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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0124

Cedar Bluff Townhome Condominium Association, Inc.,
Appellant,

vs.

American Family Mutual Insurance Company,
Respondent.

Filed December 2, 2013
Reversed and remanded
Peterson, Judge

Dakota County District Court
File No. 19HA-CV-11-5628

E. Curtis Roeder, Roeder Smith Jadin, PLLC, Bloomington, Minnesota (for appellant)

Mark Randall Bradford, Bassford Remele, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this insurance-coverage dispute, appellant townhome association argues that the district court erred by (1) determining that an appraisal panel exceeded its authority by deciding coverage questions and (2) substituting its factual determination for that of the appraisal panel. We reverse and remand to the district court.

FACTS

Appellant Cedar Bluff Townhome Condominium Association, Inc. (Cedar Bluff) is a townhome association for twenty buildings. All twenty buildings were damaged to some degree during a storm in October 2010. All of the roofs had to be replaced because of hail damage, and the siding on each building sustained relatively minor damage.

Respondent American Family Mutual Insurance Company (American Family) insured Cedar Bluff. Under the terms of the policy, American Family agreed to pay for "direct physical loss of or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss." All of Cedar Bluff's buildings are "Covered Property." Under the policy, American Family agreed, at its option, to (1) "[p]ay the value of lost or damaged property"; (2) "[p]ay the cost of repairing or replacing lost or damaged property"; (3) take damaged property at an agreed value; or (4) "[r]epair, rebuild or replace the property with other property of like kind and quality." Replacement property was to be "of comparable material and quality." If the parties were unable to agree on the amount of loss, either party could demand an appraisal of the loss.

The parties did not dispute that there was a loss or that it was caused by a covered event. But the parties could not agree on the value of the loss. The siding on the buildings was 12 to 13 years old and had faded; siding was no longer manufactured in the original color. Siding from the same manufacturer, with the same specifications, was available, but the color was "slightly darker or slightly lighter" than the color of the original siding at the time of installation. American Family proposed replacing only the damaged siding boards with the closest colors currently available from the manufacturer;

Cedar Bluff asked that all siding be replaced on all of the buildings so that there would be an exact color match. The cost of replacing all of the siding was approximately double the cost of replacing only the damaged siding boards. American Family refused to pay the cost of replacing all of the siding.

Because the parties were unable to agree, the question of the value of the loss was submitted to an appraisal. The appraisal panel, consisting of two appraisers selected by the parties and an umpire selected by the two appraisers, found that the damage to the siding was relatively minor and that individual siding boards could be replaced in accordance with "normal construction practices." But a majority of the appraisal panel determined that replacing only the damaged siding "was not a repair or replacement with comparable materials of like kind and quality," because the siding color would not match. The appraisal panel concluded that the amount of loss consisted of the cost of replacing all of the siding.

Cedar Bluff moved for partial summary judgment confirming the appraisal award. The district court denied Cedar Bluff's motion and also denied its motion for reconsideration. Several months later, Cedar Bluff again moved for partial summary judgment confirming the appraisal award, and American Family moved for summary judgment. The district court determined that American Family was responsible to pay for only direct physical damage and not for the cost of replacing undamaged siding in order to achieve a color match and granted American Family summary judgment. The district court denied Cedar Bluff's motion for partial summary judgment confirming the

appraisal award. Cedar Bluff appeals from the judgment denying confirmation of the appraisal award and granting American Family summary judgment.

D E C I S I O N

We review a district court's summary-judgment decision to determine whether there are genuine issues of material fact and whether the district court properly applied the law. *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013). In doing so, we view the evidence in the light most favorable to the nonmoving party. *Id.*

I.

We interpret an insurance policy as a question of law, applying general principles of contract law. *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012). Cedar Bluff's policy provided that in the event of a covered loss, if the parties were unable to agree on the amount of the loss, the issue would be submitted to an appraisal. An appraisal is treated as an arbitration proceeding and is governed by the same standards as an arbitration proceeding. *David A. Brooks Enters., Inc. v. First Sys. Agencies*, 370 N.W.2d 434, 435 (Minn. App. 1985). The Uniform Arbitration Act, Minn. Stat. §§ 572B.01-.31 (2012), sets forth the standards governing arbitration.[1]

When an appraisal award is made, a party may apply to the district court for an order confirming the award. Minn. Stat. § 572B.22. The district court may confirm, modify, or vacate an award. *Id.* To vacate an appraisal award, the district court must

[1] The former Uniform Arbitration Act, Minn. Stat. §§ 572.08-30 (2008), was repealed by 2011 Minn. Laws, ch. 264, § 32, and the current act became effective August 1, 2011. 2011 Minn. Laws, ch. 264, § 33.

find one of the grounds for vacation listed in Minn. Stat. § 572B.23; in this case, the district court concluded that the appraisal panel had exceeded its authority. *See id.* (a)(4). An appraisal panel must clearly exceed its authority before the district court may overturn an award. *David. A. Brooks Enters.*, 370 N.W.2d at 435. The party asserting that the appraisal panel exceeded its authority has the burden of establishing the assertion. *Cnty. of Hennepin v. Law Enforcement Labor Servs., Inc. Local No. 19*, 527 N.W.2d 821, 824 (Minn. 1995).

