

# Third District Court of Appeal

State of Florida

Opinion filed September 15, 2021.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D21-0558  
Lower Tribunal Nos. 19-14630 SP, 20-186 AP

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**Progressive American Insurance Company,**  
Petitioner,

vs.

**Dr. Car Glass, LLC, etc.,**  
Respondent.

On Petition for Writ of Certiorari from the County Court for Miami-Dade County, Michaelle Gonzalez-Paulson, Judge.

Cole, Scott & Kissane, P.A. and Alexandra Valdes and Kurt T. Koehler, for petitioner.

Chad Barr Law, and Chad A. Barr and Virginia E. Davis Horton (Altamonte Springs), for respondent.

Before HENDON, LOBREE and BOKOR, JJ.

PER CURIAM.

Petitioner Progressive American Insurance Company seeks certiorari review of a trial court order denying a motion to dismiss or to compel appraisal.

The trial court ordinarily has discretion to determine the order in which it disposes of the declaratory judgment counts and the breach of contract count. Barbato v. State Farm Fla. Ins. Co., 319 So. 3d 96, 97 (Fla. 3d DCA 2021) (“Neither can it be said that, in this case, no reasonable judge would have required appraisal to take place before a coverage determination was made.”). In this case, the trial court stayed the breach count and deferred ruling on the motion to compel appraisal until after resolution of the declaratory judgment counts. As this court explained:

[W]here declaratory counts challeng[e] the enforceability of an appraisal clause exist, courts must enjoy no less power to decide whether to address such arguments in an adjudication of the merits of such counts, or in response to a motion to compel appraisal, before the appraisal can be enforced, as well as to decide whether an evidentiary hearing is warranted.

[...]

Because these are challenges targeting the enforceability of the appraisal and other policy provisions themselves, the trial court could not have granted the motion to compel appraisal as to the breach of contract claim without improperly and prematurely adjudicating these issues with regard to the declaratory judgment claims.

People's Tr. Ins. Co. v. Marzouka, 320 So. 3d 945, 948 (Fla. 3d DCA 2021) (citations omitted). Accordingly, there was no departure from the essential requirements of the law. Additionally, Progressive fails to show irreparable harm where, as here, the trial court stayed the breach of contract claim. Petition dismissed.