

**In The Matter Of:**  
*Heritage Property and Casualty Insurance v.*  
*Titan Restoration, Inc.*

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*Hearing Before Judge Newton*  
*June 26, 2017*

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*Michael Musetta & Associates, Inc.*  
*One Tampa City Center, Suite 3400*  
*201 North Franklin Street*  
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**EXHIBIT**  
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

HERITAGE PROPERTY AND CASUALTY  
INSURANCE COMPANY,

Plaintiff,

Case No. 17-002914-CI

vs.

TITAN RESTORATION, INC.,  
YITSHAK LEVY, Individually;  
ORLY COHEN-LEVY, Individually;  
MOSHE LEVY, Individually,  
and JANE DOE (Heritage Employee),

Defendants.

----- /

BEFORE: HONORABLE CYNTHIA J. NEWTON  
Circuit Court Judge

DATE: June 26, 2017

TIME: 10:44 a.m. to 11:45 a.m.

PLACE: Pinellas County Courthouse  
545 First Avenue North  
Courtroom H  
St. Petersburg, Florida

PURSUANT TO: Plaintiff's Motion for Temporary  
Injunctive Relief

REPORTED BY: LISA A. SIMONS-CLARK, RMR, CRR  
Notary Public, State of  
Florida at Large

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## 1 APPEARANCES:

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 8 Attorney for Defendants

## 9 ALSO PRESENT:

10 A Bailiff

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1 PROCEEDINGS

2 THE BAILIFF: All rise. Court is now in  
3 session. The Honorable Cynthia J. Newton is  
4 presiding.

5 THE COURT: Good morning. Okay. So our 10:45  
6 is Case 17-002914. We have the motion for  
7 temporary injunction set this morning.

8 MR. NISBERG: Yes, Your Honor.

9 THE COURT: Okay. Mr. Nisberg?

10 MR. NISBERG: Yes. May I proceed?

11 THE COURT: Yes.

12 MR. NISBERG: Your Honor, we filed a motion  
13 for temporary injunction based upon the sworn  
14 evidence that's been presented, both in the  
15 verified amended complaint that we filed and the  
16 sworn statement that was also filed of record of  
17 Rossana Carrino Cruz. She calls herself "Rosie."

18 We may be referring to her as "Rose" during  
19 the course of the -- of this hearing. I have four  
20 documents, Your Honor, that we will be introducing  
21 as evidence. One is the verified amended  
22 complaint; the next is the sworn statement of  
23 Rosie Cruz, and there's also going to be an  
24 invoice that was presented to Heritage by Titan,  
25 which is not yet in the record, in the court

1 record, but I have a witness here who will  
2 authenticate this, and a sworn certified policy of  
3 insurance for one of our policyholders.

4 I can present them to you now, and you can  
5 mark them as we go.

6 THE COURT: Well, you can hand them to me.

7 MR. LEE: Your Honor --

8 MR. NISBERG: For marking, yes, Your Honor.  
9 Obviously we're not introducing them.

10 MR. LEE: Your Honor, I'd like to object on  
11 some of these. First, Ms. Cruz's statement is an  
12 out-of-court statement. It was made --

13 MR. NISBERG: Wait. I haven't admitted  
14 anything yet.

15 MR. LEE: Okay.

16 THE COURT: So I'm just -- I've -- they're  
17 sitting on my desk. We'll get to those when the  
18 time is right, but -- and then you can object.

19 MR. NISBERG: I was only suggesting,  
20 Your Honor, just marking them for identification  
21 purposes.

22 THE COURT: Okay. Well, we don't have a clerk  
23 here, so I mark things as they're admitted. So  
24 I'm not going to mark them ahead of time.

25 MR. NISBERG: All right. I can take them back

1 and hand them to you one at a time.

2 THE COURT: No, it's fine to do it this way.  
3 I have it here. You can tell me as you go  
4 along --

5 MR. NISBERG: Thank you, Your Honor. I've  
6 already given --

7 THE COURT: -- which one you want to refer to.

8 MR. NISBERG: Thank you, Your Honor. I've  
9 already provided defense counsel a copy, so he can  
10 follow along.

11 THE COURT: Okay. Are you going to be calling  
12 any witnesses?

13 MR. NISBERG: One witness, Your Honor.

14 THE COURT: Okay.

15 MR. NISBERG: It's going to be very quick.

16 MR. LEE: Your Honor, if I may, before we get  
17 started?

18 THE COURT: Yes.

19 MR. LEE: I would like to put some objections  
20 on the record.

21 THE COURT: Okay.

22 MR. LEE: They filed a verified complaint.  
23 They didn't actually file a separate motion. What  
24 they filed is a verified complaint, and at the  
25 heading they just said "and motion for

1 injunction."

2 In the body of the complaint, there is no  
3 separate motion stated. So there's only two  
4 counts -- and the complaint is six counts -- that  
5 asks for injunctive relief. So we just have to  
6 assume that that's their motion for injunction.

7 Both of those counts are controlled by  
8 chapters of Florida statute, and they have not,  
9 based on the verified complaint, alleged what is  
10 necessary to invoke this Court's authority to  
11 enter any type of injunction.

12 Count 3, which is the first one that they  
13 raised, which is the Deceptive and Unfair Trade  
14 Practices Act, Chapter 501 Florida statutes, it's  
15 very, very clear that whole chapter is for  
16 enforcement by governmental agencies.

17 There's only one provision in the entire  
18 chapter that lets an individual or a nonpublic  
19 entity bring a -- bring any type of claim for  
20 injunctive relief, and that's Section 501.211,  
21 which is "other individual remedies," meaning for  
22 individuals rather than the government; and it is  
23 absolutely clear, because the legislature was very  
24 guarded about granting individuals any remedies  
25 under this chapter at all.

1           It said, Anyone aggrieved by a violation of  
2 this part may bring an action to obtain a  
3 declaratory judgment -- that would be under  
4 Chapter 86 -- that an act or practice violates  
5 this part and to enjoin the person who has  
6 violated it.

7           So in other words, what has to happen here is  
8 there has to be a determination by Your Honor in  
9 the form of a declaratory judgment that there was  
10 a violation of this part of the Florida statutes  
11 and, after having done that, could enter an  
12 injunction.

13           They didn't even ask for a declaratory  
14 judgment or declaratory relief under their  
15 verified complaint. They did not mention it in  
16 any way, shape, or form. They did not mention  
17 Chapter 86. They just went straight to  
18 injunction.

19           So as a matter of law, we are not nearly at  
20 the point here where Your Honor could grant  
21 injunctive relief under Chapter 501. You'd first  
22 have to do a dec. action, declare that there's a  
23 violation under the part, and then move to a  
24 proceeding on -- on injunction.

25           The only other place in the complaint slash

1 motion that they asked for injunctive relief is --  
2 is in Count 5. They called -- they want  
3 injunctive relief because they're claiming that  
4 there was a misappropriation of trade secrets.

5 Then here it gets even worse. Not only do  
6 they not mention Chapter 86 and so forth, in this  
7 one they don't mention any statutes whatsoever;  
8 and it's very clear, under Florida law, that any  
9 type of claim for misappropriation of trade secret  
10 is controlled solely by Chapter 688, and 688 is  
11 very clear.

12 It says in there that this is the sole remedy,  
13 Chapter 688, for any type of claim of a  
14 misappropriation of a trade secret. So,  
15 Your Honor, this argument that they were making  
16 last week that Your Honor has inherent powers for  
17 injunctive relief, that could be argued when  
18 there's not a statute controlling that says you  
19 don't, and so they have alleged absolutely nothing  
20 under 688.

21 They didn't even -- they didn't even invoke  
22 the chapter of the statutes, and there's a good  
23 reason for it, because if they had done that, as  
24 it required them to do, they would have to allege  
25 all the elements under 688 for trade secrets, and

1 they could never do it. There's no trade secrets  
2 here.

3 And so the fundamental problem we have here is  
4 that there's nothing before this Court by way of a  
5 motion or by way of the amended complaint that  
6 gives this Court any authority, either under  
7 Chapter 501 or 688, to grant any type of  
8 injunction.

