Guzman et al v. American Security Insurance Company

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA Case No. 18-cv-61195-BLOOM/Valle LAZARALY GUZMAN and LARRY ROSADO,

Plaintiffs, vs. AMERICAN SECURITY INSURANCE COMPANY, A Foreign Profit Corporation,

Defendant. ______________________________/

ORDER THIS CAUSE 2018 Appraisal Award as Binding and Entry of Judgment , ECF No. [17]. The Court

s and applicable law, and is otherwise fully advised. I. BACKGROUND Plaintiffs insurance policy issued by the Defendant American Security Insurance Company .

claim stems from wind and water damage to their property resulting from Hurricane Irma. The parties disputed the amount of the claim yet agreed that the subject policy was in full force and effect at the time of the loss. The Plaintiffs originally filed their lawsuit in the Circuit Court of the Seventeenth Judicial Circuit and it was then removed to federal court by the Defendant. See ECF No. [1]. The Parties thereafter agreed that the litigation should be stayed pending the completion of an appraisal process outlined in the policy. See ECF No. [4]. The Court

thereafter stayed the case until an appraisal award issued. See ECF No. [7]. This present controversy centers on two conflicting appraisal awards. After Appraiser Emery Kunzman Appraiser Scott Thomas arties Appraisers could not agree on a neutral umpire, the Court appointed Lawrence Leiby to serve in this capacity. See ECF No. [9]. The Part Appraisers performed their respective inspections of the property but were unable to come to an agreement on the amount of loss. The Part Appraisers then met with Umpire Leiby and provided their respective positions and estimates. The Part Appraisers and Umpire Leiby inspected the premises together on August 31, 2018. Thereafter, the following relevant exchanges took place via e-mail: September 5, 2018:

At 1:54 p.m.: Umpire Leiby circulated an Appraisal Award in the amount of $121,800.30 that included his electronic signature attached for review and comment. If one or both of you find this agreeable, please sign, scan, and return to me. See ECF No. [17-2], at 1. At 2:27 p.m.: Appraiser Kunzman expressed his objection to the Disputed Award, asked for a breakdown and itemization of the award amount and a estimate. See ECF No. [17-3], at 1.

At 2:35 p.m.: Appraiser Thomas emailed Umpire Leiby and Appraiser Kunzman a signed copy of the Disputed Award that Umpire Leiby had circulated at 1:54 p.m see the attached aw See ECF No. [17-2], at 2.

requesting Appraiser Thomas forward him the missing documents and indicating that he See ECF No. [17-4], at 8-9. September 6, 2018: At 9:37 a.m.: Umpire Leiby advised Appraiser Kunzman to provide any input based upon

award [was] See ECF No. [17-4], at 6.

September 17, 2018:

See ECF [17-5], at 2. At 12:59 p.m.: Appraiser Kunzman executed the Revised Award and returned it to Umpire Leiby. Id. at 1-2. The Defendant thereafter paid the Plaintiffs $90,704.27, the amount of the Revised Award. See Resp., ECF No. [19], at 5. In their Motion, the Plaintiffs now ask the Court to confirm the September 5, 2018 Disputed Award in the amount of $121,800.30, executed by Umpire Leiby and . ECF ld be denied because the first award was preliminary. ECF No. [19], at 7. Alternatively, should the Court find the award was final, Defendant argues that the award was timely modified by Umpire Leiby. Id. at 7-8. II. LEGAL STANDARD

Courts regularly confirm appraisal awards on the basis of confirmation process even though they have recognized differences between the appraisal and

arbitration provisions. Pelican Pointe of Sebastian II Condominium Association, Inc. v. Empire Indemnity Insurance Company, 2007 WL 9702449 (S.D. Fla. 2007); Three Palms Pointe, Inc. v. State Farm Fire & Cas. Co., 250 F. Supp. 2d 1357,1362 (M.D. Fla. 2003). Florida Statutes, § 682.12 (2001), which governs the confirmation of arbitration awards, states insurer moves to vacate,

modify or clarify an award pursuant to § 682.13. Section 682.13 allows the Court to vacate an award upon certain conditions not applicable to the case at bar. Section 682.10 permits an arbitrator to change an award upon certain specified conditions. Section 682.10 states as follows:

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) Upon a ground stated in s. 682.14(1)(a) or (c); (b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or (c) To clarify the award. (2) A motion under subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award. (3) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice. (4) If a motion to the court is pending under s. 682.12, s. 682.13, or s. 682.14, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in s. 682.14(1)(a) or (c); (b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or (c) To clarify the award. (5) An award modified or corrected pursuant to this section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14.

