2022 WL 2132733
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
JUDICIAL DISTRICT STAMFORD/ NORWALK AT STAMFORD.

YOUM, Gary et al.
v.
The CINCINNATI INSURANCE COMPANY

FST CV 22-6056172 S
|
JUNE 14, 2022

MEMORANDUM OF DECISION

KRUMEICH, J.T.R.

***1** Plaintiffs have applied for an order to compel defendant The Cincinnati Insurance Company (the "Insurer") to participate in an appraisal proceeding to determine the amount of loss sustained in a sewage flood that plaintiffs assert was covered by their homeowners' insurance policy (the "Policy"). The Insurer has disclaimed coverage and argued that the appraisal proceeding would be a waste of time because the appraiser can only quantify the loss and could not resolve the coverage dispute. For the reasons stated below, the application is granted.

The Policy provides for appraisal if the parties cannot agree on the amount of the covered loss: "[if the insurer and insured] fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and disinterested appraiser within 20 days after receiving a written request from the other." Defendant has failed to choose an appraiser and has refused to participate in the appraisal requested by plaintiffs in writing.

Appraisal provisions in insurance policies have been interpreted as agreements to arbitrate subject to compulsion under C.G.S. § 52-410. See *51 Roses Mill, LLC v. American Guarantee & Liability Insurance Company*, 2022 WL 1509340 *2 (Conn. Super. 2022) (Kamp, J.) citing *Covenant Ins. Co. v. Banks*, 177 Conn. 273, 281 (1979). ("Section 52-410 governs applications to compel appraisal").

Conn. Gen. Stat. § 52-410(a) provides: "A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the superior court for the judicial district in which one of the parties resides ... for an order directing the parties to proceed with the arbitration in compliance with their agreement."

Both sides cite the Supreme Court's recent decision in *Klass v. Liberty Mutual Insurance Company*, 341 Conn. 735, 750 (2022), that upheld the lower court's decision to grant an order to compel appraisal because the extent of repairs to a roof is not a coverage issue but "a factual dispute that falls within the scope of the insurance policy's appraisal clause." Plaintiffs cite *Klass* for the proposition that the Insurer agreed to refer determination of the factual issue of the extent of the loss to the appraisal process; and argue that they are not asking the appraisers to resolve the legal issue of whether the loss is covered by the Policy.

The Insurer seeks to distinguish *Klass* as a case where the insurance company conceded coverage, 341 Conn. at 750, and urges the Court to follow Judge Kamp's dictum in *Roses Mill*, 2022 WL 1509340 *2, that "[t]he Supreme Court in *Klass* clarified that, in order to compel appraisal, *the damages in question must have been the result of a covered peril*, and that the issue to be appraised must be purely a factual question of damages." (Emphasis added). Clearly, Judge Kamp was not suggesting that any coverage dispute must be resolved before a court may compel appraisal. [1] Indeed, Judge Kamp cited with approval decisions by the United States Court of Appeals for the Second Circuit and the Connecticut Supreme Court that held appraisal of the loss amount claimed may precede resolution of coverage disputes:

> ***2** "The Supreme Court in *Klass* further affirmed that, similar to the reliance of the defendant in the present case, the trial court's initial interpretation of a key Second Circuit case was initially erroneous. Id., 739-40. Said case, *Milligon v. CCC Information Services*, 920 F.3d 146, 153 (2d Cir. 2019), served not to bar appraisal prior to

> the conclusion of coverage issues, but to reiterate that '[a]n appraisal is appropriate not to resolve legal questions, but rather to address factual disputes over the amount of loss for which an insurer is liable.' ... Indeed, many years prior to *Klass*, the Supreme Court concluded that '[a] determination of the amount of the plaintiffs' loss by appraisers pursuant to the policy would not have precluded a subsequent determination of the liability issues at a trial and would greatly have shortened the duration of a trial.' *Giulietti v. Connecticut Ins. Placement Facility*, 205 Conn. 424, 432 ... (1987)." (Footnote omitted).

Nothing in the language of the appraisal provision in the Policy or the cited authorities indicate that resolution of a coverage dispute must precede appraisal; in fact, the reasoning in *Giulietti*, is exactly the opposite, the Court held that appraisal could proceed even though the coverage dispute had not been resolved and cited precedent that held if an insurer's denial of coverage precluded appraisal "it renders the loss appraisal clause illusory whenever an insurer resists its invocation by an insured. If the defendant's proposition were sound, it would provide 'an effective and simple way to destroy the insured's right of appraisal.' " 205 Conn. at 432 (citations omitted).[2] For the same reason, there is no requirement the Court must decide the legal question of whether the loss is covered by the Policy before entering an order to compel the Insurer to participate in the appraisal process. A factual dispute over the amount of the loss arguably covered under the Policy and a written request to arbitrate is all that is needed to trigger appraisal and avoid waiver of appraisal rights. Nor is the quantification of the loss a waste of time, as the Insurer argued, for the reason mentioned in *Giulietti*, a shortened trial as to coverage, 205 Conn. at 432, but also for the benefit of educating the parties as to the value of the case for purposes of settlement.

Although there is no pending litigation to resolve the coverage dispute, the parties agreed that the time to commence a declaratory judgment or breach of contract action has not passed. There is no reason why an appraisal proceeding to ascertain the loss from the sewage flood claimed to be covered under the Policy must be delayed. The application to compel arbitration under C.G.S. § 52-410(a) is granted.

All Citations

Not Reported in Atl. Rptr., 2022 WL 2132733

Footnotes

1 In *Roses Mill* Judge Kamp remarked "the fire that damaged the property is undisputedly a covered peril". 2022 WL 1509340 *2.

2 The actual holding in *Giulietti* was that plaintiff waived appraisal by litigating the amount of loss in the coverage lawsuit. 205 Conn. at 433.

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