

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-019327

08/03/2005

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
S. Brown
Deputy

FILED: 08/10/2005

NICHOLA TAVILLA, et al.

RICHARD T TREON

v.

EMPLOYERS MUTUAL CASUALTY
INSURANCE COM, et al.

WILLIAM H DOUGLAS

MYLES P HASSETT

MINUTE ENTRY

The Court received and has now considered Plaintiff Travillas' *Motion For Partial Summary Judgment Re: Breach of Contract*, Defendant Employers Mutual Casualty Insurance Company's responsive pleading and the various replies.

Plaintiffs seek summary judgment asserting that Defendant Employers Mutual Casualty Insurance breached the parties' insurance coverage agreement. Briefly stated, Plaintiffs claim a loss under the terms of the policy and this Defendant insurer disputes both the existence and value of the loss.

Plaintiffs assert that once the parties' dispute regarding the value of the amount of loss surfaced, they were contractually entitled to invoke the appraisal process of the agreement. As a consequence, Plaintiffs formally requested that the parties' disputed claim be resolved through this informal appraisal process. It is Plaintiff's position that once they made a formal demand invoking the appraisal provision of the parties' insurance agreement that this Defendant was legally obligated to proceed to appraisal.

The parties' contractual agreement provides as follows:

"6. Appraisal. If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss."

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Defendant asserts that Plaintiffs failed to comply with their contractual post-loss obligations. That Plaintiffs failed to properly document the nature, description and extent of the damage sustained, its actual cash value and the amount of the loss suffered. Briefly stated, it is Defendant's position that there must exist a meaningful exchange of information sufficient for the parties to understand the nature of their disagreement. Under these factual circumstances, Defendant asserts that Plaintiffs failed to provide this minimal threshold of information. Thus, Defendant affirmatively asserts that it was not provided with sufficient information to arrive at loss values and/or otherwise understand the nature of the parties' disagreement. Therefore, in the absence of this information, it asserts it was not required to proceed with the appraisal process.

In determining whether any party is entitled to summary judgment, the Court must view the facts and reasonable inferences in the light most favorable to the party opposing the motion. Summary judgment is warranted only under circumstances where no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56 [c]; *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000 [1990]. It is appropriate only "if the facts produced in support of the [other party's] claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme School v. Reeves*, 166 Ariz. at 309, 802 P.2d at 1008.

The Court finds that there does exist genuine issues of material fact. Further, Plaintiffs are not entitled to judgment as a matter of law.

IT IS ORDERED denying Plaintiff's *Motion For Partial Summary Judgment*.

/S/ J. RICHARD GAMA

HONORABLE J. RICHARD GAMA
JUDGE OF THE SUPERIOR COURT