THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Certain Underwriters at Lloyd's, London, etc. v. Gables Court Condominium Association, Inc.

Certain Underwriters · No. 3D22-436 · Decided March 1, 2023

SUMMARY

The Florida Third District Court of Appeal reversed an order compelling appraisal in an insurance dispute between Certain Underwriters at Lloyd's, London and Gables Court Condominium Association, Inc. The court held that the trial court was required to conduct an evidentiary hearing to determine whether Gables Court had satisfied its post-loss obligations before compelling appraisal. The court affirmed the determination that Gables Court had not waived its right to appraisal.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Emas, J.; Lindsey, J.; Bokor, J.
JURISDICTION	Florida
DECIDED	March 1, 2023
DOCKET	3D22-436
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a nonfinal order compelling appraisal under an insurance policy and a subsequent order denying reconsideration.
STANDARD OF REVIEW	Independent review of the record; the opinion does not identify a distinct standard of review for each issue.
PRECEDENTIAL VALUE	published
PARTIES	Certain Underwriters at Lloyd's, London, etc., et al. v. Gables Court Condominium Association, Inc.

TOPICS

insurance · waiver · appellate procedure · evidence · contracts

PRACTICE AREAS

insurance law · civil procedure · appellate procedure · contract law · evidence

QUESTIONS PRESENTED

1. Whether the trial court could compel appraisal without first conducting an evidentiary hearing to determine whether the insured complied with its post-loss obligations.
2. Whether Gables Court waived its contractual right to appraisal by engaging in litigation conduct inconsistent with that right.

HOLDINGS

1. When an insurer reasonably disputes whether an insured complied with the policy's post-loss obligations, the trial court must conduct an evidentiary hearing and determine compliance before compelling appraisal.
2. Gables Court did not waive its right to appraisal because it consistently sought appraisal and did not act inconsistently with that right.

KEY QUOTATIONS

> *"It is well-settled in Florida that all post-loss obligations must be satisfied before a trial court can exercise its discretion to compel appraisal."* (at 2)

> *"Until these [post-loss obligation] conditions are met and the insurer has a reasonable opportunity to investigate and adjust the claim, there is no 'disagreement' (for purposes of the appraisal provision in the policy) regarding the value of the property or the amount of loss."* (at 3)

> *"unsworn legal argument of counsel is not evidence"* (at 4)

> *"The argument of counsel on this issue does not constitute evidence."* (at 5)

> *"We reverse the order compelling appraisal and remand for an evidentiary hearing to determine whether Gables Court complied with its post-loss obligations. We affirm the trial court's determination that Gables Court did not waive its right to appraisal."* (at 8)

FACTUAL BACKGROUND

Gables Court made a presuit demand for appraisal under its insurance policy and later sued Lloyd's, alleging breach of contract in part based on Lloyd's denial of that demand. Gables Court moved to compel appraisal four months after filing suit and two weeks after Lloyd's filed its answer. The parties disputed whether Gables Court had complied with its post-loss obligations, including providing requested documents and information, and the trial court resolved those factual disputes based on counsel's representations rather than evidence.

PROCEDURAL HISTORY

Gables Court sued Lloyd's and moved to compel appraisal. The trial court granted the motion without first conducting an evidentiary hearing concerning Gables Court's compliance with post-loss obligations and determined that Gables Court had not waived its appraisal right. Lloyd's appealed. Gables Court conceded that an evidentiary hearing was required but contested Lloyd's waiver argument.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Conduct an evidentiary hearing to determine whether Gables Court complied with its post-loss obligations under the policy before compelling appraisal. The trial court's determination that Gables Court did not waive its appraisal right was affirmed.

CASES CITED

- State Farm Fla. Ins. Co. v. Fernandez, 211 So. 3d 1094, 1095 (Fla. 3d DCA 2017)
- State Farm Fla. Ins. Co. v. Cardelles, 159 So. 3d 239, 241 (Fla. 3d DCA 2015)
- State Farm Fla. Ins. Co. v. Hernandez, 172 So. 3d 473, 476-77 (Fla. 3d DCA 2015)
- Citizens Prop. Ins. Corp. v. Galeria Villas Condo. Ass'n, 48 So. 3d 188, 191 (Fla. 3d DCA 2010)
- Auto Club Ins. Co. of Fla. v. Santee, 347 So. 3d 451, 452 (Fla. 3d DCA 2022)
- People's Tr. Ins. Co. v. Ortega, 306 So. 3d 280, 284 (Fla. 3d DCA 2020)
- Echevarria v. Lennar Homes, LLC, 306 So. 3d 327, 329 n.2 (Fla. 3d DCA 2020)
- Chase Home Loans LLC v. Sosa, 104 So. 3d 1240, 1241 (Fla. 3d DCA 2012)
- State v. T.A., 528 So. 2d 974, 975 (Fla. 2d DCA 1988)
- United Prop. & Cas. Ins. Co. v. Concepcion, 83 So. 3d 908, 909-10 (Fla. 3d DCA 2012)
- Sunshine State Ins. Co. v. Corridori, 28 So. 3d 129, 131 (Fla. 4th DCA 2010)
- Heritage Prop. & Cas. Ins. Co. v. Superior Contracting & Envtl. Specialties, LLC, 314 So. 3d 743, 746 (Fla. 2d DCA 2021)
- Florida Ins. Guar. Ass'n v. Branco, 148 So. 3d 488, 494 (Fla. 5th DCA 2014)

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