

¶ 2 Plaintiff Jacqueline Marshall filed an interpleader action against defendants Gloss Group Co. ("Gloss") and Nationwide Adjusting Co. ("Nationwide") for a determination of rights to the insurance proceeds for the remediation of plaintiff's fire damaged house. Both parties filed cross motions for summary judgment. The circuit court granted Gloss' motion for summary judgment and denied Nationwide's. Subsequently, Windsor Building Company Construction ("Windsor") filed a motion to intervene in the interpleader action which the circuit court denied. On appeal, Nationwide argues that the court erred where several issues of material fact precluded a summary judgment disposition. Windsor argues that the court abused its discretion in denying its motion to intervene in the action. For the following reasons, we affirm in part and reverse in part.

¶ 3 BACKGROUND

¶ 4 On or before March 29, 2011, plaintiff Jacqueline Marshall and her now deceased husband George Marshall were owners of the property located at 15325 S. Paulina St., Harvey, Illinois ("the property"). Green Tree Servicing was the mortgagee and loan servicer for a loan secured by a mortgage on the property. The property was insured by Allstate Property and Causality Insurance Company ("Allstate").

¶ 5 On March 29, 2011, a fire broke out at the property causing substantial damage. Pursuant to a contract with plaintiff, Nationwide provided adjusting services for plaintiff's insurance claim with Allstate for the fire loss at the property. On June 21, 2011, following Nationwide's recommendation, plaintiff entered into a contract with Windsor, a construction company, for the rehabilitation, reconstruction and repair of the fire damaged property. Prior to October 12, 2012, Windsor performed work on the property, and billed Nationwide and plaintiff in the amount of \$62,342. This bill was never paid either by plaintiff, Nationwide or Allstate. Windsor did not entirely complete the work at the property.

¶ 6 In June 2012, Allstate issued a check to "Estate of George Marshall and Green Tree Servicing LLC, its affiliates and Nationwide Adjusting Company, Inc." for the fire damage to the property in the amount of \$59,216.54. On or about March 22, 2013, Allstate issued another check for the "Estate of George Marshall and Green Tree Servicing LLC, its affiliates and Nationwide Adjusting Company, Inc." in the amount of \$14,997.87. Both checks were delivered and negotiated by plaintiff and held in escrow pending an outcome of the interpleader action. Green Tree Servicing prosecuted a foreclosure action and received full payment of all debts owed by plaintiff and is no longer a party to the interpleader action.

¶ 7 On October 11, 2012, the property was broken into and vandalized. Gloss signed a construction and repair contract with plaintiff to remediate the damages at the property. Gloss also negotiated and adjusted plaintiff's new insurance claim with Allstate. Allstate issued two checks to Gloss in the amount of \$16,574.27 and \$4,409.67 for the repairs. Gloss proceeded to repair the damage at the property and collected the two checks. Gloss also attempted to collect the checks issued for the fire damage claiming that, at the time it repaired the property following the vandalism, it also repaired some of the damage caused by the fire which occurred on March 29, 2011.

¶ 8 On March 8, 2013, plaintiff and Gloss entered into an assignment agreement which stated that they agreed that Gloss was owed \$81,016.60 for its repair work at the property. On March 16, 2013, plaintiff filed her interpleader action against Nationwide and Gloss asking the court to determine which company was entitled to the funds issued by Allstate in June and July 2012. Neither party filed any pleadings against Windsor.

¶ 9 Both defendants filed cross-motions for summary judgment. In its motion for summary judgment, Nationwide argued that it was entitled to collect the checks because Gloss was not

involved in the property's fire repair and rehabilitation, but that its involvement began only after the property was vandalized, and that Gloss already settled a claim with Allstate for its work.

¶ 10 In its motion, Gloss argued that Nationwide had no authority to collect funds for the work performed by Windsor as Nationwide and Windsor were two separate entities, and that Windsor breached its contract with plaintiff when it failed to complete the repair work at the property. In turn, Nationwide replied that it should be able to collect the checks and distribute the amount to Windsor in its capacity as a Public Insurer Adjuster, pursuant to 215 ILCS5/512.52 *et seq.* (West 2012).

¶ 11 The circuit court granted Gloss' motion for summary judgment and denied Nationwide's. Subsequently, Nationwide filed a motion to vacate the judgment. Windsor filed a motion for leave to intervene. In one order, the circuit court denied both motions. Nationwide and Windsor filed the instant appeal.

¶ 12 ANALYSIS

¶ 13 We review an order granting summary judgment *de novo*. *Illinois Tool Works Inc. v. Travelers Casualty & Surety Co.*, 2015 IL App (1st) 132350, ¶ 8. Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits, viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012). If disputes as to material facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted. *Fox v. Seiden*, 2016 IL App (1st) 141984, ¶ 12.

¶ 14 On appeal, Nationwide contends that the circuit court erred in granting Gloss' motion, when several issues of material fact, precluding summary judgment, existed as to the amount of

work and damages sustained by Gloss when Windsor substantially performed its contract with plaintiff to repair the fire damage. Nationwide contends that, as a Public Insurance Adjuster, it had the authority to collect funds in excess of the amount it was awarded by the circuit court for the construction work done by Windsor.

