

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed October 8, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-1218
Lower Tribunal No. 05-12417

Basil Usiabulu,
Appellant,

vs.

Progressive Express Insurance Co., etc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ellen L. Leesfield, Judge.

Basil Usiabulu, in proper person.

Steven J. Jacobson and J. Steven Warner (Fort Lauderdale), for appellee.

Before WELLS, ROTHENBERG, and SALTER, JJ.

SALTER, J.

Basil Usiabulu, pro se, appeals a final summary judgment in favor of Progressive Express Insurance Company. We reverse. See Brown v. Traveler's Indem. Co., 755 So. 2d 167 (Fla. 3d DCA 2000).¹

Usiabulu's pro se "statement of defense" filed and served in response to Progressive's subrogation claim raised a number of facially genuine and material issues of fact. See Martinez v. Fraxedas, 678 So. 2d 489, 491 (Fla. 3d DCA 1996). Progressive's motion for summary judgment and supporting affidavit relied exclusively on Usiabulu's failure to respond to a request for admissions, and Progressive did not otherwise overcome the facts asserted as defenses. Under Brown and several earlier decisions, the motion for summary judgment should not have been granted.

Reversed and remanded.²

¹ We commend Progressive's counsel's candor in citing Brown in the answer brief. See R. Regulating Fla. Bar 4-3.3(a)(3). The trial court cannot be faulted for failing to apply a controlling case that the parties themselves apparently did not provide below.

² Progressive should note Usiabulu's current address (in New Braunfels, Texas) on the cover page of his initial brief and in the final judgment; Progressive's answer brief contains a Lake Worth, Florida service address, which may explain the absence of a reply brief.