

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Oak Pointe West Townhome Association
Petitioner,

Case Type: Civil Other
Judge Susan N. Burke

v.

ORDER

American Family Mutual Insurance
Company,
Respondent.

Court File No. 27-CV-17-17081

This matter came before the Honorable Susan N. Burke on May 10, 2018, on Petitioner's motion to confirm appraisal award and for pre-award interest. Alexander M. Jadin, Esq., appeared for Petitioner. Michael McNamara, Esq., appeared for Respondent.

BACKGROUND

Petitioner Oak Pointe West Townhome Association (“Oak Pointe”), is a multi-building, residential townhouse association located in Bloomington, Minnesota. Oak Pointe is insured by Respondent American Family Mutual Insurance Company (“American Family”). On August 6, 2013, a severe hail storm caused extensive damage to 30 Oak Pointe townhomes located at 7161 Oak Pointe Curve, Bloomington, Minnesota. On August 13, 2013, Oak Pointe submitted a claim to American Family for reimbursement of the damages caused by the hail storm.

After Oak Pointe submitted its insurance claim to American Family, American Family valued the damage to the buildings. American Family issued payment to Oak Pointe for the “actual cash value” of the damage, which it valued at \$985,205.57. Oak Pointe disagreed with American Family’s valuation and requested an appraisal. In March 2015, Oak Pointe completed repairs on the townhome buildings, and then American Family issued an additional payment of

\$863,389.37 to Oak Pointe. On July 8, 2015, the appraisal was conducted, and two independent appraisers calculated the appraisal award, the total cost to repair the buildings, to be \$2,093,519.85. The appraisers awarded \$1,897,103.48 for the replacement cash value and \$196,416.37 for code compliance. The appraisers declared that they would “act with competence and disinterest in making an appraisal of the amount of the loss upon said described property.” American Family issued an additional payment in the amount of \$43,507.03, and deemed that \$196,626.37 of the appraisal award was not covered by the insurance policy.

On November 7, 2011, Oak Pointe commenced this action against American Family moving the Court to confirm the appraisal award and requesting pre-award interest on the appraisal award.

ANALYSIS

I. The July 8, 2015 Appraisal Award Must be Confirmed

Oak Pointe argues that it is entitled to confirmation of the July 8, 2015 appraisal award. The Court agrees. Appraisal decisions are subject to Minnesota’s arbitration statute. *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n*, 778 N.W.2d 393, 398 (Minn. App. 2010). Under Minnesota law, a party to an arbitration proceeding may file with the court a motion to confirm the award. Minn. Stat. § 572B.22. The court shall confirm the appraisal award, unless proper grounds are asserted for vacating, modifying, or correcting the award. *Id.* A motion to vacate, modify, or correct an award, must be filed within 90 days after the movant receives notice of the award. Minn. Stat. §§ 572B.23, 572B.24.

Under Minnesota law, there are six grounds whereby the Court may vacate an appraisal award:

- (1) the award was procured by corruption, fraud or other undue means;

- (2) there was . . . evident partiality by an arbitrator appointed as a neutral, . . . corruption by an arbitrator, . . . or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (3) an arbitrator refused to postpone the hearing upon sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted a hearing as to prejudice substantially the rights of a party to the arbitration proceeding;
- (4) an arbitrator exceeded the arbitrator's powers;
- (5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection . . . not later than the commencement of the arbitration hearing; or
- (6) the arbitration was conducted without proper notice of the initiation of an arbitration . . . so as to prejudice substantially the rights of a party to the arbitration proceeding.

Minn. Stat. § 572B.23.

Moreover, under Minnesota law, there are three grounds whereby the Court may modify or correct an appraisal award:

- (1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
- (2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
- (3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

Minn. Stat. § 572B.24.

The present action is a motion to confirm the appraisal award brought by Oak Pointe. American Family did not bring an action to vacate, modify, or correct the appraisal award; it only filed a responsive memorandum. Moreover, even if the Court were to construe American Family's responsive memorandum as a motion to vacate, modify, or correct the appraisal award, American Family did not act within 90 days after it received the appraisal award. American Family's time period to oppose the appraisal award has passed. Accordingly, the Court must confirm the July 8, 2015 appraisal award.

American Family argues that the appraisal award should not be confirmed because Oak Pointe's claim is barred by a two-year statute of limitations in its insurance policy. American Family alleges that this action should be considered a legal action under the insurance policy because Oak Pointe raised a coverage issue regarding the amount of the appraisal award that American Family has not yet paid. Oak Pointe argues that it is not raising a coverage issue. The Court agrees with Oak Pointe.

