

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No.19HA-CV-13-4822

Southcross Village Condominium Association,  
Inc.,

Plaintiff,

ORDER

v.

American Family Mutual Insurance Company,

Defendant.

The above-entitled matter came before the Honorable Mary J. Theisen, Judge of District Court, on January 17, 2014, at the Dakota County Judicial Center, Hastings, Minnesota.

Anthony Thomas Smith, Attorney at Law, appeared as counsel for and on behalf of Plaintiff Southcross Village Condominium Association, Inc. ("Southcross").

Mark Hellie, Attorney at Law, appeared as counsel for and on behalf of the Defendant American Family Mutual Insurance Company.

This matter came before the Court on Southcross's Motion to confirm an appraisal award.

Subsequent to the hearing, the parties reached agreement as to Southcross's claim for the unpaid balance of \$15,933.59. Therefore, the question of "double recovery" is no longer an issue for this Court to decide.

The remaining issues for this Court are Southcross's request to confirm the appraisal award issued by the appraisal panel on December 19, 2011, and request to award Southcross pre-award interest pursuant to Minn. Stat. § 549.09, subd. 1, and post-judgment interest pursuant to Minn. Stat. § 549.09, subd. 2.

This matter was taken under advisement on January 29, 2014.

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

MAR 14 2014

Based upon the proceedings, this Court makes the following:

### FINDINGS OF FACT

1. Plaintiff Southcross Village Condominium Association, Inc. (“Southcross”) is a townhome association made up of 29 buildings located in Dakota County.
2. Defendant American Family Mutual Insurance Company (“American Family”) insured the Southcross buildings from December 2009 to December 2010 under American Family insurance Businessowners Policy number 22-XC-738104 (the “Policy”). (Smith Aff., filed Dec. 10, 2013, Ex. 1, Businessowners Coverage Form BP 00 03 01 06.)
3. On April 13, 2010, portions of the Southcross property were damaged by hail. Southcross filed an insurance claim, and a portion of the insurance proceeds was paid out. Per the policy, American Family was to disburse to Southcross the remainder of the proceeds after the repairs were made. (*Id.*, Ex. 1 at p. 16, E.5.d.(1).)
4. Prior to making the hail damage repairs, several Southcross buildings sustained wind-related damages on October 27, 2010.
5. Two Southcross buildings were damaged by both the hailstorm and the windstorm.
6. Southcross submitted an insurance claim to American Family for the windstorm damage.
7. American Family valued the loss. Southcross disagreed with the loss value. Pursuant to the Policy and Minnesota law, the parties participated in an insurance appraisal hearing with an appraisal panel on December 19, 2011. (*Id.*, Ex. 1 at p. 15, E.2.) The panel heard evidence and testimony from both parties.
8. On January 23, 2012, the panel issued an “Award Statement” finding the Actual Cash Value of the loss of the covered property or “gross loss” to be \$1,029,770.91. (*Id.*, Ex. 2.)

9. The appraisal award was filed January 23, 2012. Southcross filed this Motion on December 9, 2013.

### CONCLUSIONS OF LAW

1. Pursuant to Minn. Stat. § 572B.22, after receiving notice of an arbitration award, the party may file a motion to confirm the arbitration award. MINN. STAT. § 572B.22 (2013). The court “shall issue” an order confirming the award unless “the award is modified or corrected pursuant to section 572B.20 or 572B.24 or is vacated pursuant to section 572B.23.” *Id.*
2. In this case, there is no allegation or argument that the appraisal award should be vacated or corrected. However, American Family asserts that this Motion is untimely because Minn. Stat. § 572B.24 provides that a motion to modify or correct an arbitration award must be filed within 90 days after receiving notice of the award. MINN. STAT. § 572B.24 (2013).
3. Southcross asserts that this Motion is not a request to modify or correct the arbitration award. Rather, it is simply a request to confirm the award and awarded pre-award interest pursuant to Minn. Stat. § 549.09, subd. 1, and post-judgment interest pursuant to Minn. Stat. § 549.09, subd. 2. Therefore, Southcross argues that Minn. Stat. § 572B.24 does not apply and the deadline therein does not bar this Motion.
4. Pursuant to the terms of the policy, if the parties do not agree on the “amount of loss,” they are to use an appraiser “for an appraisal of the loss.” (Smith Aff., Ex. 1, Businessowners Coverage Form, p. 15, E.2.) “The appraisers will state separately the amount of loss.” (*Id.*) The Policy does not state that the panel should, or has the authority to, award interest. Furthermore, the Court did not receive evidence that indicates either party requested the appraisal panel to also determine and award interest in addition to determining the amount of loss.