9 They would have to go back, get the dec.  
10 action under Chapter 86 as far as the Deceptive  
11 and Unfair Trade Practices Act is concerned; and  
12 under an alleged misappropriation of trade  
13 secrets, they would have to show, under Chapter  
14 688, how they have a right to an injunction based  
15 on the various sections of Chapter 688, and then  
16 Your Honor could, at that point, move for  
17 injunction.

18 But this idea that you have general authority  
19 for injunctive relief is not true when you have  
20 chapters of statute that control it completely,  
21 which is the case here. They've made no other  
22 claim in their motion slash verified complaint for  
23 any type of injunctive relief, only -- only Count  
24 3, Count 5, both controlled by chapters of Florida  
25 statute, very clear, unequivocal; and so there's

1 really no basis here for this Court to go forward.

2 I would say that this is statutorily  
3 controlled. Not only do you not have legal  
4 authority, but you also probably don't have  
5 subject matter jurisdiction at this point.

6 Now, if they were --

7 THE COURT: I have to cut you off, Mr. Lee.  
8 We have 30 minutes scheduled for this. This is  
9 their motion. I mean, you're --

10 MR. LEE: I have a right to object; I'm  
11 objecting. And the other objection is --

12 THE COURT: You're objecting, but you don't  
13 have a right to take up all the time with legal  
14 argument that opposes the motion, which is what  
15 you're doing.

16 MR. LEE: Well, I'm done with that. The only  
17 other --

18 THE COURT: So an objection doesn't entitle  
19 you to a speaking objection that takes half the  
20 time that they have scheduled for the hearing. So  
21 if your objection is objection, improper venue,  
22 state the legal basis for your objection, but it  
23 doesn't entitle you to take up -- I don't know how  
24 long you're intending to take, the entire time of  
25 the hearing that we have scheduled to --

1 MR. LEE: 20 more seconds.

2 THE COURT: -- state your objection.

3 MR. LEE: 20 more seconds.

4 THE COURT: And you filed a written objection.  
5 And let me just say, too, procedurally, this was  
6 filed as Heritage's Verified Amended Complaint For  
7 Damages and Injunctive Relief and Emergency Motion  
8 for Temporary Injunction filed May 11th, 2017.

9 While I was out, the duty judge, Judge Day,  
10 set this on an emergency basis, and you had a  
11 hearing in front of him. I wasn't there for that,  
12 but what he determined is that it was not an  
13 emergency, but it was entitled to be heard on an  
14 expedited basis as to Count 3. That's what's been  
15 set here today.

16 MR. LEE: That was an ex parte hearing they  
17 had. We didn't know nothing about that hearing.

18 MR. NISBERG: Your Honor, there actually  
19 wasn't a hearing.

20 THE COURT: Okay.

21 MR. NISBERG: We had -- we called the clerk,  
22 and we understood that the duty judge was not  
23 treating it as an emergency. We found mutually  
24 available hearing time for today --

25 THE COURT: Okay.

1 MR. NISBERG: -- and there hasn't been a  
2 hearing yet.

3 THE COURT: Okay. So no hearing took place  
4 with Judge Day?

5 MR. LEE: That was totally ex parte. He set  
6 this hearing today unilaterally. Anything  
7 about --

8 THE COURT: No, he didn't.

9 MR. LEE: -- anything on the defense side  
10 agreeing to this date or being at that other  
11 hearing is just not true.

12 MR. NISBERG: It's partially true, Your Honor.

13 THE COURT: Well, this wasn't set  
14 unilaterally. It had to be coordinated to be set.

15 MR. NISBERG: Your Honor, this --

16 MR. LEE: This hearing was set unilaterally.  
17 Before we ever got in the case, this hearing was  
18 already set. We didn't even know it was set. We  
19 had to go to the docket. I had one of my -- my  
20 paralegals go to the docket when we got in the  
21 case, and only that way is the only way we found  
22 out.

23 Mr. Nisberg allegedly said that he had served  
24 notices of the hearing on the defendant before we  
25 were ever in the case, but then he admitted it

1 never got served on them. The court -- the  
2 process server never served it. We would not have  
3 even known about this hearing but for our looking  
4 on the docket when we were brought into the case.

5 We were not at that earlier hearing; we are  
6 not noticed. And my last objection is, as I  
7 objected to last week, for the four corners of the  
8 complaint, this Court does not have venue; and, as  
9 the case law is very clear, where it affirmatively  
10 shows no venue in Pinellas County, we're not  
11 obligated to come forward with an affidavit. What  
12 would we do? Bring an affidavit that says we  
13 agree with what they say in the complaint about --  
14 about venue?

15 I mean, it's very clear there's no venue here  
16 either, so --

17 THE COURT: Okay. Well, again, you scheduled  
18 a motion to cancel today's hearing, which we had  
19 where you were allowed to appear by phone last  
20 week and you made your objection on that basis.  
21 We have a record of that.

22 So what I'd like to do, since we have a  
23 limited period of time, is hear the motion, and  
24 then you can respond to it.

25 MR. LEE: You know, I'm --

1           THE COURT: So far I've heard nothing from the  
2 moving party.

3           MR. LEE: Because the objections to this point  
4 are that we don't think you're allowed to have  
5 this hearing. So those are -- those are  
6 objections which you'd have to state on the front  
7 end and, you know --

8           MR. NISBERG: Well, Your Honor, those  
9 objections were already made. We had a hearing on  
10 that.

11          THE COURT: Well, already had -- you had a  
12 hearing scheduled for 15 minutes that took 30  
13 minutes last week where you argued that I had no  
14 basis to conduct this hearing, and that was  
15 your -- you titled that a Motion to Cancel the  
16 Hearing, and I denied it and said we're going to  
17 have our hearing.

18          So here we are. We haven't started our  
19 hearing because you're voicing the same objection  
20 that you voiced for 30 minutes on the phone last  
21 week about why we can't have the hearing.

22          MR. LEE: That's not correct. We never got to  
23 any objections as to the -- their stating a cause  
24 of action for injunctive relief. All we talked  
25 about last week was venue, the venue issue.

1           THE COURT: Okay. And there was nothing that  
2 I heard last week in the arguments, having heard  
3 both sides, that supported your motion to cancel  
4 the hearing, and we dealt with that.

5           MR. LEE: Last week -- last week I argued the  
6 venue motion.

7           THE COURT: Yes, you did.

8           MR. LEE: This week I'm re-alleging the  
9 objection for that, but I'm also arguing what we  
10 didn't get to argue last week, and that is that  
11 they have not stated a cause of action for  
12 injunctive relief, no less any type of emergency  
13 injunctive relief.

14           Now, for the first time, I'm hearing  
15 Mr. Nisberg is saying that we coordinated this  
16 hearing today and that they had a hearing before  
17 the judge. The defense was not notified or  
18 represented in any of that. This is the first I'm  
19 hearing about that.

20           So I know it's not true, that we coordinated  
21 the hearing; I know it's not true that the defense  
22 side was not at the hearing.

23           MR. NISBERG: Your Honor, if I may, just so  
24 the record is clear on this. We initially  
25 attempted service on the defendants of the notice

1 of the emergency temporary -- motion for temporary  
2 injunction. We -- our process server made  
3 numerous attempts and was unable to serve the  
4 defendants.

5 When Mr. Lee became counsel of record, we sent  
6 a notice 10 days before today, amended notice, to  
7 let him know, make sure he understood that there  
8 was a hearing on the 26th. There's been no  
9 objection to the hearing on the 26th, which is  
10 today, and now we've gone -- he's literally taken  
11 all of my time, 15 minutes, unless the Court  
12 grants me additional time.

13 We don't want this hearing to be scrubbed  
14 simply because counsel has repeated objections  
15 that he's already made in writing and at the last  
16 hearing. I'd like to put on the evidence,  
17 Your Honor.

18 This is a very important issue for Heritage.  
19 It's an ongoing issue of misappropriation of trade  
20 secrets and fraud. There's supposed -- there's --  
21 apparently there is an employee within Heritage  
22 that is giving confidential information to -- to  
23 Yitshak Levy, who purportedly is the owner of  
24 Titan, which isn't actually even his corporation.

