court correctly entered judgment in their favor.

We'll start with the Florida Building Code. Under Florida law, the Florida Building Commission is responsible for adopting the Florida Building Code, which "contain[s] or incorporate[s] by reference all laws and rules which pertain to and govern the . . . construction . . . of public and private buildings." FLA. STAT. § 553.73(1)(a). And every three years, the Commission is required to update the Florida Building Code "through review of the most current updates" of certain standardized codes published by external "institute[s] or standards organization[s]." *Id.* § 553.73(7)(a), (d). Particularly relevant here, the Commission is statutorily required to incorporate the most recent edition of the National Electrical Code, *id.* §§ 553.73(3), 553.88(1), which is published by the National Fire Protection Association, *id.* § 553.73(7)(a).

Changes to these incorporated standards do not become effective automatically. Instead, when an external "institute or standards organization" makes a change "to any standard or criterion that is adopted by reference in the Florida Building Code," that change "does not become effective statewide until it has been

adopted by the commission.” *Id.* § 553.73(7)(d). And even then—and crucial to this appeal—statewide application is subject to the caveat that “the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit.” *Id.*

Recall that Eco Marine applied for the dock construction permit on December 14, 2020. No one disputes that the Sixth Edition of the Florida Building Code, which incorporated the 2014 National Electrical Code, was in effect when Eco Marine submitted the permit application. *See* INT’L CODE COUNCIL, *Preface* to FLORIDA BUILDING CODE, RESIDENTIAL (6th ed. 2017), <https://perma.cc/28U5-X5VU> (noting incorporation of the 2014 National Electrical Code and effective date of December 31, 2017). The Seventh Edition of the Florida Building Code, which incorporated the 2017 National Electrical Code, did not replace the Sixth Edition until December 31, 2020. *See* INT’L CODE COUNCIL, *Preface* to FLORIDA BUILDING CODE, RESIDENTIAL (7th ed. 2020), <https://perma.cc/25B5-FA6E> (noting incorporation of the 2017 National Electrical Code and effective date of December 31, 2020). AIG does not argue that the installed circuit breaker violated the 2014 National Electrical Code; instead, its claims rely on the 2017 National Electrical Code. But because the 2017 National Electrical Code did not apply, AIG’s claims must fail.

AIG makes three arguments for why that conclusion is mistaken. We address each in turn.

26-10302

Opinion of the Court

7

First, AIG argues that the district court erred in interpreting Florida Statutes section 553.73(6) to conclude that the 2014 National Electrical Code applied to this project. That provision provided for the Florida Building Code’s “initial adoption . . . for use statewide” and says that “[f]or a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit.” FLA. STAT. § 553.73(6). AIG argues that section 553.73(6) does not support the district court’s summary judgment because it applies only to permit applications submitted before the initial adoption of the Florida Building Code.

We don’t necessarily disagree with AIG’s interpretation of section 554.73(6). But it doesn’t matter. Even assuming section 553.73(6)’s carve-out applies only to permit applications submitted prior to the initial adoption of the Florida Building Code, another provision, section 553.73(7)(d), expressly extends a similar carve-out to permit applications submitted prior to the adoption of subsequent editions. *Id.* § 553.73(7)(d). That provision, as we’ve explained above, says that “the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit.” *Id.* § 553.73(7)(d).

Tellingly, AIG has no response to the plain text of section 553.73(7)(d). Instead, it simply points out that neither the district

court nor the parties in the district court cited section 553.73(7)(d). But we must apply the applicable provision of the statute whether or not it was cited in the district court. The parties cannot waive or forfeit the applicable law. *See ECB USA, Inc. v. Chubb Ins. Co. of N.J.*, 113 F.4th 1312, 1321 (11th Cir. 2024) (explaining that a party cannot “waive or forfeit . . . the words of a statute”), *cert. denied*, 145 S. Ct. 1431 (2025); *United States v. Dawson*, 64 F.4th 1227, 1239 (11th Cir. 2023) (“[P]arties cannot waive the application of the correct law” (alteration in original) (quoting *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 923 (11th Cir. 2018))). And we “may affirm on any ground supported by the record, regardless of whether that ground was relied upon or even considered below.” *Waldman v. Conway*, 871 F.3d 1283, 1289 (11th Cir. 2017). Thus, because the 2014 National Electrical Code clearly applied to work completed under Eco Marine’s permit, it doesn’t matter whether it applied under section 553.73(6) or under section 553(7)(d).

Second, AIG argues that, no matter which year’s code applied for purposes of the permit, Eco Marine was contractually bound to perform its obligations based on the code in effect when the work was performed. AIG points to contract language that required the work to be performed “in accordance with all local codes, laws, ordinances and regulations.” Dkt. No. 45-1 at 2. AIG says that, because the 2017 National Electrical Code became effective during the pendency of the project, Eco Marine should have ensured that the work complied with that code’s requirements.

This argument fails too. Eco Marine has not been accused of violating a code, law, ordinance, or regulation that applied to the project. We think the contract cannot be understood as an agreement that Eco Marine would ensure that the project complied with *inapplicable* codes, laws, ordinances, or regulations. The Seventh Edition of the Florida Building Code, incorporating the 2017 National Electrical Code, was inapplicable to work completed under Eco Marine's permit because Eco Marine applied for that permit prior to the Seventh Edition's effective date. *See* FLA. STAT. § 553(7)(d). So, a failure of Eco Marine to abide by the Seventh Edition would not be a breach of its agreement to complete the project "in accordance with all local codes, laws, ordinances and regulations." Dkt. No. 45-1 at 2.

Third, and in a similar vein, AIG argues that nothing in the section 553.84 cause of action limits its applicability to violations of the law that "administratively applie[d]" when Eco Marine submitted the dock construction permit application. Appellant's Br. at 30. Instead, section 553.84 simply provides a cause of action for "violation[s] of this part or the Florida Building Code." FLA. STAT. § 553.84 (2001). Therefore, AIG maintains, because the 2017 National Electrical Code was effective statewide during the course of the project, violations of that code were sufficient to support a section 553.84 cause of action.

This argument fails for the same reason as the previous one. Though the 2017 National Electrical Code was effective statewide before the project was completed, it was not effective when Eco

Marine applied for its permit. Thus, that code did not govern work conducted under the permit, FLA. STAT. § 553.73(7)(d), and non-compliance could not constitute a “violation” for purposes of section 553.84.

IV.

For the foregoing reasons, we **AFFIRM** the district court’s grant of summary judgment in favor of Eco Marine and Custom Electrical.