Interpretation of an insurance contract is a question of law to be decided by the Court. Gulf Tampa Drydock Co. v. Great Atlantic Ins. Co., 757 F.2d 1172, 1174 (11th Cir. 1985). Because this case is before the Court pursuant to diversity jurisdiction, the Court applies the law of the forum state, Florida. Grupo Televisa, S.A. v. Telemundo Commc'ns Group, Inc., 485 F.3d 1233, 1240 (11th Cir. 2007). proceeding should be

See Allstate Ins. Co. v. Suarez, 833 So. 2d 762, 765 (Fla. 2002) has determined

that the appraisal provisions of a contract of insurance have been properly invoked, further

III. DISCUSSION The parties do not dispute that the subject policy provides coverage for the loss. Rather, . At issue is the operative and unambiguous appraisal provision that states in relevant part:

The appraisers will state separately the value of the residential property and the amount of loss. If they fail to agree, they will submit their difference to the umpire. A decision agreed to by any two will be binding. ECF No. [4-1], at 2 (emphasis in original); see also Section 8, ECF No. [17-1], at 12.

Plaintiffs claim that the binding award was the Disputed Award. ECF No. [17], at 6. The Defendant, however, claims that the Disputed Award was not final, and that Umpire Leiby was able to modify or correct the Disputed Award at any time within 20 days of its issuance. ECF No. [19], at 7-8. Under Florida Supreme Court precedent, where a party to an insurance contract has accorda See Allstate

Ins. Co. v. Suarez, appraisal provisions of a contract of insurance have been properly invoked, further proceedings

An appraisal provision in an insurance contract is subject to contract law and, when the terms are not ambiguous, the contract must be given effect as written. Id. Nonetheless, Florida courts apply the procedures provided by the Arbitration Code to the confirmation process of an appraisal award. See Three Palms Pointe, Inc. v. State Farm Fire & Cas. Co., 250 F. Supp. 2d 1357, 1361-62 (M.D. Fla. 2003) (emphasis supplied).

Florida Statute § 682.10 provides that upon motion an arbitrator may modify or correct an Fla. Stat. § 682.10. Coral-Tech Assocs. v. Plumbing Contrs., Inc., 916 So. 2d 958, 961 (Fla. 4th DCA 2005). The

Plaintiffs do not contest the applicability of this statute to the confirmation process but argue instead that none of the requirements of the statute were met prior to the issuance of the Revised Award. ECF No. [20], at 3-4. The Court agrees. The Court finds that Umpire Leiby lacked the authority to unilaterally modify the award. ECF No. [4-1], at 2. Here, the record evidence supports the conclusion that the Disputed Award

was indeed final and that Nothing within the four corners of the award reflects that Umpire Leiby believed it to be preliminary in nature. When Umpire Leiby transmitted the Disputed Award in his September 5, 2018, email, he expressly stated -2], at 1. The award transmitted at the time of that e-mail bore Umpire

. Id. at 4. Upon receipt of the award, Appraiser Thomas agreed, signed and returned the award to Umpire Leiby, copying all parties to his e-mail correspondence. Id. at 2. Tellingly, the Disputed Award states that

[w]e, the undersigned appraisers and umpire, have investigated the claimed loss, visited the premises together on August 31, 2018, considered all the material facts and available information pertaining to this claim, and have decided on an Appraisal Award as described below. See ECF No. [17-3]. Once the Disputed Award was forwarded and thereafter signed by Appraiser Thomas, it became binding by the express and unambiguous terms of the insurance policy.