¶ 15 In response, Gloss contends that there were no issues of material fact regarding its claim for the amount of money it was owed as a result of the work done at the property. Gloss argues that Nationwide lacked standing to raise a claim for Windsor, its third party affiliate, since Nationwide and Windsor are two separate entities. Gloss maintains that Nationwide could not recover the insurance proceeds on behalf of Windsor, and that Windsor should have intervened earlier in the litigation to assert its own legal rights regarding the insurance proceeds.

¶ 16 In an interpleader action, the plaintiff or the stakeholder asks for a determination of the respective rights of the claimants to the property and the burden of proof rests with each claimant to establish his entitlement to the property. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill. App. 3d 603, 609 (1993). Claimants must recover based on the strength of their own claims and not on the weakness of adverse claims. *Id.* A proponent must assert its own legal rights and interest, instead of basing its claim for relief upon the rights of third parties. *Amtech Sys. Corp. v. Illinois State Toll Highway Auth.*, 264 Ill. App. 3d 1095, 1103 (1994). The “inquiry regarding standing is whether a litigant, either in an individual or representative capacity, is entitled to have the court decide the merits of a dispute or a particular issue.” *In re Estate of Wellman*, 174 Ill. 2d 335, 344 (1996).

¶ 17 Here, Nationwide and Gloss were the parties named in plaintiff’s interpleader action. Windsor was not a party. In order to recover, Nationwide and Gloss had to establish that they were entitled to collect the insurance proceeds. There is no dispute that the circuit court properly

awarded Nationwide its fees pursuant to the adjustment contract between Nationwide and plaintiff. While Gloss asserted its rights to recovery based on the construction work done at the property, Nationwide initially argued that it derived its right to collect the funds beyond its adjustment fees from the payment it made to Windsor. However, just as the circuit court noted "that assertion turned out to be false," because Nationwide admittedly did not pay Windsor.

¶ 18 Nationwide argues that, as a Public Insurance Adjuster, pursuant to the Public Adjustment Statute, 215 ILCS 5/512.52 ("the Act"), it was entitled to recover the insurance proceeds in excess of the amount granted by the circuit court on behalf of Windsor. Nationwide claims that the provisions of the Act ensure that the contractor who performed work "on recommendation" of a Public Insurance Adjuster is compensated for its work.

¶ 19 Section 512.52 of the Act is a definitions section that provides in pertinent part as follows:

“(a) ‘Adjusting insurance claims’ means representing an insured with an insurer for compensation, and while representing that insured either negotiating values, damages, or depreciation or applying the loss circumstances to insurance policy provisions.

(b) ‘Public Insurance Adjuster’ means a person engaged in the business of adjusting insurance claims who is licensed pursuant to this Article.

* * *

(d) ‘Compensation’ shall include, but need not be limited to, the following:

1. any assignment of insurance proceeds or a percentage thereof;
2. any agreement to make repairs for the amount of the insurance proceeds payable;

3. assertion of any lien against insurance proceeds payable.”

215 ILCS 5/512.52(a), (b), (d) (West 2012).

¶ 20 The provisions of the Act further define the requirements and the rules for certification of public adjusters, and the regulations necessary for completing the adjustment of claims in a proper manner. 215 ILCS 5/512.52(a), (b), (d); 215 ILCS 5/512.59 (a) (b) (c) (d). The Act establishes the nature of the relationship between the Public Adjuster and the insured, including the adjuster's compensation for the services provided to the insured, and the performance standards applicable to a Public Adjuster. See 215 ILCS 5/512.52(a), (b), (d); 215 ILCS 5/512.59 (a) (b) (c) (d). The Act provides that, in its contract with an insured, the adjuster needs to disclose the full salary, commission, compensation, or any other consideration that the Public Adjuster is to receive for its services. 215 ILCS 5/512.52(a)(c). Furthermore, the Act provides that the adjuster can assert a lien against the insurance proceeds to recover its fees for the adjustment services performed. 215 ILCS 5/512.52(a)(c).

¶ 21 The plain language of the Act indicates that Nationwide represents the "insured," plaintiff, in negotiating and adjusting a claim with Allstate. See *Golub & Assocs., Inc. v. State Farm Fire & Cas. Co.*, 406 Ill. App. 3d 1195, 1199 (2011). Contrary to Nationwide's contention, the Act does not provide that Nationwide "represents" or could collect insurance proceeds on behalf of a contractor. Nor does the Act mention the relationship between a Public Adjuster and contractors other than a reference to a general warranty owed by the Public Adjuster to the insured for the work of a contractor referred to by the adjuster. See 215 ILCS 5/512.59 (c). Clearly, the intent of our legislature in passing the Act was to protect the interests of the insured in having Public Adjusters, trustworthy and competent settlement experts, acting on behalf of the insured and negotiating their claims with insurance companies. See *Profl*

Adjusters, Inc. v. Tandon, 433 N.E.2d 779, 786 (Ind. Sup. Ct. 1982) (discussing the intent of Indiana's legislature in passing a similar statute). Accordingly, the Act does not support Nationwide's contention that it was entitled to recover the insurance proceeds on behalf of Windsor.

