

DOCKET NO. AAN-CV23-6052079-S : SUPERIOR COURT
GALEANO, HERNAN : JUDICIAL DISTRICT OF
ANSONIA/MILFORD
V. : AT MILFORD
AMERICAN STRATEGIC INSURANCE : APRIL 16, 2024

J.D. CLEARY'S OFFICE
SUPERIOR COURT
MILFORD, CT
2024 APR 16 PM 4:08

MEMORANDUM OF DECISION

The present matter is an application to compel the parties to engage in a contractual process known as appraisal found in the insurance agreement, Policy Number CTA 45857, which was effective September 23, 2022, and issued by the defendant, American Strategic Insurance Corp., to the plaintiffs, Hernan and Darlene Galeano, (policy). The policy is a homeowners policy providing coverage for the plaintiffs' residence at 598 Racebrook Road in Orange, Connecticut (property).

The matter is before the court pursuant to General Statutes § 52-410, which provides that “[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.” General Statutes § 52-410(a).¹ “Our

¹ The plaintiffs have also brought this action pursuant to General Statutes § 38a-307, which is the standard form of fire insurance policy for the state of Connecticut. Section 38-307 does not apply to this matter. The loss sustained by the plaintiffs was not caused by fire. The policy is a homeowners insurance policy that provides coverage for loss sustained by fire and several other perils. The inclusion of coverage against the peril of fire in the policy does not transform the policy into a standard fire insurance policy. See *Holmes v. Safeco Insurance Company of America*, 171 Conn. App. 597, 607-08, 157 A.3d 1147 (2017).

Electronic notice sent 4/16/24 (CR)

Supreme Court has held that an appraisal clause in the standard form fire insurance policy as set out in General Statutes § 38a-307, such as the appraisal clause in the policy in this case, constitutes an agreement to arbitrate and falls within the ambit of our arbitration statutes, General Statutes §§ 52-408 through 52-424.” (Quotations omitted; citations omitted.) *Steiner v. Middlesex Mut. Assur Co.*, 44 Conn. App. 415, 424, 689 A.2d 1154 (1997).

The undisputed facts are as follows. On January 20, 2023, the property sustained damage to the roof and to portions of the interior as a result of a wind and water loss. At the time of the loss, the property was insured by the defendant under the policy. The damage to the home included roof damage and interior damage to the living room and hallway. It also required asbestos remediation.

On or about February 21, 2023, the defendant provided the plaintiffs with an asbestos abatement estimate, which the plaintiffs accepted. Thereafter, the plaintiffs provided the defendant with a roof replacement estimate, which the defendant accepted. The defendant then paid the plaintiffs approximately \$75,000. The parties were unable to reach an agreement on four additional parts of the loss, which the parties refer to: 1. Asbestos permit notification; 2. Asbestos hazardous waste hauling and disposal; 3. Asbestos test fee - final clearance; and 4. Interior repairs on the living room and hallway.

The plaintiffs demanded in writing invocation of the appraisal provision in the policy but limited to the scope of the four aforementioned items. The defendant also demanded appraisal in writing but as to the entire scope of the loss.²

² The plaintiffs contend that there was an agreement between the parties to appraisal limited to 1. Asbestos permit notification; 2. Asbestos hazardous waste hauling and disposal; 3. Asbestos test fee - final clearance; and 4. Interior repairs on the living room and hallway. The defendants

Both parties now ask the court to mandate appraisal but in accordance with the scope they desire. The plaintiffs seek a scope limited to the items they deem unresolved, and the defendant seeks a scope that includes the entire loss, including those items already paid for.

The appraisal language in the present case is different from the language in § 38a-307³ and the other policies such as the one in *Steiner*⁴. In both § 38a-307 and *Steiner*, one party may demand appraisal, at which point the process is obligatory. Here the policy states, "If you and we fail to agree on the amount of loss, an appraisal of the loss may take place. However, both parties must agree to the appraisal and once agreed, the appraisal process cannot be withdrawn." Policy, Section I, Appraisal. This language is clear and unambiguous, and appraisal is only obligatory upon the agreement of both the insured and the insurer.

The court finds that there is no agreement to appraisal. The parties do not have a signed, written agreement to appraisal. Though the parties have submitted writings demonstrating a willingness to engage in appraisal, there has been no clear evidence that the parties had a meeting of the minds as to the scope of appraisal. Because the court finds that the policy language regarding appraisal is permissive and requires agreement by the parties, without a clear agreement the court cannot compel appraisal with either scope offered by the parties. Accordingly, the application to compel appraisal is denied and the application is dismissed.

dispute this agreement. The writing that the plaintiffs argue memorializes this agreement is ambiguous.

³ Section 38a-307 states in relevant part, "[i]n case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand." § 38a-307.

⁴ "Appraisal. If you and we 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 appraiser within 20 days after receiving a written request from the other." *Steiner*, supra, 416, n1.

So Ordered.

By the Court,

A handwritten signature in black ink, appearing to read "J. Welch", written over a horizontal line.

Welch, J.