

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

HERITAGE PROPERTY & CASUALTY INSURANCE COMPANY,

Appellant,

v.

FOREST MERE TOWNHOUSE COMMUNITY ASSOCIATION, INC.,

Appellee.

No. 2D21-1470

July 1, 2022

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Lee County; Leigh Hayes, Judge.

David A. Noel and Kara Rockenbach Link of Link & Rockenbach, PA, West Palm Beach; and Jeffrey A. Rubinton and Laila Mina of Rubinton & Associates, P.A., Hollywood, for Appellant.

Cary J. Goggin, Amanda C. Broadwell, and Jessica Rodriguez of Goede, Adamczyk, DeBoest & Cross, PLLC, Naples, for Appellee.

MORRIS, Chief Judge.

Heritage Property & Casualty Insurance Company (Heritage) appeals an order compelling appraisal of a supplemental insurance

claim brought by Forest Mere Townhouse Community Association, Incorporated (Forest Mere). Because we conclude that Heritage fully denied coverage of the supplemental claim at issue, we reverse the order compelling appraisal of the amount of loss.

This case involves damages alleged to have been caused by Hurricane Irma. Forest Mere initially submitted two claims under its policy with Heritage for roof damage to its seven condominium buildings. Heritage determined that the roof damages were covered under the policy, and it issued two payments to Forest Mere.

Almost nineteen months later, Heritage received a letter from Forest Mere's public adjuster containing a supplemental claim¹ for replacement of all windows and doors on the condominium buildings due to alleged Hurricane Irma damage. Heritage investigated the claim but ultimately denied coverage for the supplemental claim in its entirety.

¹ As articulated herein, this new claim meets the definition of a "supplemental claim" as set forth in the insurance policy: "Supplemental claim or reopened claim means an additional claim for recovery from us for losses from the same hurricane or other windstorm which we have previously adjusted pursuant to the initial claim."

Forest Mere then filed a complaint against Heritage for breach of contract, and Forest Mere sought to compel Heritage to submit to an appraisal as set forth in the insurance policy.² Heritage asserted that appraisal was inappropriate because it had never acknowledged coverage for the supplemental claim. Forest Mere filed a motion to stay the litigation and to compel appraisal arguing that the claim should not be considered supplemental because it had not been previously adjusted as part of the original claim. After

² The policy's appraisal provision provides in relevant part:

If we and you disagree on the value of the property or the amount of loss, either may request:

.....

2. An appraisal of the loss, in writing. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire.

A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

an evidentiary hearing, the trial court agreed with Forest Mere and entered an order compelling appraisal.

The issue in this case was recently decided in another case involving Heritage. *See Heritage Prop. & Cas. Ins. Co. v. Veranda I at Heritage Links Ass'n*, 334 So. 3d 373 (Fla. 2d DCA 2022). In that case, the insurance policy contained identical language to the policy in this case regarding the definition of a "supplemental claim" as well as the rights and responsibilities relating to an appraisal. As in this case, Heritage acknowledged coverage for the claim for roof repairs but wholly denied coverage for the supplemental claim for damages to windows and doors. *See id.* at 375. We acknowledged that where an insurer admits coverage but disputes the amount of loss, that issue is appropriately referred to an appraisal panel. *Id.* at 376 (citing *Villagio at Estero Condo. Ass'n v. Am. Capital Assurance Corp.*, 46 Fla. L. Weekly D879, D886 (Fla. 2d DCA Apr. 16, 2021)). But we explained that where an insurer wholly denies coverage for a claim, it cannot be referred to appraisal because that is a coverage question which must be decided by the court. *Id.* (citing *Johnson v. Nationwide Mut. Ins. Co.*, 828 So. 2d 1021, 1022 (Fla. 2002)).

Relying on this court's opinion in *American Coastal Insurance Co. v. Ironwood*, 330 So. 3d 570 (Fla. 2d DCA 2021), which involved nearly identical facts and policy language, we concluded that the windows-and-doors claim made by Veranda was not part of the original roof-damage claim but was instead a supplemental claim as defined by the policy. *Veranda I at Heritage Links Ass'n*, 334 So. 3d at 376-77. As a result, we explained that it had to be considered separately from the initial roof claim that had been fully adjusted. *Id.* at 377. And because Heritage had wholly denied coverage for the windows-and-doors claim, we held that the trial court was precluded from referring that claim to appraisal. *Id.*³

Here, because Heritage wholly denied coverage of the supplemental windows-and-doors claim, we conclude that our disposition is controlled by our decisions in both *Veranda I at Heritage Links Ass'n* and *Ironwood*.⁴ Accordingly, we reverse the

³ See also *Heritage Prop. & Cas. Ins. Co. v. Fairway Oaks, Inc.*, 47 Fla. L. Weekly D938 (Fla. 2d DCA Apr. 22, 2022) (applying *Veranda I at Heritage Links Ass'n* and reversing order compelling appraisal on the same basis).

⁴ For the reason explained in *Veranda I at Heritage Links Ass'n*, we reject Forest Mere's attempt to distinguish between a "covered loss" and a "supplemental claim" for purposes of

order compelling appraisal of the supplemental claim and remand for further proceedings.

Reversed and remanded.

SLEET and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.

determining whether appraisal is appropriate. *See Veranda I at Heritage Links Ass'n*, 334 So. 3d at 376 n.4.