¶ 22 In addition, the adjustment contract between plaintiff and Nationwide does not disclose any relationship between Windsor and Nationwide. The contract does not provide that Nationwide would represent Windsor's interests, or that Nationwide would collect or distribute the money to Windsor. Therefore, since Nationwide failed to establish its authority to collect money in excess of its fees awarded by the circuit court, the circuit court did not err in denying Nationwide' motion for summary judgment.

¶ 23 We need to determine next whether the circuit court correctly held, as a matter of law, that Gloss was entitled to the proceeds when Windsor filed its motion to intervene in the litigation asserting competing rights in the insurance proceeds based on its contract with plaintiff. Windsor argues on appeal that the circuit court abused its discretion when it denied its motion as untimely. Windsor concedes that it initially relied on Nationwide to collect the money from Allstate but realized that Nationwide's representation was inadequate only after the circuit court granted Gloss' motion for summary judgment.

¶ 24 A court may grant intervention either permissively or as a matter of right. *Ramsey Emergency Services, Inc. v. Illinois Commerce Comm'n*, 367 Ill. App. 3d 351, 364-65 (2006). Under section 2-408(a) of the Code (735 ILCS 5/2-408(a) (West 2012)), “[u]pon timely application anyone shall be permitted as of right to intervene in an action” when a statute provides for the unconditional right or when the applicant's interest may not be adequately represented by the existing parties and the applicant will be bound by an order or judgment in the

action. *Id.* Further, upon timely application, the court, in its discretion, may permit anyone to intervene in an action when a statute confers a conditional right to intervene or “when an applicant's claim or defense and the main action have a question of law or fact in common.” 735 ILCS 5/2–408(b) (West 2012). Intervention statutes are remedial in nature and should be construed liberally “to allow a person to protect an interest jeopardized by pending litigation to which he is not a party or to avoid relitigation in another suit of issues which are being litigated in a pending suit.” *City of Chicago v. John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d 140, 143 (1984)

¶ 25 “Intervention is usually allowed only before judgment issues, and parties may not normally seek intervention after the rights of the existing parties have been determined and a final decree entered.” *Ramsey*, 367 Ill. App. 3d at 365. However, intervention may be allowed after judgment is entered where it is necessary to protect the intervenor's rights, particularly where the interest of the intervenor existed at the time the judgment was entered. *People ex rel. Scott v. Illinois Protestant Children's Home, Inc.*, 95 Ill. App. 3d 552, 558 (1981). The decision to allow or deny intervention is within the discretion of the court and will not be overturned on review absent an abuse of that discretion. *Ramsey*, 367 Ill. App. 3d at 365.

¶ 26 We find that the circuit court abused its discretion when denying Windsor's motion to intervene. Although Windsor did have knowledge about the litigation since its inception and only moved to intervene a few days after the circuit court granted Gloss's motion for summary judgment, this factor should not have been the decisive one in determining the timeliness of the motion to intervene. See *Pekin Ins. Co. v. Rada Dev., LLC*, 2014 IL App (1st) 133947, ¶ 21-23. The crucial issue is whether a petitioner's interests were adequately represented by the existing parties. *City of Chicago v. John Hancock Mut. Life Ins. Co.*, 127 Ill. App. 3d at 144. The most

important factor in determining the adequacy of representation is how the interest of the absentee compares with the interests of the present parties. *Id.* at 145.

¶ 27 Here, the circuit court specifically noted in its order that Windsor's interests were not properly represented by Nationwide because Nationwide had no authority to act on Windsor's behalf, and blamed Windsor for unreasonably relying on Nationwide's representation of its interests. Still, Windsor had an interest in the insurance proceeds based on its contract with plaintiff, an interest that the court did not consider when determining the propriety of the insurance proceeds. And, unless Windsor would be permitted to intervene, its interest would be jeopardized as any future litigation between Windsor and plaintiff would be bound by the outcome of this instant case.

¶ 28 The original action was an interpleader action and, as the circuit court noted during oral argument, we do not understand why plaintiff did not name Windsor in this suit. Regardless of plaintiff's procedural choice, under these circumstances when Windsor had an interest in the insurance proceeds, when that interest was not adequately represented in the litigation, and construing the attempt to intervene liberally, the circuit court abused its discretion when it denied Windsor's motion to intervene. Therefore, since we find that Windsor should have been allowed to intervene in the interpleader action, we reverse the circuit court's judgment granting Gloss' motion for summary judgment, and remand the case to the circuit court for a determination of both Gloss' and Windsor's interests in the insurance proceeds.

¶ 29

CONCLUSION

¶ 30 Based on the foregoing, we affirm the circuit court's judgment denying Nationwide's motion for summary judgment. We reverse the court's judgment granting Gloss's motion for summary judgment and the court's judgment denying Windsor's motion to intervene. We

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remand the case for further proceedings consistent with this order.

¶ 31 Affirmed in part and reversed in part.

¶ 32 Remanded.