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

UNDERWRITERS AT LLOYD'S, LONDON, ICAT SYNDICATE 4242,

Appellant,

v. Case No. 5D18-3002

JOHN SORGENFREI AND DEANA SORGENFREI,

Appellees.

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Opinion filed September 13, 2019

Nonfinal Appeal from the Circuit Court for Brevard County, Jeffrey Mahl, Judge.

Micheala D. Scheihing, of Southeast Law Group, P.A., Daytona Beach, for Appellant.

Matthew G. Struble and Christine D. Skubala, of Struble, P.A., Ft. Lauderdale, for Appellees.

PER CURIAM.

Underwriters at Lloyd's, London, (the Insurer) appeals the trial court's nonfinal order denying its motion to compel appraisal. Because the Insurer did not wholly deny coverage for the loss, we reverse and remand for the trial court to enter an order compelling appraisal.

John Sorgenfrei and Deana Sorgenfrei (the Homeowners) insured their home with the Insurer. While the policy was in force, the home sustained damage as a result of Hurricane Irma, and the Homeowners claimed benefits under the policy. The Insurer admitted coverage under the policy but asserted that the loss did not exceed the named storm deductible and declined to make any payments on the claim.

The Homeowners subsequently sued the Insurer, alleging a breach of the insurance policy. In the answer, the Insurer again admitted coverage, but noted that the loss did not meet the required deductible. Additionally, the Insurer asserted the affirmative defense of pre-existing damage. The Insurer also filed a motion to compel appraisal, asserting its entitlement to an appraisal because the dispute involved the proper amount of loss under the policy. After a hearing, the court denied the motion to compel appraisal, and this appeal timely followed.

On appeal, the Insurer argues that the trial court erred in denying the motion to compel appraisal because it did not wholly deny coverage of the claim. Based on our de novo review, see People's Tr. Ins. Co. v. Garcia, 263 So. 3d 231, 233 (Fla. 3d DCA 2019) (citing Mora v. Abraham Chevrolet–Tampa, Inc., 913 So. 2d 32, 33–34 (Fla. 2d DCA 2005)), we agree.

In Johnson v. Nationwide Mutual Insurance Co., 828 So. 2d 1021, 1022 (Fla. 2002), the Florida Supreme Court held that when an insurer does not wholly deny coverage, a disagreement between the parties as to causation presents an amount–of–loss issue to be determined, under the contract, by appraisal.

Here, the Homeowners filed a single claim under the policy, and the Insurer agreed that a portion of the claim was covered—while also asserting that the amount of loss did

not exceed the deductible and that the balance of the claimed loss constituted pre-existing damage. As such, the Insurer did not wholly deny coverage. See First Protective Ins. Co. v. Colucciello, 44 Fla. L. Weekly D1810, D1810 (Fla. 5th DCA July 12, 2019); Garcia, 263 So. 3d at 236–38. Thus, the trial court erred in refusing to compel an appraisal.[1]

Accordingly, we reverse the trial court's order and remand with directions to compel an appraisal.

REVERSED and REMANDED for further proceedings.

ORFINGER, EISNAUGLE, and GROSSHANS, JJ., concur.

[1] We reject, without discussion, the Homeowners' tipsy coachman argument that the Insurer waived its right to appraisal.