Generally, "[t]he scope of appraisal is limited to damage questions while liability questions are reserved for the court." *Quade*, 814 N.W.2d at 706. Thus, an appraisal panel does not have authority to construe a policy or to determine whether an insurer is liable under the terms of the policy. *Id.*

But in *Quade*, the supreme court noted that "the line between liability and damage questions is not always clear," and that, in some circumstances, determining the amount of loss under a policy "necessarily includes a determination of causation." *Id.* at 706-07. The supreme court added, "[Q]uestions of law or fact, which are involved as mere incidents to a determination of the amount of loss or damage are appropriate to resolve in an appraisal in order to ascertain the amount of the loss." *Id.* at 707 (quotation omitted). The supreme court explained the role of the appraiser as follows:

> "[T]he appraisers must determine many matters other than the mere value of specific property produced before them for examination and appraisal. They must determine the quantity of property covered by the policy . . . , the quantity destroyed, the quantity damaged, whether the damage resulted from causes covered by the policy or from other causes not covered

> thereby, and various other questions, both of law and fact, upon which the parties may differ."

Id. (quoting *Am. Cent. Ins. Co. v. Dist. Court*, 125 Minn. 374, 378, 147 N.W. 242, 244 (1914)).

The appraisal panel considered whether the amount of loss included only the directly damaged individual siding boards, or whether the loss included all of the siding because the directly damaged boards could not be replaced with matching siding. In deciding that the amount of loss included all of the siding, the appraisal panel necessarily interpreted the phrases "replace . . . with other property of like kind and quality" and "replace . . . with other property . . . [o]f comparable material and quality." Under the reasoning of *Quade*, the appraisal panel had authority to consider the meanings of those phrases when determining the amount of loss. Therefore, the district court erred by refusing to confirm the appraisal award on the grounds that the appraisal panel exceeded its authority.

II.

Although an appraisal panel may decide coverage issues if necessary to its determination of the amount of loss, the supreme court further concluded in *Quade* that "an appraiser's liability determinations are not final and conclusive" and "the decision of the appraisers will be subject to review by the district court. The process gives force to the appraisal process but reserves to the courts the authority to decide coverage questions." *Id.* at 707-08 (quotation omitted). The supreme court summarized its decision as follows:

> [A]s an incidental step in the appraisal process . . . , the appraisers must necessarily determine the cause of the loss, as well as the amount necessary to repair the loss. However, to the extent that determination goes beyond the scope of the appraisal and interprets policy exclusions, that determination is reviewable by the district court.

Id. at 708. Thus, although the district court erred by refusing to accept the factual determinations of the appraisal award, the question of coverage under the policy was properly before the court.

We interpret an insurance contract to "ascertain and give effect to the intentions of the parties as reflected in the terms of the insuring contract." *Midwest Family Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013) (quotation omitted). An insurance contract must be interpreted as a whole. *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010). The language of an unambiguous contract is interpreted according to its plain and ordinary meaning. *Wolters*, 831 N.W.2d at 636. "Language in a policy is ambiguous if it is susceptible to two or more reasonable interpretations." *Id.* "Any ambiguity [in an insurance contract] is resolved in favor of the insured." *Id.* (quotation omitted). As a practical matter, this means that "[p]rovisions in an insurance policy are to be interpreted according to both plain, ordinary sense and what a reasonable person in the position of the insured would have understood the words to mean." *Farmers Home Mut. Ins. Co. v. Lill*, 332 N.W.2d 635, 637 (Minn. 1983) (quotation omitted).

In the relevant provisions of the policy, American Family agreed to "[r]epair, rebuild or replace the [damaged] property with other property of like kind and quality,"

and that the value of the covered property would be determined based on the cost to replace the "damaged property with other property . . . [o]f comparable material and quality." American Family maintains that it is unreasonable to interpret this provision to require replacement of both damaged and undamaged siding in order to achieve an exact color match. But the policy does not define property "of like kind and quality" or property "of comparable material and quality." Cedar Bluff interprets this language to mean that a repair of its damaged buildings requires that the buildings have uniformly colored siding. Cedar Bluff's interpretation is not an unreasonable understanding of the policy language; a reasonable person could understand that "comparable material" means material that is the same color as the damaged property. Because there is more than one reasonable interpretation of the policy language, the policy is ambiguous. When a policy is ambiguous, ambiguities are resolved in favor of the insured. *Wolters*, 831 N.W.2d at 636. *See also Lill*, 332 N.W.2d at 637 ("[I]f there is a competing reasonable interpretation, there is ambiguity and the insurer's reading must give way to the insured's").

We conclude that the district court erred as a matter of law by failing to resolve the ambiguous policy language in favor of the insured, Cedar Bluff. Therefore, we reverse the district court's summary judgment and remand this matter to the district court for entry of judgment in favor of Cedar Bluff in an amount consistent with the appraisal award.

Reversed and remanded.