25 MR. LEE: Your Honor, he represented to the

1 Court --

2 MR. NISBERG: Your Honor, if I may talk  
3 without being interrupted.

4 THE COURT: Yeah.

5 MR. LEE: He coordinated this hearing, said  
6 they had given us notice. Now he just admitted on  
7 the record that he never actually gave them notice  
8 of this hearing, and they weren't at any hearing  
9 regarding injunction before.

10 THE COURT: Well, there actually wasn't a  
11 hearing on injunction before.

12 MR. LEE: I'm just going on what's being  
13 stated here today. There was a comment that there  
14 was a -- that there was a hearing on injunction.

15 THE COURT: I was asking if there was because  
16 they -- the emergency motion that I have was  
17 reviewed by Judge Day, who was the duty judge, who  
18 reviewed whether it was an emergency or not. I  
19 was asking whether he held a hearing on that  
20 because he wrote some notes on what he then gave  
21 to me as my copy of that motion.

22 I can't tell from that if he had a hearing. I  
23 assumed he did.

24 MR. LEE: It was ex parte, though.

25 MR. NISBERG: There was no hearing,

1 Your Honor.

2 THE COURT: No, not if there was no hearing.

3 MR. LEE: No, I'm saying whatever he did  
4 there, if he decided that it wasn't an emergency  
5 hearing, everything after that, there's no grounds  
6 for any ex parte proceedings of any kind. You  
7 can't set a hearing without the other side knowing  
8 about it. We got into this case --

9 THE COURT: Let's clear this up then.

10 MR. LEE: I flew over here because you would  
11 not deny it. I would have argued that last week,  
12 but I didn't know.

13 THE COURT: There wasn't a hearing by  
14 Judge Day, so --

15 MR. LEE: That's what I'm saying, Your Honor.  
16 I'm thinking to this minute, I'm thinking this is  
17 still a hearing on an emergency motion.

18 THE COURT: This is a hearing on --

19 MR. LEE: We did not see anything that he said  
20 that it's not an emergency basis. That changes  
21 everything.

22 THE COURT: No, it doesn't.

23 MR. LEE: If it's not an emergency, you don't  
24 get to do ex parte; you don't get to do things,  
25 set hearings down unilaterally and all this stuff,

1           which is apparently what Mr. Nisberg did. We're  
2           putting the cart before the horse because.

3           THE COURT: We are, right, which is what's  
4           taking all of our time.

5           MR. LEE: Well, you know, this is going to  
6           go --

7           THE COURT: So thank you for acknowledging  
8           that's putting everything --

9           MR. LEE: If you are going to grant injunctive  
10          relief on this basis, Your Honor --

11          THE COURT: I haven't even heard the motion.

12          MR. LEE: -- we're going to take it to the  
13          Second DCA, so I have to make my objections.

14          THE COURT: You can make your objections; but,  
15          as I said last week, we're having the hearing. We  
16          still haven't started the hearing because you've  
17          taken up all the time with your objections as to  
18          why I shouldn't enter the injunction.

19          MR. LEE: Are you instructing me not to object  
20          anymore, Your Honor?

21          THE COURT: No.

22          MR. LEE: Okay.

23          THE COURT: I'm just saying you've taken up --  
24          it's 11:03 now of our 30 minutes. So you've  
25          taken --

1           MR. LEE: Well, there's a lot of objections to  
2 be made in this case, Your Honor.

3           THE COURT: But procedurally, it's important  
4 to understand and I've made a record of you taking  
5 up all of the hearing time that has prevented this  
6 hearing from occurring. So I'm turning it over  
7 now to the side that actually has the motion so  
8 that we can proceed.

9           MR. NISBERG: Thank you, Your Honor.  
10 Alan Nisberg for Heritage. I'll do my best to be  
11 extremely streamlined and quick with this. The  
12 verified complaint, Your Honor, paragraphs 15 to  
13 16, discuss the misappropriation of trade secrets.

14           It talks about how a Heritage employee, who  
15 has not been yet identified by Heritage, was  
16 providing loss information, location of the loss,  
17 homeowner's name, contact information, all of that  
18 there's a duty to keep confidential -- actually,  
19 paragraphs 15 and 16 talk about the duty of  
20 confidentiality.

21           In paragraph 15 of the verified amended  
22 complaint, Your Honor, it talks about text  
23 messages that were sent by Yitshak Levy to  
24 Rossana Cruz, who was the confidential informant  
25 at the time, now that her testimony has been

1 placed as evidence in the record.

2 Ms. Cruz's testimony admits that she was a  
3 part -- she doesn't say it in these words, but her  
4 conduct demonstrates that she was part of the  
5 conspiracy to not only -- well, not only to  
6 misappropriate trade secrets from Heritage but  
7 also to fraudulently inflate bills and present  
8 them to Heritage.

9 The -- again, the complaint, paragraph 15, and  
10 the sworn statement of Rosie Cruz at pages 8 and  
11 12 bear out this -- the texting from a Heritage  
12 employee to Yitshak Levy.

13 Her sworn testimony, pages 9 and 10, go on to  
14 talk about bribes and kickbacks, that Yitshak Levy  
15 was offering money as reimbursement for  
16 information so that he could get -- get these jobs  
17 and develop more work for himself and Titan.

18 It's also in the verified amended complaint at  
19 paragraph 16. There's testimony by -- in the  
20 sworn statement of Rosie Cruz about policyholders  
21 that were deceived into believing that Titan was  
22 sent by Heritage. They held themselves out to be  
23 Heritage contractors. That's at paragraph 17 of  
24 the verified amended complaint.

25 It's also in the sworn statement of

1 Rosie Cruz, pages 6 through 8 and 16 to 21. So  
2 Rosie Cruz clearly, from her statement, had  
3 knowledge of the trickery that was getting  
4 homeowners to give their business to Titan instead  
5 of giving their business to Heritage.

6 I'll talk in a few minutes about what the  
7 policy allows as a right to elect on behalf of the  
8 insurance company. It has a right to elect  
9 prequalified vendors to provide services. I'll  
10 come back to that, Your Honor.

11 As far as the inflated bills, in paragraphs 20  
12 to 23 of the verified amended complaint, it's  
13 noted that Heritage -- excuse me -- that Titan was  
14 increasing the hours on their bills for -- to  
15 include work that was not actually performed.

16 That was also in the sworn statement of  
17 Rosie Cruz, pages 24 through 29. She literally  
18 testified that Yitshak Levy told her -- she was  
19 then -- she was then an employee of the company --  
20 to increase every invoice, adding five or more  
21 hours to these invoices for work that was not  
22 performed before the bills were sent.

23 I would call -- and I would call to the stand  
24 at this time my one witness, Ms. Christy Brigman,  
25 just to authenticate the billing statement that

1 was provided and testify as to how that ties into  
2 the statement of Rosie Cruz.

3 MR. LEE: I'm going to object, Your Honor, for  
4 the record. We had sent a notice of taking  
5 Ms. Brigman's deposition, like, over a week ago,  
6 and her office is very close to our office in  
7 Fort Lauderdale, and Ms. Brigman and Mr. Nisberg  
8 both said, No, we're not going to do it.

9 So, you know, now he wants to put her on the  
10 stand after he just basically refused to let us  
11 take her deposition.

12 MR. NISBERG: If I may, Your Honor. We were  
13 given three days' notice of the deposition. It  
14 was only noticed; it was never subpoenaed. She  
15 was not required legally to appear for a  
16 deposition, and I sent an E-mail to Mr. Lee,  
17 telling him that we will make her available at the  
18 hearing, he can ask her questions then, and she's  
19 here today.

20 MR. LEE: She's an employee of the plaintiff.  
21 She's part of the party. We didn't need a  
22 subpoena for that. We sent this thing on --

23 MS. BRIGMAN: Monday.

24 MR. LEE: -- on the 19th, and we wanted to  
25 take her deposition on the 23rd. We had very

1 short notice of this whole case. We gave her a  
2 week's notice, and she's literally down the street  
3 from where we are, and they just basically said  
4 no.

