

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE FARM FLORIDA INSURANCE COMPANY,

Appellant,

v.

Case No. 5D18-3581

SPEED DRY, INC., AS ASSIGNEE
OF MAURICIO AND PATRICIA ORTIZ,

Appellees.

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Opinion filed April 3, 2020

Nonfinal Appeal from the Circuit Court
for Orange County,
Kevin B. Weiss, Judge.

Scot E. Samis, of Traub Lieberman Straus
& Shrewsberry LLP, St. Petersburg, for
Appellant.

David R. Heil, of David R. Heil, P.A., Winter
Park, for Appellee.

EVANDER, C.J.

State Farm Florida Insurance Company (“State Farm”) appeals the denial of its motion to compel appraisal. State Farm argues that because it did not wholly deny

coverage for its insureds' claim, it was entitled to enforce the insurance policy's appraisal provision. We agree.¹

Mauricio and Patricia Ortizes' residence was insured by State Farm under a homeowner's policy. The Ortizes filed an insurance claim with State Farm after sustaining storm damage to their home. They subsequently assigned their right to proceeds under the policy to Speed Dry, Inc. Speed Dry, as assignee, filed a declaratory judgment action against State Farm alleging that a dispute had arisen with State Farm in regard to the repair of the Ortizes' roof. According to Speed Dry, it was State Farm's position that the policy permitted it to replace damaged or missing shingles with shingles that did not "match" the other shingles on the roof. Speed Dry argued, on the other hand, that the Ortizes were entitled to either matching shingles or the replacement of the roof.

In response, State Farm filed a motion to compel appraisal. The subject insurance policy provided that if the insured and insurer were unable to agree on the amount of loss, either party could demand that the amount of the loss be set by appraisal. The appraisal provision further provided that if a dispute arose "regarding the extent of the damages or whether any part of the loss [was] covered by the policy, the appraisers [would] itemize the damages according to the scope of the loss specified by each party."²

¹ We have jurisdiction pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv), which provides that the district court of appeal may review a nonfinal order that determines "the entitlement of a party to . . . an appraisal under an insurance policy."

² The complete language of the policy's appraisal provision was, as follows:

Appraisal. If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal. A demand for appraisal must be in writing. You

In denying State Farm's motion, the trial court found that the determination of whether State Farm would be required to pay for matching shingles and/or an entire new roof was a coverage question requiring "an immediate need for declaratory judgment action" We conclude that the trial court's decision was inconsistent with the Florida

must comply with Your Duties After Loss before making a demand.

Each party will select a qualified, disinterested appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. Each party shall be responsible for the compensation of their selected appraiser. The two appraisers shall then select a qualified disinterested umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. Reasonable expenses of the appraisal and the reasonable compensation of the umpire shall be paid equally by you and us.

The appraisers shall then set the amount of the loss. The amount of the loss is determined by the actual cash value, market value or replacement cost of the loss according to the applicable Loss Settlement provision. If a dispute exists regarding the extent of the damages or whether any part of the loss is covered by the policy, the appraisers will itemize the damages according to the scope of the loss specified by each party. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within 30 days, unless the time is extended by mutual agreement, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss.

Appraisal is only available to determine the actual cash value, market value or replacement cost of the loss, and has no effect on matters of coverage. Appraisal is a non-judicial proceeding and neither party will be awarded attorney fees or be subject to an entry of judgment in court. We do not waive any of our rights by submitting to an appraisal.

Supreme Court's decision in *Johnson v. Nationwide Mutual Insurance Co.*, 828 So. 2d 1021, 1022 (Fla. 2002). There, the Florida Supreme Court held that "causation is a coverage question for the court when an insurer wholly denies that there is a covered loss and an amount-of-loss question for the appraisal panel when an insurer admits that there is a covered loss, the amount of which is disputed." Here, State Farm conceded that there was a covered loss.

This court has recently reiterated that an insurer is entitled to enforce a policy appraisal provision where it has not wholly denied coverage. See *First Protective Ins. Co. v. Colucciello*, 276 So. 3d 456 (Fla. 5th DCA 2019) (holding that where insurer paid claims for mold damage and other interior damage to insureds' home, but declined to pay for certain interior damages to home, dispute was one of "amount of the loss"; insurer entitled to compel appraisal); *Underwriters at Lloyd's, London, ICAT Syndicate 4242 v. Sorgenfrei*, 278 So. 3d 930, 931 (Fla. 5th DCA 2019) (holding that where insurer admitted coverage for storm damage to insureds' home, but argued that loss did not meet required deductible, insurer entitled to compel appraisal pursuant to policy terms; coverage was not wholly denied).

We find further support for our decision from *Florida Farm Bureau Casualty Insurance Co. v. Sheaffer*, 687 So. 2d 1331 (Fla. 1st DCA 1997), *disapproved on other grounds*, *Allstate Insurance Co. v. Suarez*, 833 So. 2d 762 (Fla. 2002). There, the insurer and the insureds disagreed on whether the insurer was permitted to repair the insureds' roof by replacing only the damaged missing tiles, or whether, given the unavailability of "matching" tiles, the insurer was required to pay for the replacement of the insureds' entire

roof. Our sister court found that the parties' dispute did not involve a question of coverage, but rather concerned the amount of the loss. 687 So. 2d at 1334.

Because State Farm did not wholly deny coverage for storm damage to the Ortizes' roof, it was entitled to compel appraisal pursuant to the terms of the insurance policy. Accordingly, the trial court erred in denying State Farm's motion to compel appraisal.

REVERSED and REMANDED.

GROSSHANS and TRAVER, JJ., concur.