Pursuant to the American Family insurance policy:

No one may bring a legal action against [American Family] under this insurance unless:

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

It is true that Oak Pointe's initial demand for appraisal arose under the insurance policy. However, Oak Pointe does not bring this action against American Family under the insurance policy. Instead, Oak Pointe brings this action under Minnesota Statutes section 572B.22. Moreover, while American Family argues there is a coverage issue, Oak Pointe has not raised a coverage issue with the Court. Neither Oak Pointe nor American Family has asked the Court for a liability determination, nor have they requested that the Court issue a declaration regarding the existence of insurance policy coverage. In fact, the only legal issues before the Court are whether the appraisal award should be confirmed, and whether Oak Pointe is entitled to pre-award interests and costs. Both of these issues arise out of statutes, not the insurance policy. Accordingly, Oak Pointe's motion to confirm the appraisal award is not time-barred under the insurance policy.

American Family also argues that, alternatively, the appraisal award should be modified because American Family previously made payments to Oak Pointe. If American Family had

wanted to object to the amount of the appraisal award, it had 90 days after it received notice of the appraisal award to modify or correct the appraisal award under Minnesota Statutes section 572B.24. As discussed above, American Family's opportunity to oppose the appraisal award has passed. Accordingly, the July 8, 2015 appraisal award should not be modified.

II. Oak Pointe is Entitled to Pre-Award Interest From August 13, 2013

American Family argues that the Court should calculate pre-award interest beginning on December 23, 2014, the date on which Oak Pointe demanded an appraisal. Oak Pointe argues that it is entitled to pre-award interest from August 13, 2013, when it notified American Family of its insurance claim and when it received a written acknowledgment of its claim from American Family. The Court agrees with Oak Pointe.

Pre-award interest on an appraisal award is calculated from the time of the commencement of the action or demand for appraisal, or the time of a written notice of the claim, whichever occurs first. Minn. Stat. § 549.09, subd. (1)(b). Pre-award interest accrues through the date of the appraisal award. *Id.* at subd. (1)(b). When an appraisal award exceeds \$50,000, the rate of pre-award interest is calculated at 10% per year. *Id.* at subd. (c)(2). The purpose of pre-award interest is to compensate the plaintiff for the loss of use of his money, to deprive the defendant of any gain resulting from the use of money rightfully belonging to the plaintiff, and to promote settlement. *Nelson v. Ill. Farmers Ins. Co.*, 567 N.W.2d 538, 543 (Minn. App. 1997); *see also Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 391 (Minn. App. 2004) (explaining that the purpose of this statute is to put the other party on notice that there is a potential claim being pursued and to provide incentive for the potential judgment debtor to settle or expedite resolution of the case.). Thus, under Minnesota Statutes section 549.09, once an

insured party files a notice of claim, it is entitled to use of that money, and the insurer deprives the insured party of its use until the claim is paid. *Id.*

In this case, it is undisputed that by August 13, 2013, American Family had notice of Oak Pointe's insurance claim as demonstrated by the notice of claim Oak Pointe received from American Family. After this point, American Family was aware that Oak Pointe was seeking coverage for a loss that occurred on August 6, 2013, and American Family could have attempted to settle the claim. Because American Family did not settle the claim, Minnesota Statutes section 549.09, subdivision 1(b), allows Oak Pointe to seek pre-award interest from the earlier of the demand for an appraisal or a written notice of claim. Accordingly, Oak Pointe is entitled to \$398,055.56 in pre-award interest¹ from August 13, 2013, the date of the first written notice of claim.

¹ 694/365 (days) x 10% (interest) x \$2,093,519.85 (appraisal award) = \$398,055.56

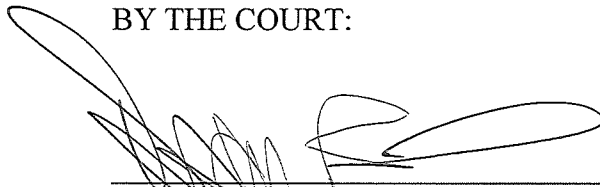
ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. Oak Pointe West Townhome Association's motion to confirm appraisal award is **GRANTED**.
2. The July 8, 2015 appraisal award is **CONFIRMED**.
3. Oak Pointe West Townhome Association is entitled to \$398,055.56 in pre-award interest on the appraisal award from August 13, 2013 to July 8, 2015, at a rate of 10% per annum pursuant to Minnesota Statutes section 549.09.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:



SUSAN N. BURKE
District Court Judge

Dated: June 5, 2018