5 What Mr. Nisberg said to me was, Oh, you'll be  
6 able to talk to her during the hearing. That's  
7 not the way it works, you know. She's an employee  
8 of --

9 THE COURT: Okay.

10 MR. LEE: -- the plaintiff.

11 THE COURT: You've made your objection.  
12 Overruled. I'm going to swear her in. You can  
13 cross-examine her on this.

14 CHRISTY BRIGMAN,  
15 having been first duly sworn by the Court, was examined  
16 and testified as follows:

17 THE WITNESS: I do.

18 THE BAILIFF: Step this way, ma'am. Watch  
19 your step.

20 MR. NISBERG: Your Honor, as she's taking the  
21 stand, can we move Heritage's verified amended  
22 complaint into evidence as Exhibit 1?

23 MR. LEE: Okay. Now I'm going to object.  
24 We're talking about -- he wants to admit this  
25 statement of Rossana Cruz. That was an

1 out-of-court statement. The defendants weren't --  
2 it wasn't a deposition.

3 MR. NISBERG: Counsel, I'm talking about the  
4 verified amended complaint. I've offered that  
5 into evidence.

6 MR. LEE: The verified what?

7 MR. NISBERG: The verified amended complaint  
8 as well.

9 MR. LEE: That's fine. I don't have a  
10 problem.

11 THE COURT: Okay. So the -- the verified  
12 amended complaint is admitted.

13 MR. NISBERG: Thank you, Your Honor. I now  
14 would offer into evidence as Exhibit 2 the sworn  
15 statement of Rossana Karina Cruz.

16 MR. LEE: That's what I'm objecting to.  
17 That's what I thought he was holding; that's what  
18 I thought he meant. This is an out-of-court  
19 statement. It's very clear, under the Rules of  
20 Evidence, this is not admissible in any way,  
21 shape, or form.

22 This is not a deposition. It was -- the other  
23 side wasn't there. As a matter of fact, it was  
24 taken before the lawsuit was even filed, and it's  
25 just clearly hearsay by definition.

1           MR. NISBERG: By definition, Your Honor, it's  
2 an exception to hearsay because this is a  
3 statement given against her own interest because  
4 she was involved in the conspiracy. She was the  
5 one that marked up the bills. She had knowledge  
6 of Yitshak and Moshe Levy telling homeowners that  
7 they were there sent by Heritage.

8           So this is -- this would implicate her in the  
9 conspiracy to defraud in the Deceptive and Unfair  
10 Trade Practices, et cetera, and misappropriation  
11 of trade secrets. She also had knowledge of the  
12 text messages that were coming from the Heritage  
13 employee, so it's not hearsay.

14          MR. LEE: Your Honor, it's not -- it's not --  
15 she's not a part of this case. So it's not an  
16 admission against interest by a party, and it's  
17 hearsay on hearsay.

18          If you go through that whole thing and all it  
19 says throughout there is, "I think," "maybe,"  
20 "somebody told me." It's hearsay, per se, because  
21 it's an out-of-court statement. We have a right  
22 to cross-examine her.

23          He doesn't bring her here. He brings one of  
24 their employees of the plaintiff who's going to  
25 now try to bootstrap and say, I talked to her, and

1 she told me this is -- this is a -- this is  
2 completely against the Rules of Evidence.

3 Nothing he's done in this case so far has  
4 involved the other side. If he wanted to take her  
5 deposition, he can do that, and we can  
6 cross-examine her. She's not here to  
7 cross-examine.

8 We're going to cross-examine an employee of  
9 the plaintiff who said I talked to this person?  
10 So now we're talking triple hearsay.

11 THE COURT: Well, I'd like to hear what the  
12 evidentiary basis would be for having the  
13 background as to who this person is so that you  
14 can support the argument that it's not hearsay.

15 MR. NISBERG: Thank you, Your Honor. Would  
16 you --

17 MR. LEE: It's an out-of-court statement.

18 THE COURT: Is that coming from her?

19 MR. LEE: That makes it hearsay automatically.

20 THE COURT: Well, I'm not admitting it at this  
21 point. Do you -- can you put your name on the  
22 record?

23 THE WITNESS: Yes, Your Honor.

24 Christy Brigman, C-h-r-i-s-t-y, B-r-i-g-m-a-n.

25 THE COURT: Okay.

1 MR. NISBERG: Has the witness been sworn?

2 THE COURT: Yes.

3 MR. NISBERG: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. NISBERG:

6 Q. Ms. Brigman, tell us your full name, please.

7 A. Christy Brigman.

8 Q. And where are you employed?

9 A. I am employed at Heritage.

10 Q. What is your position there?

11 A. Staff counsel.

12 Q. Okay. As staff counsel, did you have the  
13 opportunity to meet with Rossana Karina Cruz?

14 A. Yes.

15 Q. And she called herself Rosie?

16 A. She referred to herself as "Rosie."

17 Q. Okay. When did you first become aware of  
18 Rosie Cruz?

19 A. Some time in February of this year.

20 Q. And how did you become aware of her?

21 A. She initially called Heritage and left a voice  
22 message, tipping us off that there was some potential  
23 fraud activity on one of our files.

24 MR. LEE: Objection. If she's offering that  
25 for the truth of the statement, I'd object as

1           hearsay.

2           THE COURT: Sustained.

3 BY MR. NISBERG:

4           Q. Did you -- did you take any -- well, did you  
5 take a -- the sworn statement of Rossana Karina Cruz on  
6 March 22, 2017?

7           A. I did.

8           Q. Okay. And was she sworn in under oath at that  
9 time?

10          A. She was.

11          Q. Okay. Could you describe for us, if you  
12 would, the testimony that she gave in your presence  
13 under oath?

14          A. Rosie indicated that she had called us in  
15 February initially to let us know about some activities  
16 on one of our files that she was uncomfortable with.

17          MR. LEE: Objection, Your Honor. Hearsay.

18          THE COURT: Sustained.

19          THE WITNESS: She indicated --

20          THE COURT: Well, that was sustained.

21          THE WITNESS: Oh.

22          THE COURT: This is all hearsay.

23 BY MR. NISBERG:

24          Q. Let me ask you this: Did Ms. Cruz, on the  
25 record during the course of that sworn statement, admit

1 that she was artificially inflating invoices that were  
2 sent by Titan --

3 MR. LEE: Objection. Objection. It's  
4 hearsay.

5 THE COURT: Sustained.

6 MR. NISBERG: Your Honor, it would be  
7 admission against interest. It wouldn't be -- it  
8 would be non-hearsay.

9 THE COURT: No, this is -- this is all  
10 hearsay.

11 MR. NISBERG: Okay. If I may, Your Honor, the  
12 exhibit that's been marked for identification as  
13 Exhibit 2, the sworn statement of Rossana Cruz,  
14 I'd like to hand it to the witness.

15 THE COURT: Oh, okay. Here it is.

16 MR. NISBERG: Thank you, Your Honor.

17 THE WITNESS: Thank you, Your Honor.

18 MR. LEE: Can we go off the record for one  
19 second? I don't hear very well; that's why I'm  
20 standing here.

21 THE COURT: Okay. Okay.

22 BY MR. NISBERG:

23 Q. Okay. Back on the record. Do you recognize  
24 the transcript of Rossana Karina Cruz as presented to  
25 you that's marked as Exhibit 2?

1 A. Yes, I do.

2 Q. Okay. And the exhibit behind it, Exhibit 1,  
3 if you would, just turn to that. That's not what's  
4 tabbed. It's a few pages before that, maybe 10 pages  
5 before, that the exhibit begins.

6 A. Yes.

7 Q. Can you look through that, please, and see if  
8 you can identify that document as a true and accurate  
9 copy of the Exhibit 1 that was attached to that sworn  
10 statement?

11 A. Yes. These are the documents that were  
12 provided to me by Rosie Cruz, which I attached as an  
13 exhibit to her statement.

14 Q. Okay. And she presented those to you on the  
15 day that you met for the sworn statement?

16 A. She did. She brought them with her.

17 Q. Okay. There's a flag, a green flag, partway  
18 into the Exhibit 1. It has handwriting on a form that  
19 says at the top Christopher Foster. Do you see that?

20 A. Yes.

21 Q. Okay.

22 A. And I apologize, counsel. Just for clarity, I  
23 don't remember if she brought paper copies with her or  
24 if it was an electronic copy that she then printed at  
25 the court reporter's office where we were at, but she

1 provided them to me that day.