Accordingly, the Court finds that Appraiser Thomas complied with the requirements set forth by and, once signed and forwarded, the award was binding. No motion was made by a party to correct or clarify the award and there was no basis to modify the award. The Defendant relies on A.L. Gary and Associates, Inc. v. Travelers Indemnity Company of Connecticut, 2008 WL 11333729 (S.D. Fla. 2008), to support the argument that where an award has been entered, the umpire may modify, correct or clarify an award on application made within 20 days after its delivery. See Resp., ECF No. [19], at *6. However, in A.L. Gary and Associates, Inc. v. Travelers Indemnity Company of Connecticut, the Court vacated an appraisal award finding that there was no legal basis for the umpire to revisit the award absent a timely motion for modification or clarification. Id. at *8. Such is the case here. In the present case, Umpire Leiby lacked authority to unilaterally modify the Disputed Award, which became final upon Appraiser signature.

J.P.F.D. Investment Corporation v. United Specialty Insurance Company, 322 F. Supp. 3d 1263 (M.D. Fla. 2018), is equally unavailing. In that case, the Court did not reach the argument related to confirming an appraisal award since it found that the defendant did not deny plaintiff benefits under the applicable policy. 322 F. Supp. 3d 1263, at 1267. Here, once final, the Umpire lacked the authority to modify the award. The Eleventh Circuit International Brotherhood of Electrical Workers v. Verizon Florida, 803 F. 3d 1241 (11th Cir. 2015), supports the conclusion that the umpire exceeded his power by issuing a substituted

Id. at 1245.

Section 682.10(b) permits a change of award where the arbitrator has not made a final and definite award upon a motion submitted by the parties to the arbitration proceeding. No such motion was submitted by the parties here. Nor does the record support any request for clarification or basis for correction. The Defendant claims that Umpire Leiby circulated a preliminary award -mail, Umpire Leiby did not

communicate that the award was intended to be non-final. Rather, the email explicitly stated that f one or both of you find this agreeable, please sign, scan, and return to me. I will then get out ECF No. [17- tronic signature was sufficient otherwise. Once the signed award was returned, the award became final and binding.

Emery Kunzman, expressed his objections to the Disputed Award via electronic correspondence on September 5, 2018 at 2:27 p.m. In that correspondence, Kunzman stated that he never estimate of damages detailing his amount for the loss, and that the Disputed Award was not sent

with a breakdown as to the itemization of the award. ECF No. [17-3], at 1. The Court notes, however that to date, no request for modification or correction has been made by either party. Moreover, -mail did not express that the Disputed Award was non-final or preliminary. It was only after the award was returned signed by Appraiser Thomas that Umpire See ECF No. [17-4], at 8- I will hold off on the final earlier binding effect under the express terms of the policy. See ECF No. [17-4], at 6, 9; ECF No. [17-5], at 2. The Plaintiffs are correct that Florida Statute § 682.12 governs the confirmation of application of a party to the arbitration, unless an insurer moves to vacate, modify or clarify an award pursuant to § 682.13 of a motion legally sufficient under either §§ 682.13 or 682.14, the trial court must confirm the

Wells v. Castro, 117 So. 3d 1233, 1237-38 (Fla. Dist. Ct. App. 2013). No such motion was filed by the Defendant. IV. CONCLUSION

Based upon the foregoing, it is ORDERED AND ADJUDGED as follows:

1. Binding and Entry of Judgment, ECF No. [17], is GRANTED.

2. and the Defendant shall remit the additional finds due to the Plaintiffs consistent

with the Disputed Award. 3. fees and costs due to the Plaintiffs. Plaintiffs shall, in compliance with the

Local Rules, file their application for a no later than April 10, 2019. 4. The Clerk shall CLOSE this case.

DONE AND ORDERED in Miami, Florida, this 27th day of March, 2019.

_________________________________ BETH BLOOM UNITED STATES DISTRICT JUDGE Copies to: Counsel of Record