[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-11769

ANTHONY SOS,

Plaintiff-Appellee,

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
a foreign insurance company,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:17-cv-00890-PGB-LRH

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Before LUCK, BRASHER, and HULL, Circuit Judges.

BRASHER, Circuit Judge:

We have twice held that a defendant cannot moot a class action lawsuit by buying off the individual claims of the named plaintiff. *See Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030 (5th Cir. 1981); *Stein v. Buccaneers Ltd.*, 772 F.3d 698 (11th Cir. 2014). The Supreme Court, too, has reasoned that allowing a class's claims to "be 'picked off' by a defendant's tender of judgment before an affirmative ruling on class certification could be obtained, obviously would frustrate the objectives of class actions." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980). We have explained that a contrary rule would give defendants "the option to preclude a viable class action from ever reaching the certification stage," which is "precisely what the [Supreme Court] condemns." *Zeidman*, 651 F.2d at 1050.

In this class action lawsuit, Anthony Sos, the named plaintiff, timely filed a motion to certify a class of State Farm policy holders who had been shortchanged when State Farm failed to pay sales taxes and title transfer fees under a standard automobile insurance contract. While that class certification motion was pending, State Farm tried many times to moot Sos's claims so that a class could not be certified. Just hours after Sos filed his class certification motion, State Farm sent Sos's attorneys a check to resolve his individual claims, which his attorneys rejected. Later, State Farm offered

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to pay Sos double its earlier offer if Sos would dismiss his putative class suit. After settlement talks failed, State Farm began to send voluntary payments to other members of the putative class, whom State Farm had identified through internal documents, in an express attempt to moot the class claims. Lastly, in one final effort, State Farm sent Sos another check. Sos had filed a motion for summary judgment on behalf of the putative class on the deadline set by the district court. The district court granted Sos's motion for summary judgment on only his individual claims for damages and prejudgment interest, without addressing his claim for statutory attorney's fees under Florida law and without ruling on class certification. The day before a hearing on Sos's long-pending class certification motion, State Farm paid Sos for his individual damages and prejudgment interest as reflected in the district court's summary judgment.

The district court rejected State Farm's repeated argument that its payments to Sos and other members of the class mooted the case. Shortly after the class certification hearing, the district court certified a class of Florida insureds and granted summary judgment in its favor, entitling the class to damages, prejudgment interest, and statutory attorney's fees.

State Farm's appeal requires us to resolve five questions. First, under established precedent and the unique circumstances here, we conclude that State Farm did not moot this case by making unsupervised partial payments to the putative class members or by paying some of Sos's individual claims. Second, we conclude

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that the district court did not abuse its discretion in certifying the class action under Rule 23 of the Federal Rules of Civil Procedure. Third, we conclude that State Farm's failure to pay the class members the complete costs of their sales taxes and title transfer fees was a breach of contract under Florida law. Fourth, we conclude that the district court did not abuse its discretion in awarding the plaintiffs prejudgment interest. Fifth, we conclude that the district court's attorney's fee award was an abuse of its discretion because the court used the wrong standard to calculate the applicable hourly rate and added a too-generous 2.5 multiplier. Accordingly, we affirm in part, reverse in part, and remand this case for the district court to recalculate attorney's fees in light of this opinion.

I.

"This case has a lengthy, and heavily litigated, history." *Sos v. State Farm Mut. Auto. Ins. Co.*, No. 617CV890ORL40LRH, 2021 WL 1185685, at *1 (M.D. Fla. Jan. 26, 2021), *report and recommendation adopted in part, rejected in part*, No. 6:17-CV-890-PGB-LRH, 2021 WL 1186811 (M.D. Fla. Mar. 19, 2021). Because this factual history is critical to our decision, we describe it in some detail.

Anthony Sos and unnamed class members each leased a vehicle covered by a State Farm form insurance policy with identical essential terms. The policy provides that, in the event of a "total loss," State Farm will pay the insured the "actual cash value" of his vehicle. But the policy does not define "actual cash value" or explain whether it includes the cost of sales tax or title transfer fees.

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State Farm engages in a multi-step procedure for handling total loss claims. After determining that a State Farm insured vehicle is a total loss, a claims specialist calculates the vehicle's actual cash value by entering agreed-upon values into State Farm's Total Loss Settlement Tool ("TLST"), a graphical user interface. State Farm then sends the insured a settlement check equal to the actual cash value calculated by the TLST. From 2012 to 2017, State Farm employed a "business rule" in the State of Florida that set the tax field in the TLST to zero dollars if the total loss claim was for a leased vehicle, rather than an owned one.

In 2016, Sos was in a car accident involving his leased, Florida-registered Lexus, which State Farm declared a total loss. State Farm issued a settlement payment to Sos that, consistent with its business rule, did not include sales tax and included less than the full amount for title transfer fees—$58.75 instead of $75.25.

Sos filed a class action lawsuit on behalf of himself and all others similarly situated, claiming State Farm's failure to pay appropriate sales tax and title fees on leased vehicle total loss claims in Florida breached its auto insurance policy. According to Sos, the policy required State Farm to pay all total loss claimants Florida's six percent state sales tax, applicable local sales tax, and $75.25 in title transfer fees. Sos also alleged that the putative class action satisfied all applicable class certification requirements under Rule 23. The operative class complaint sought compensatory damages, prejudgment interest, attorney's fees, and costs for both Sos and the putative class members.

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