2 Q. Okay. But the documents that are in Exhibit 1  
3 are the documents that you --

4 A. Yes.

5 Q. -- received from her?

6 A. Yes, they are.

7 Q. All right.

8 MR. NISBERG: And if I may, Your Honor, the  
9 third document that I presented to you before  
10 beginning is an invoice. It says Titan  
11 Restoration at the top --

12 THE COURT: Yes.

13 MR. NISBERG: -- marked as Exhibit 3. If you  
14 would hand that Exhibit 3 to her.

15 MR. LEE: I'm going to object to that. One is  
16 authentication.

17 MR. NISBERG: Well, I haven't asked the  
18 witness questions yet. She can authenticate the  
19 document.

20 MR. LEE: She can authenticate she got it from  
21 that woman, but she can't authenticate this is a  
22 real document.

23 MR. NISBERG: She can, Your Honor. This is  
24 not a document that was provided by Rosie Cruz.

25 THE COURT: Well, I'm going to hand it to her,

1 and then you can ask a question about it.

2 BY MR. NISBERG:

3 Q. Do you recognize the document that's marked as  
4 Exhibit 3?

5 A. Yes, I do.

6 Q. What is that?

7 A. This is the invoice that we received from  
8 Titan Restoration which I printed out from our claim  
9 file on the Christopher Foster matter.

10 Q. Okay. And so this Exhibit 3 then is something  
11 that Heritage received from Titan?

12 A. Yes. Heritage received it during the pendency  
13 of Christopher Foster's claim.

14 Q. Okay. Can you say this is a true and accurate  
15 representation of the original?

16 A. Yes.

17 MR. NISBERG: I'd like to move Exhibit 3 into  
18 evidence, Your Honor.

19 THE COURT: Any objection?

20 MR. LEE: No.

21 THE COURT: Okay.

22 MR. NISBERG: And I'd also like, Your Honor,  
23 to admit into evidence Exhibit 1 to the Rosie Cruz  
24 deposition, which contains the tabbed page that  
25 has the handwritten notations on

1 Christopher Foster.

2 MR. LEE: I'm just going to object for the  
3 record. It's not a deposition. This was an  
4 out-of-court statement. The other side was not  
5 involved in it, so it's not a deposition; and, if  
6 he wants to attach it as something that the  
7 witness here can identify from her employment with  
8 Titan and authenticate it, that's fine.

9 MR. NISBERG: Your Honor, she's already  
10 identified it as something that was given to her  
11 by Rosie Cruz. It's a true and accurate copy of  
12 what she received.

13 MR. LEE: All right. Well, the difference,  
14 Your Honor, is if she's authenticating what she --  
15 if she's saying she received it from Rosie Cruz,  
16 that's just -- that's all -- as far as it goes.  
17 That's much different than authenticating that  
18 it's a genuine document.

19 THE COURT: Right.

20 MR. LEE: So I don't know which one she's --  
21 he's attempting to do here, so if he's trying  
22 to --

23 THE COURT: I agree. So, I mean --

24 MR. LEE: -- authenticate it as a genuine  
25 document, I object.

1 MR. NISBERG: Your Honor, what I'm identifying  
2 it as is it's not a corporate record of Plaintiff  
3 but, rather, an authentic copy of the document  
4 that she received from a confidential informant.

5 THE COURT: Do you have any case law to  
6 support that admission?

7 MR. NISBERG: Not offhand, Your Honor.

8 THE COURT: Okay. The objection is sustained.

9 BY MR. NISBERG:

10 Q. Ms. Brigman, if you would, take a look at the  
11 second page of the Titan Restoration invoice.

12 A. Yes.

13 Q. The -- does this document reflect the number  
14 of hours purportedly spent on water extraction  
15 remediation by technicians?

16 A. Yes, it does. Line Item No. 2 accounts for  
17 the hours of the water extraction and remediation  
18 technicians on page 2 of the invoice.

19 Q. Okay. Do you have reason to believe that that  
20 amount, 14 hours for water extraction or remediation,  
21 is inaccurate?

22 A. I do.

23 Q. What is the basis of that belief?

24 A. Rosie Cruz indicated --

25 MR. LEE: Objection. Hearsay.

1 THE COURT: Sustained.

2 BY MR. NISBERG:

3 Q. Did you review the documents contained within  
4 Exhibit 1 that came into your possession?

5 A. I did, and one of the documents indicates  
6 the -- specifically the daily log water notes indicate  
7 that the technicians --

8 MR. LEE: Objection.

9 THE WITNESS: -- only spent nine hours at the  
10 property, not 14.

11 MR. LEE: You're supposed to stop talking when  
12 an objection is raised. You're an attorney; you  
13 know that. First of all, it hasn't been  
14 authenticated as genuine; and second, she's  
15 indicating it came from Rosie Cruz, so --

16 THE COURT: Yeah.

17 MR. LEE: -- she can't testify as to --

18 THE COURT: The problem here, the big picture  
19 problem here, is Rosie Cruz is not here --

20 MR. LEE: Yeah.

21 THE COURT: -- and you want to admit  
22 everything that she has said to the witness who is  
23 here and use that as a basis to grant the  
24 injunction. I mean, the heart of what she has to  
25 say is the basis for granting the injunction, and

1 all you have is a sworn statement that she gave.  
2 She's -- I mean --

3 MR. NISBERG: Your Honor, it's the same as an  
4 affidavit. If this were a summary judgment  
5 hearing, Your Honor would accept the statement.

6 THE COURT: It's not a summary judgment  
7 hearing, though. It's an evidentiary hearing on  
8 which you want the Court to enter a temporary  
9 injunction, and these are serious allegations, and  
10 you really want it to be supported solely on  
11 hearsay, and I think that's a problem.

12 So it's not summary judgment. There's a big  
13 difference, where the Court can consider  
14 affidavits and summary judgment evidence in the  
15 record. A motion for an injunction is an entirely  
16 different animal that has to be supported by  
17 evidence, and this is hearsay, and I -- I can't  
18 just take a transcript of a confidential informant  
19 who cannot be cross-examined, whose testimony  
20 cannot be challenged in any way by the other  
21 side -- there's essentially no defense at that  
22 point -- and use that to grant an injunction.

23 I'm not aware of being able to do that  
24 procedurally. If you have some case law that says  
25 that procedurally that's sound, I need to see

1           that.

2           MR. NISBERG: Your Honor, I don't have it with  
3 me today, but I'd like the opportunity to present  
4 that to the Court.

5           MR. LEE: Your Honor, if I may. You said it  
6 exactly correctly. This is not a summary judgment  
7 proceeding. That's another Rule of Procedure, and  
8 in summary judgment proceedings, you don't have  
9 witnesses. All you admit there is affidavits.

10          THE COURT: Right.

11          MR. LEE: This is an evidentiary hearing. You  
12 said it absolutely correctly, and the Rules of  
13 Evidence apply.

14          THE COURT: Right.

15          MR. LEE: They haven't brought a single piece  
16 of evidence that's admissible to this hearing.  
17 They brought an out-of-court statement, which is  
18 inadmissible. They've got a witness that wants to  
19 testify to hearsay, who's actually in this case  
20 even worse than that, because we're talking about  
21 the plaintiff testifying as to what this person  
22 said. It's not even a third party.

23                 So it's -- it's pretty -- pretty egregious;  
24 but I would, when he's done, I'd like to  
25 cross-examine her.

1 THE COURT: Do you have any further questions,  
2 Mr. Nisberg?

3 MR. NISBERG: Did I move into evidence the  
4 invoice, Your Honor? I believe I did.

5 THE WITNESS: Yes.

6 MR. NISBERG: Was that granted?

7 THE COURT: Number 3 was admitted.

8 MR. NISBERG: Yes.

9 THE COURT: So 1 and 3, the complaint and  
10 the -- that's the invoice that I handed back to  
11 you.

12 THE WITNESS: Oh, I'm sorry, Your Honor.

13 THE COURT: That's okay.

14 THE WITNESS: Here you go.

15 THE COURT: I just wanted to confirm.

16 MR. LEE: Your Honor, is that the one she  
17 authenticated as receiving from Titan?

18 THE COURT: Yes.

19 MR. LEE: Okay.

20 MR. NISBERG: Your Honor, I do have one other  
21 exhibit. It's the fourth document.

22 THE COURT: Yeah.

23 MR. NISBERG: Exhibit No. 4 that's been  
24 premarked, it's the -- it's the policy of  
25 Christopher Foster. I would move that into

1 evidence. It's a sworn, certified copy of the  
2 policy.

