

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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AMERICAN COASTAL INSURANCE COMPANY,

Appellant,

v.

IRONWOOD, INC.,

Appellee.

No. 2D20-3406

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October 27, 2021

Appeal from the Circuit Court for Collier County; Elizabeth V. Krier,  
Judge.

Hope C. Zelinger, Samantha S. Epstein, Lilian Rodriguez-Baz, and  
Krista L. Elsasser of Bressler, Amery & Ross, P.C., Fort Lauderdale,  
for Appellant.

Cary J. Goggin and Amanda C. Broadwell of Goede, Adamczyk,  
DeBoest & Cross, PLLC, Naples, for Appellee.

NORTHCUTT, Judge.

American Coastal Insurance Company appeals an order  
staying litigation and compelling an appraisal of damage to property

of its insured, Ironwood, Inc. We reverse because the directive to submit to an appraisal is premature.

This case arises from a dispute between Ironwood, a condominium association in Naples, and American Coastal over the former's claim for property damage caused by Hurricane Irma in 2017. Ironwood initially filed a claim for roof damage in November 2017. American Coastal adjusted the claim and issued several payments for repairs. The resolution of that initial roofing claim is not in dispute.

In February 2019, Ironwood filed an additional claim for damage to doors and windows caused by the same hurricane. American Coastal began investigating the new claim and requested a variety of documents from Ironwood. Ironwood then invoked its right to an appraisal before American Coastal made a coverage determination on the windows-and-doors claim.

American Coastal maintained that an appraisal was premature because Ironwood had not yet provided all the documentation American Coastal requested regarding the damage to the windows and doors. Ironwood disagreed and filed suit,

claiming breach of contract and seeking an appraisal and compensatory damages.

Ironwood eventually moved for a stay of the litigation and for an order compelling an appraisal. The circuit court granted the motion. Although the court held a hearing on the motion and took limited testimony on the issue of Ironwood's compliance with its postloss obligations, the court stated that its decision was based solely on the pleadings and attachments. There are two infirmities in the court's ruling.

First, although the testimony and pleadings evinced a genuine dispute over Ironwood's compliance with its postloss obligations, the court failed to resolve that dispute before compelling the parties to appraisal.

In order to make a preliminary determination that there is a disagreement between the insurer and the insured regarding the amount of loss, the trial court must be satisfied of the insured's compliance with the policy's post-loss conditions. Where the insurer reasonably disputes such compliance and raises a question as to the sufficiency of the insured's compliance with post-loss obligations, a question of fact is created that must be resolved by the trial court before compelling appraisal.

*United Prop. & Cas. Ins. Co. v. Concepcion*, 83 So. 3d 908, 910 (Fla. 3d DCA 2012) (citations omitted).

The parties' insurance contract imposes on Ironwood a postloss obligation to "[f]urnish all other documents or insurance policies that [American Coastal] may reasonably require." In response to Ironwood's claim for damage to the property's windows and doors, American Coastal made several written requests for documents. In particular, American Coastal requested that Ironwood provide:

- 1) Sworn Proof of Loss;
- 2) All supporting estimates, invoices, receipts, and contracts for work relating to the subject loss;
- 3) All documentation received by the Insured from Moisture Intrusion Solutions relating to the subject loss;
- 4) Association board meeting minutes for the past five years;
- 5) Association maintenance records for the past five years (2014-2019);
- 5) Any photographs, videos or otherwise that depict the condition of the property at any time, both prior to and after the date of loss;
- 6) Any reports, including appraisals, prepared on behalf of the Association;
- 7) Any engineering, general construction, or expert reports pertaining to the subject loss and the damages being claimed; and
- 8) Any Certificates of Completion, Certificates of Satisfaction, final invoices, and evidence of paid invoices.

To all appearances, American Coastal's requests for documents were reasonable. Consequently, Ironwood is not entitled to an appraisal if it has not adequately responded to them

as required by the policy. The parties presented evidence solely on this dispute over Ironwood's compliance with American Coastal's request, but the circuit court erroneously failed to resolve or even to address it. *See People's Tr. Ins. Co. v. Ortega*, 306 So. 3d 280, 285 (Fla. 3d DCA 2020) ("[W]here there is a dispute over whether an insured has sufficiently complied with his or her contractual duties so as to trigger the policy's appraisal provision, that dispute must be resolved before compelling the parties to proceed with an appraisal of the disputed loss."); *Concepcion*, 83 So. 3d at 909 (holding that "the dispute as to whether Concepcion complied with post-loss obligations created a fact issue which must be resolved by the court through an examination of the evidence" prior to ordering an appraisal); *see also Gonzalez v. People's Tr. Ins. Co.*, 307 So. 3d 956, 960 (Fla. 3d DCA 2020) ("[U]ntil the subject homeowner's insurance policy's post-loss obligations are met, there can be no disagreement as to the amount of the loss.").

Second, the court below erred in concluding that Ironwood's windows-and-doors claim is an aspect of the initial roof-damage claim rather than a supplemental claim. This distinction is important because a claim is not yet ripe for appraisal until a

coverage determination has been made. *See Am. Capital Assurance Corp. v. Leeward Bay at Tarpon Bay Condo. Assoc., Inc.*, 306 So. 3d 1238, 1240 (Fla. 2d DCA 2020), *review granted*, SC20-1766, 2021 WL 416684 (Fla. Feb. 8, 2021). American Coastal has already made its coverage determination regarding the roof damage. If the windows and doors damage is part of the roof claim, then appraisal might be appropriate. But if it is a supplemental claim for which a separate coverage determination must be made, appraisal is premature until "the insurer has a reasonable opportunity to investigate and adjust the claim." *Citizens Prop. Ins. Corp. v. Galeria Villas Condo. Ass'n, Inc.*, 48 So. 3d 188, 191 (Fla. 3d DCA 2010).

Ironwood's insurance policy defines a supplemental claim as "any additional claim for recovery from [American Coastal] for losses from the same hurricane or windstorm which [American Coastal] [has] previously adjusted pursuant to the initial claim." Ironwood's windows-and-doors claim falls squarely within this definition. It is undisputed that American Coastal "previously adjusted" damage resulting from the same hurricane, i.e., losses related to damage to Ironwood's roofs. Ironwood's "additional claim for recovery for

losses from the same hurricane," i.e., alleged losses related to damage to windows and doors, is therefore a supplemental claim for which a coverage determination must be made before the contractual appraisal right ripens. *See Goldberg v. Universal Prop. & Cas. Ins. Co.*, 302 So. 3d 919, 923 (Fla. 4th DCA 2020) (holding that, under the same definition of "supplemental claim," an insured's request for "additional payment for his losses from the same hurricane after the adjustment of his initial claim" was a supplemental claim).

Accordingly, we reverse the order compelling an appraisal and remand for further proceedings.

Reversed and remanded.

KELLY and ATKINSON, JJ., Concur.

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Opinion subject to revision prior to official publication.