5. In looking at the "Award Statement", the appraisal panel determined the "Replacement Cost" to be \$1,084,008.68, less depreciation of \$54,237.77, for a total "Actual Cash Value" or "Gross Loss" of \$1,029,770.91. (*Id.*, Ex. 2.) The appraisal panel did not award any interest or consider Southcross's deductible payments; rather, it solely valued the "Gross Loss" of the covered property by determining the replacement cost less depreciation.
6. Minn. Stat. § 549.09 provides, in part:

**Subdivision 1. When owed; rate.**

(a) When a judgment or award is for the recovery of money, . . . interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award.

(b) Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first . . . Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following:

(1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;

(2) judgments or awards for future damages;

(3) punitive damages, fines, or other damages that are noncompensatory in nature;

(4) judgments or awards not in excess of the amount specified in section 491A.01; and

(5) that portion of any verdict, award, or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court or arbitrator.

. . . (c)(2) For a judgment or award over \$50,000, other than a judgment or award for or against the state or a political subdivision of the state, the interest rate shall be ten percent per year until paid.

**Subd. 2. Accrual of interest.**

During each calendar year, interest shall accrue on the unpaid balance of the judgment or award from the time that it is entered or made until it is paid, at the annual rate provided in subdivision 1. The court administrator shall compute and add the accrued interest to the total amount to be collected when the execution is issued and compute the amount of daily interest accruing during the calendar

year. The person authorized by statute to make the levy shall compute and add interest from the date that the writ of execution was issued to the date of service of the writ of execution and shall direct the daily interest to be computed and added from the date of service until any money is collected as a result of the levy.

MINN. STAT. § 549.09 (2013).

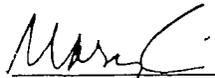
7. Minn. Stat. § 549.09 treats the judgment/award separate from the interest thereon, and requires the court administrator or arbitrator to calculate and add the interest to the judgment/award. MINN. STAT. § 549.09, subd. 1(a) (2013) (“[I]nterest . . . shall be computed by the court administrator or arbitrator . . . and added to the judgment or award.”) Furthermore, Minn. Stat. § 549.09 does not state “appraisal awards” or the like in its list of judgments/awards that prohibit preverdict, preaward, or prereport interest. *Id.* at subd. 1(b).
8. Because the Policy states that the appraisal panel is to determine the “amount of the loss,” there is no indication that the panel had the authority to award interest under the terms of the Policy, there is no evidence that either party requested the panel to award interest, and viewing Minn. Stat. § 549.09 as treating the judgment/award and interest separately, the Court finds that the panel did not consider the issue of interest in valuing the gross loss of the covered property. Therefore, this Court finds that this Motion is merely a request to confirm the appraisal award pursuant to Minn. Stat. § 572B.22, and a request to award pre-award interest and post-judgment interest, rather than a modification to the appraisal award.
9. Because there is no allegation or argument that the appraisal award should be vacated or corrected, the Court must confirm the appraisal award pursuant to Minn. Stat. § 572B.22. Therefore, the appraisal award is confirmed.
10. Pursuant to Minn. Stat. § 549.09, the Court grants Southcross’s request for pre-award interest and post-judgment interest. The Court Administrator shall compute the interest and add it to the award pursuant to Minn. Stat. § 549.09.

**ORDER**

1. Southcross's request to confirm the appraisal award issued on December 19, 2011 is **GRANTED**.
2. Southcross's request for pre-award interest and post-judgment interest is **GRANTED**.
3. Counsel shall confer and determine the proper calculation of principal, after taking into account the deductible and any additional factors, and applicable interest (as ordered herein) pursuant to Minn. Stat. § 549.09. Counsel shall also identify the pre-award start date. Counsel shall submit this information in writing to the Court no later than April 1, 2014.
4. Southcross's request for costs is **GRANTED**.

Dated: March 12, 2014

**BY THE COURT:**

  
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Mary J. Theisen  
Judge of District Court