3 MR. LEE: I have one objection on that. It's  
4 certified, so I don't have a problem with it being  
5 admitted for today, but that does not in any way  
6 cure the violation of Rule 1.130 as having failed  
7 to attach that to the complaint, which was  
8 required, and there's other things they have not  
9 attached to the complaint.

10 So the fact that it may be admitted here for  
11 this purpose, I just want to make it clear that  
12 that doesn't affect failure to state a cause of  
13 action under the complaint.

14 MR. NISBERG: Your Honor, in response to that  
15 legal argument, attaching a document to a  
16 complaint is only required if the cause of action  
17 is founded upon a contract or other documents.  
18 This is not a breach of policy, breach of  
19 insurance contract action. This is -- these are  
20 tort actions. It's --

21 THE COURT: Well, I think what he wants to do  
22 is make sure he's not waiving any objections at  
23 any other point in time in the proceedings, but --

24 MR. LEE: That's correct, Your Honor.

25 THE COURT: -- not object to its admission

1 today.

2 MR. LEE: That's correct.

3 THE COURT: So with that understanding, I'll  
4 admit that. That's No. 4.

5 MR. NISBERG: Thank you, Your Honor. And the  
6 policy is offered for the purpose of  
7 identifying -- I think it's four pages from the  
8 back of the policy. There's an endorsement called  
9 a Platinum Preferred Savings Program.

10 It sets forth the basis for the allegations in  
11 the verified amended complaint that Heritage has a  
12 right to elect a prequalified vendor to do the  
13 remediation services. Again, the verified amended  
14 complaint, Your Honor, has been introduced into  
15 the record without objection.

16 The statements within the verified amended  
17 complaint are, therefore, not subject to hearsay  
18 objections, which haven't been raised when counsel  
19 agreed that it would be admitted. The verified  
20 amended complaint talks about the misappropriation  
21 of trade secrets through a Heritage employee by  
22 Yitshak Levy.

23 It talks about -- it talks about the fraud and  
24 deceit by tricking homeowners. It talks about  
25 inflated bills that do not accurately reflect the

1 services rendered, and it talks about the loss of  
2 business opportunity by Heritage based upon this  
3 preferred savings program which is set forth --  
4 and this is just one example.

5 Policyholder Foster is one of the  
6 policyholders who had the endorsement and did not  
7 have an opportunity to contact Heritage because  
8 they thought other -- that Titan, when they came  
9 out, was sent by Heritage to do the work.

10 I don't have further questions of Ms. Brigman,  
11 Your Honor.

12 THE COURT: Okay.

13 MR. NISBERG: I would submit however -- well,  
14 let's -- if I have a couple of minutes for legal  
15 argument, I'd like to make a legal argument at the  
16 end. I understand that Your Honor had a limited  
17 amount of time for the hearing.

18 THE COURT: Okay. Did you have any cross?

19 MR. LEE: Thank you.

20 CROSS-EXAMINATION

21 BY MR. LEE:

22 Q. Ms. Brigman, you're an attorney, correct?

23 A. Yes.

24 Q. Are you licensed to practice in Florida?

25 A. I am.

1 Q. And you're an employee of the plaintiff,  
2 Titan, correct?

3 A. I -- no, I'm an employee of Heritage.

4 Q. I mean, I'm sorry, the plaintiff Heritage.  
5 Are you a direct employee? Do you work directly for  
6 Heritage?

7 A. Correct.

8 Q. Okay. But you're located in what, Broward  
9 County, right?

10 A. Sunrise, correct, in Broward County.

11 Q. That's in Broward County, Florida, right?

12 A. Uh-huh. (Indicates affirmatively).

13 Q. Is the entire legal department over in Broward  
14 County?

15 A. No.

16 Q. So just tell me first, where are the lawyers,  
17 the in-house lawyers, for Heritage?

18 MR. NISBERG: Objection. Relevance.

19 Your Honor, this appears to be becoming a venue  
20 hearing instead of a deposition --

21 THE COURT: Sustained. It's got to be limited  
22 to the scope of direct.

23 MR. LEE: Okay. No problem.

24 BY MR. LEE:

25 Q. So I think Mr. Nisberg introduced a couple of

1 copies of policies, Foster and Cattan; is that right?

2 Am I saying that right, Cattan?

3 A. I have Foster in front of me.

4 Q. Okay. Foster?

5 A. I don't know if it's one or both policies. I  
6 would have to look.

7 Q. Foster will work. Okay. And Mr. Nisberg made  
8 a reference to the Platinum Preferred Savings Program,  
9 correct?

10 A. I -- just --

11 Q. Just now.

12 A. Sure.

13 Q. Okay. So would you please look at the  
14 Platinum Preferred Savings Program rider in the Foster  
15 policy?

16 A. Okay.

17 Q. All right. The verified sworn to complaint in  
18 this case states -- and I'm paraphrasing -- that  
19 Heritage had the legal right to, under the policy, to  
20 perform remediation services for its policyholders that  
21 had a casualty loss through what they called  
22 prequalified vendors. Is that the way you understand  
23 it?

24 A. I don't have the complaint in front of me.

25 THE COURT: Oh, here it is.

1           THE WITNESS: Thank you, Your Honor. Do you  
2           know what paragraph you're referring to?

3 BY MR. LEE:

4           Q. I'll find it for you. I think it's paragraph  
5           19, but let me just check.

6           A. Yes, 19. Would you like me to read it?

7           Q. Just -- yeah, read 19 so we all know what  
8           we're talking about here.

9           A. Paragraph 19 of the verified complaint, says,  
10          For the homeowners who did engage Titan through  
11          trickery and artifice, Heritage lost a business  
12          opportunity. Heritage has a legal right, under the  
13          insurance policy, to select a vendor prequalified by  
14          Heritage to perform repairs to the property of its  
15          policyholder.

16                 Heritage has its own subsidiary companies that  
17          perform water remediation work. By tricking the  
18          homeowners into signing binding contracts with Titan,  
19          thereby precluding Heritage its right to elect to  
20          repair the property through its own subsidiaries,  
21          Heritage was damaged.

22          Q. Okay. So if you will look at that Platinum  
23          Preferred Savings Program -- and I'm asking you because  
24          you're an attorney and you're an attorney working for  
25          the plaintiff -- if you look at Section 1 where it

1 says, Conditions, and if you would read -- not out  
2 loud, to yourself -- D2, 1 and 2, where it starts out,  
3 Keep accurate records. If you would read that to  
4 yourself, I'm going to ask you some questions about  
5 that.

6 MR. NISBERG: Your Honor, we would object to  
7 any questions that would pertain to legal  
8 opinions. He said he's going to be asking  
9 questions because she's an attorney of the  
10 company, and I'm just anticipating.

11 There's no question pending, but I just want  
12 the Court to be aware that it appears to be going  
13 that direction.

14 THE COURT: Okay. Well, let me wait and see.

15 BY MR. LEE:

16 Q. Are you done reading it?

17 A. Uh-huh. (Indicates affirmatively).

18 Q. Okay. It doesn't say that a homeowner has to  
19 let Heritage do the remediation work, does it?

20 MR. NISBERG: Objection. Calls for a legal  
21 conclusion.

22 MR. LEE: She's an attorney, an in-house  
23 attorney for the plaintiff. If she doesn't know  
24 what these contracts --

25 THE COURT: Well, it would help if I have a

1 copy of it so that I can see what you're referring  
2 to.

