

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FLORIDA INSURANCE GUARANTY
ASSOCIATION, INC.,

Appellant,

v.

FRANKLIN KIRSCHNER and VANESSA
KIRSCHNER,

Appellees.

Case No. 2D13-5467

Opinion filed March 27, 2015.

Appeal pursuant to Fla. R. App. 9.130 from
the Circuit Court for Hillsborough County;
James Barton, II, Judge.

Hinda Klein of Conroy, Simberg, Ganon,
Krevans, Abel, Lurvey, Morrow & Schefer,
P.A., Hollywood, for Appellant.

Nancy A. Lauten and George A. Vaka of
Vaka Law Group, Tampa; and Kenneth C.
Thomas, Jr. of Marshall Thomas Burnett,
Land O Lakes, for Appellees.

BLACK, Judge.

Florida Insurance Guaranty Association, Inc. (FIGA), appeals a nonfinal order compelling appraisal regarding the repair of damages caused by a sinkhole to a residence owned by Franklin and Vanessa Kirschner. We reverse the order compelling appraisal and remand for further proceedings.

For the reasons expressed in Florida Insurance Guaranty Ass'n v. de la Fuente, 40 Fla. L. Weekly D123 (Fla. 2d DCA Jan. 7, 2015), we conclude that appraisal is not available under the 2011 amendment to section 631.54(3), Florida Statutes, applicable to this case. Additionally, like the homeowners in Florida Insurance Guaranty Ass'n v. Waters, 40 Fla. L. Weekly D354 (Fla. 2d DCA Feb. 6, 2015), the Kirschners actively litigated this case for more than two years prior to seeking appraisal. As a result, they waived any right to appraisal they may have had. See id. at D356.

As we did in de la Fuente, we certify the following questions to the Florida Supreme Court as questions of great public importance:

I. DOES THE DEFINITION OF "COVERED CLAIM" IN SECTION 631.54(3), FLORIDA STATUTES, EFFECTIVE MAY 17, 2011, APPLY TO A SINKHOLE LOSS UNDER A HOMEOWNERS' POLICY THAT WAS ISSUED BY AN INSURER BEFORE THE EFFECTIVE DATE OF THE NEW DEFINITION WHEN THE INSURER WAS ADJUDICATED TO BE INSOLVENT AFTER THE EFFECTIVE DATE OF THE NEW DEFINITION?

II. DOES THE STATUTORY PROVISION LIMITING FIGA'S MONETARY OBLIGATION TO THE AMOUNT OF THE ACTUAL REPAIRS FOR A SINKHOLE LOSS PRECLUDE AN INSURED FROM OBTAINING AN APPRAISAL AWARD DETERMINING THE "AMOUNT OF LOSS" IN ACCORDANCE WITH THE TERMS OF THE HOMEOWNERS' POLICY OF INSURANCE?

Reversed and remanded for further proceedings; questions certified.

CASANUEVA and KELLY, JJ., Concur.