3 MR. LEE: Yes, ma'am.

4 THE COURT: She has the exhibit, so --

5 MR. LEE: Let me show you where it is,  
6 Your Honor.

7 THE COURT: Okay.

8 MR. LEE: We're looking at where it says  
9 Duties to, 1 and 2.

10 THE COURT: Okay.

11 BY MR. LEE:

12 Q. It doesn't say, does it?

13 A. Honestly, I am not a corporate representative,  
14 and I was not involved in any way, shape, or form with  
15 writing this policy language, so --

16 Q. Okay.

17 A. I don't really know what you're asking of me.

18 Q. I'm asking you, show me in that rider where  
19 Heritage has the legal right to perform the remediation  
20 services.

21 MR. NISBERG: Same objection, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: In Section 1, Conditions, Duties  
24 after a loss, D1 states that, Our insureds are  
25 required to notify us before authorizing or

1           commencing repairs so that we, at our option, may  
2           select a prequalified vendor to make covered  
3           repairs or perform the services.

4 BY MR. LEE:

5           Q.    Right.  And doesn't it say after that, that if  
6           your policyholder decides not to tell you and not to  
7           let you do it, that you still have to pay for the  
8           repairs; it's just a different formula?  It's the  
9           reasonable cost in 1 or the amount you would have paid  
10          a prequalified vendor in 2; isn't that correct?  Isn't  
11          that what it says?

12          A.    I think the policy speaks for itself in that  
13          regard.  Again, I was not involved in any way, shape,  
14          or form with writing or drafting this particular policy  
15          language or any policy language.

16          Q.    Well, I mean, you can read English, right?  It  
17          does say that, right?

18          A.    I actually just answered you and said the  
19          policy speaks for itself, and yes, I can read English.

20          Q.    It says, If you do not notify us prior to  
21          authorizing or commencing the repairs or services and  
22          allow us to -- the option to select a prequalified  
23          vendor, then it says, the repairs and services --  
24          repairs for services are limited to the lesser of the  
25          reasonable costs you incur and necessary repairs or, 2,

1 the amount we would have paid prequalified vendors.

2 So if I'm a policyholder and I choose to have  
3 my own vendor, my own third party do the repairs, I can  
4 do that. It's just that you're going to pay the amount  
5 under 1 and 2, correct?

6 MR. NISBERG: Object. Calls for a legal  
7 conclusion.

8 THE WITNESS: I wouldn't want to speculate on  
9 that. There are --

10 THE COURT: Sustained.

11 THE WITNESS: Sorry, Your Honor.

12 BY MR. LEE:

13 Q. Well, what I'm trying to get to is that the  
14 verified complaint is false when it says they had a  
15 legal right to do the repairs. They didn't have a  
16 legal right, did they? They just had a right to pay a  
17 different amount for the repairs?

18 MR. NISBERG: Objection. That  
19 mischaracterizes the complaint.

20 THE COURT: Sustained. I think this is your  
21 argument to make in your closing argument --

22 MR. LEE: Well, you know --

23 THE COURT: -- for purposes of --

24 MR. LEE: -- he put the lawyer on the stand,  
25 and she's a representative, so I thought she would

1 know about these policies.

2 BY MR. LEE:

3 Q. Well, let me ask you one other question about  
4 the policies: This is a rider to your standard policy,  
5 right?

6 A. Again, I was not involved in the drafting of  
7 this policy. I can't tell you whether or not --

8 Q. Okay.

9 A. -- this is a rider or not or what you even  
10 mean by that term. It's an endorsement, as it's  
11 labeled at the top.

12 Q. Do you know enough about the policies of your  
13 employer that you know what riders are?

14 A. I don't know what you mean by the term  
15 "rider."

16 Q. Well --

17 A. This is an endorsement. "Endorsement" is a  
18 term used in the industry.

19 Q. Okay. Endorsement. Endorsement, do you know  
20 what an endorsement is?

21 A. Generally, yes.

22 Q. Okay. So that's something that's -- it says,  
23 This endorsement changes the policy. Please read it  
24 carefully. Okay. So this endorsement is something  
25 that's added to a standard policy, correct?

1           A.    Again, I wouldn't want to speculate.  I don't  
2 know enough about our policies to state when this  
3 endorsement is added on.

4           Q.    Are you involved at all in Heritage's  
5 policies, insurance policies?

6           MR. NISBERG:  Objection.  Vague.

7           THE WITNESS:  "Involved"?  Meaning what?

8 BY MR. LEE:

9           Q.    Yeah, is it your job?

10          A.    I have already answered you, sir, that I am  
11 not involved in policy construction or drafting in any  
12 way, shape, or form.

13          Q.    Okay.  Let's back up a second.  What do you do  
14 at Heritage?

15          A.    I am staff counsel.

16          Q.    What do you do?

17          A.    I defend lawsuits.

18          THE COURT:  Okay.  Mr. Lee, I need you to wrap  
19 this up now.  The focus here is the temporary  
20 injunction.

21          MR. LEE:  Right, and the other --

22          THE COURT:  I have another hearing.  Folks are  
23 waiting in the courtroom.

24          MR. LEE:  All right.  The only other point I'm  
25 trying to make is that this is an endorsement

1           that's an election. So a lot of the policies of  
2           Heritage do not have this rider.

3           THE COURT: Do you have any further  
4           questions --

5           MR. LEE: No.

6           THE COURT: -- for the witness? Okay. Thank  
7           you, Ms. Brigman.

8           THE WITNESS: Thank you, Your Honor.

9           THE COURT: Can you give me back the exhibits?

10          THE WITNESS: This one wasn't marked. Do you  
11          need it?

12          THE COURT: Right. I'll just take those back  
13          and then --

14          MR. NISBERG: Your Honor, if I may just argue  
15          two quick points that Mr. Lee brought up during  
16          the --

17          THE COURT: Sure.

18          MR. NISBERG: -- hearing. He said that there  
19          cannot be an action for misappropriation of trade  
20          secrets or for Florida Deceptive and Unfair Trade  
21          Practices, there's no declaratory relief, that he  
22          was focusing just on the deceptive practices  
23          count.

24                 The Ahearn case that we've already cited,  
25                 Your Honor, has that in that notebook that I gave

1       you last week, Ahearn vs. Mayo. It very clearly  
2       says in that case -- there were two separate  
3       counts. One was a damages count that had a  
4       request for injunctive relief contained within it  
5       and another count specifically under the  
6       Declaratory Judgment Statute, Chapter 86.

7             It found in that case that the Chapter 86  
8       declaratory judgment count was not viable because  
9       it was not an actual and present controversy,  
10      whereas the other count, the damages count that  
11      contained injunctive relief request, was viable  
12      because the Deceptive and Unfair Trade Practices  
13      Act doesn't have to have an actual written  
14      controversy.

15            If anyone has been aggrieved by anybody in the  
16      past, the present, or the future, there can be an  
17      action, and there can be injunctive relief. In  
18      fact, that case talks about there can be  
19      injunctive relief or declaratory relief.

20            The only other point I wanted to make,  
21      Your Honor, is that for a temporary injunction, a  
22      temporary injunction hearing can be brought  
23      ex parte. It doesn't even have to be brought, you  
24      know, with notice to the party.

25            Here, we've given Mr. Lee, in particular,

1 notice 10 days in advance. There was no objection  
2 to the hearing, and the arguments that were  
3 previously raised last week have already been  
4 decided, and the briefing on that was not only on  
5 the issue of venue but also on proper  
6 jurisdiction.

7 So, Your Honor, if I may have the opportunity  
8 to provide Your Honor legal authority before, if  
9 you're inclined not to rule in our favor, I would  
10 just --

11 MR. LEE: And I --

12 MR. NISBERG: Hang on. I would again just  
13 reiterate that the verified amended complaint was  
14 admitted into evidence without objection, that we  
15 have -- that we have presented the invoice that  
16 was given by Titan and discussed the -- I'd just  
17 like the opportunity, Your Honor, to address the  
18 hearsay rulings that you made during the hearing  
19 before ruling unless you're inclined to rule  
20 today.

21 THE COURT: Well, I wasn't going to rule  
22 today. Just -- I was going to take it under  
23 advisement, and so if both sides want some time to  
24 submit things, you can, and we can talk about  
25 that, but -- so, Mr. Lee, brief argument?

1           MR. LEE: Yeah, I'd like to respond to what he  
2 was just talking about. You can only go by the  
3 complaint motion they filed, and they filed under  
4 two chapters of the Florida statute; and, as far  
5 as the 688 is concerned, it is very clear that  
6 it's the sole remedy.

7           If you look at 688.008, it says, 688.001  
8 through 688.009 displace inflicting tort,  
9 restitutory, and other law of this state providing  
10 civil remedies for misappropriation of trade  
11 secret.

12           So this is the only remedy, and they did not  
13 comply with it. So there's no cause of action in  
14 their motion for any type of injunctive relief.  
15 The other point is that, under 501, which is the  
16 Deceptive and Unfair Trade Practice Act, the law  
17 is very clear that you first have to determine  
18 whether there's been a violation of that act --  
19 the Court does by a dec. action -- and then they  
20 can move on to injunction.

21           So he's not stated it. It's his complaint.  
22 It's not a cause of action for injunctive relief.

23           MR. NISBERG: Your Honor, if I may, since I'm  
24 the plaintiff, have the last word. The purpose of  
25 temporary injunction is to maintain the status

1        quo. Heritage is now faced with potentially a  
2        continuous stream of text messages to Mr. Levy,  
3        like has been testified to, although not accepted  
4        by the Court as hearsay in the sworn statement of  
5        Rosie Cruz but has been admitted into evidence in  
6        the affirmative -- in the amended -- the verified  
7        amended complaint, that there has been use of that  
8        information to get to the remediation sites before  
9        Heritage first responders can get out there, and  
10       the policyholders have been misled into believing  
11       that Titan was sent by Heritage.

12                So there's no been -- there's been no  
13       reasonable opportunity for these policyholders to  
14       know that they weren't complying with the contract  
15       requirement of notice before the remediation  
16       started and possible engagement of preferred  
17       providers sought.

18                We would just ask Your Honor to recognize that  
19       the temporary injunction is for the broader  
20       purpose of protecting the parties. There's no  
21       harm to Titan for being asked not to obtain  
22       confidential information from Heritage.

23                There's no harm to the defendant Titan and  
24       others from refusing -- or being precluded from  
25       engaging in fraudulently inflated bills, so -- but

1           there would be on the other side of that, if that  
2           is the conduct that's occurring, there would be  
3           tremendous harm to the insurance company and for  
4           the policyholders and ultimately the public at  
5           large because fraud causes higher premiums for  
6           everyone.

7           MR. LEE: Your Honor, there would be extreme  
8           harm to the defendants if this was -- if this  
9           injunction was granted. Why? Because all these  
10          remediators -- and Heritage knows it -- they work  
11          on assignment of benefits, and we saw from their  
12          very own policy that Mr. Nisberg admitted into  
13          evidence today that they are not hurt because the  
14          homeowner has the option of either using them or  
15          using a third party; and, if they use the third  
16          party, they don't have to pay Titan or anybody  
17          else any more than they would have paid to their  
18          own vendor, their own subsidiary corporation,  
19          which is a whole nother question, but they're  
20          never hurt here because if the work is done by  
21          them, it's done by them.

22          If it's not done by them, their only  
23          obligation under the policy is to pay the amount  
24          to the third-party vendor the amount they would  
25          have paid to their own in-house subsidiary vendor.

1 They're fully protected, and the homeowner has the  
2 absolute right to do it. All they're trying to do  
3 is use this court, through an injunction, to give  
4 them a corner in the market.

5 You can see that by looking at Count 5.  
6 They're saying, This is a valuable asset, this  
7 trade secret. The trade secret they're arguing is  
8 what you see in the six o'clock news at night.  
9 Joe Smith's house caught on fire. John Jones's  
10 house got flooded. That's not a trade secret.

11 They want you to stop these third-party  
12 vendors from getting this work. They want you to  
13 actually be their pawn in their unfair competition  
14 situation. They're totally protected by their  
15 policy.

16 If they come to Titan and Titan does the work  
17 and remits a bill to Heritage, Heritage, under the  
18 policy, only has to pay the amount they would have  
19 paid their third-party vendor. They're completely  
20 protected. There's no damage there.

21 On the other hand, if you grant the  
22 injunction, that means that Titan cannot continue  
23 to do work because they all work on assignment of  
24 benefits, and you have to look at -- the homeowner  
25 gives you the insurance policy, he gives you the

1 policy number, all this stuff necessary to do an  
2 assignment of benefits so they can get paid  
3 directly versus making the homeowner pay them.

4 It's totally legitimate. Everybody does it,  
5 and that's what they're trying to stop because  
6 they don't like it. They want to corner the  
7 market. They came up with this idea that we're  
8 going to dupe our policyholder, so to speak, by  
9 having these subsidiary companies that look like  
10 prequalified vendors, but they're actually  
11 Heritage doing the work, and they don't want the  
12 competition from the legitimate third-party  
13 people, and an injunction would do just that.

14 It would shut these people down, and you saw  
15 from the policy these policyholders have a right  
16 to use Titan or anybody else they want. They're  
17 just going to get paid an amount that would have  
18 been the equivalent of what their in-house people  
19 got paid. So they're protected.

20 We would ask you to deny the injunction for  
21 all the reasons we've said today.

22 THE COURT: All right. Okay. I need to take  
23 it under advisement and have some time to review  
24 the case law and the materials. Does either side  
25 want time to submit anything or -- or not?

1 MR. LEE: Thank you, Judge.

2 THE COURT: Sorry, Mr. Lee. I probably wasn't  
3 speaking loud enough. Do you want time to submit  
4 anything further? Or if not, that's fine.

5 MR. NISBERG: Heritage --

6 MR. LEE: I think you have enough to rule,  
7 Your Honor; but, if you're going to let him submit  
8 something, I might want to, but personally, I'm  
9 not asking for anything.

10 THE COURT: I mean, I'd rather -- I'd rather  
11 not extend the deadline since I have what I --  
12 what looks like a lot of material based on the  
13 binders, but are you requesting anything further,  
14 Mr. Nisberg?

15 MR. NISBERG: Just on the issue of whether  
16 hearsay is admissible in a temporary injunction  
17 hearing, Your Honor, or whether this would, in  
18 fact, qualify as hearsay.

19 THE COURT: Okay. Well, can you do that by  
20 tomorrow?

21 MR. NISBERG: Yes, Your Honor.

22 MR. LEE: Then can I have 24 hours to respond  
23 to that after that -- I get it?

24 THE COURT: Yes.

25 MR. LEE: And let me say one other thing,

1 Your Honor. He's given you a lot of binders. I  
2 have no idea what's in those binders. I mean,  
3 obviously there's a lot of things that we objected  
4 to as being hearsay, so hopefully Your Honor is  
5 not going to review those as part of your  
6 determination.

7 THE COURT: Well, I'm -- no. I'm going by  
8 what was admitted at the hearing, so --

9 MR. LEE: Okay.

10 THE COURT: And then I'd be reviewing any case  
11 law that's in the binder.

12 MR. LEE: All right. So if I understand,  
13 we're limited to Mr. Nearberg (sic) doing some  
14 research -- further research on hearsay, and then  
15 we'll have an opportunity to respond to that?

16 THE COURT: Yes.

17 MR. LEE: Thank you, Judge.

18 MR. NISBERG: Thank you, Your Honor.

19 THE COURT: All right. Thank you both. Thank  
20 you.

21 (Proceedings concluded at 11:45 a.m.)  
22  
23  
24  
25

## 1 REPORTER'S CERTIFICATE

2  
3 STATE OF FLORIDA

4 COUNTY OF HILLSBOROUGH

5  
6 I, Lisa A. Simons-Clark, Registered Merit  
7 Reporter, Certified Realtime Reporter, certify that I  
8 was authorized to and did stenographically report the  
9 foregoing proceedings and that the transcript is a true  
10 and complete record of my stenographic notes.11 I further certify that I am not a relative,  
12 employee, attorney, or counsel of any of the parties,  
13 nor am I a relative or employee of any of the parties'  
14 attorney or counsel connected with the action, nor am I  
15 financially interested in the action.

16 Dated this \_\_\_\_\_ day of July, 2017.

17 Lisa A. Simons-Clark, RMR, CRR  
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