Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
12/25/2006 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-003936 12/21/2006

HON. COLIN F. CAMPBELL

CLERK OF THE COURT
M. Sahli
Deputy

HARTFORD CASUALTY INSURANCE COMPANY — CHRISTOPHER ROBBINS

v.

STONE ARTWORX INC, et al. — JOSEPH C DOLAN

MINUTE ENTRY

This case is before the Court on a Motion to Confirm an Appraisal Award. This is a 2003 case, arising from a fire loss that occurred in April 2001. It is one of the oldest cases on the Court's calendar.

The insurance policy in this case provides for a binding appraisal to determine the amount of the loss. The Court entered an order in 1994 compelling an appraisal. Each side picked an appraiser who, between themselves, could not reach an agreement. They, in turn, together picked a third person, an umpire. An appraisal hearing was held with all three present. The umpire and Mr. Sandhaus, Defendant Stone Artworx's appraiser, signed a final award. Two out of three appraisers signed the award. To the extent there was a disagreement between Mr. Sandhaus and Mr. Newton, Hartford's appraiser, Plaintiff Hartford lost.

Plaintiff Hartford disputes the appraisal on two grounds. First, it claims that the appraisal awards extra expenses beyond the date of restoration. Second, it claims that the appraisal award includes repair expenses it has already paid for, allowing a double recovery. Defendant Stone

Artworx responds that the appraisal award is like an arbitration award. Absent fraud or other limited grounds to attack an award, it must be confirmed.

The parties' characterization of the dispute is not helpful to the Court for resolution of the case. The parties, by contract, agreed to a binding appraisal. Plaintiff Hartford cannot relitigate the appraisal hearing because it is dissatisfied with the result. If there were errors made in calculations or mathematics, they are not errors for the Court to resolve for that would simply result in a rehearing of the whole matter. On the other hand, if the appraisal award goes outside what the parties agreed to resolve in their contract, then the Court should limit the award to its proper scope. The gravaman of the dispute, then, is whether Plaintiff Hartford is simply disputing the method or manner in which the umpire and appraisers reached a result, or whether the appraisers exceeded the scope of their authority.

The insurance contract provided for recovery of lost business income during the period of restoration of the business, which was restored on September 5, 2001, plus thirty days, and for extra expenses until the day of restoration. Plaintiff Hartford claims the appraisers gave extra expenses from September 5 to October 5, 2001, which is outside the insurance contract.

Mr. Gay, the umpire, issued a report that the loss incurred by the Insured as result of the fire was $377,700.00, and the period of restoration was from April 26, 2001 through October 5, 2001. His letter does not contain backup documentation as to the manner and method of his analysis, and the Court does not know his reasoning. The Court does not know what evidence went into his figures or what adjustments he made. The Court will not substitute its analysis or judgment for Mr. Gay's. The two partisan appraisers disagreed between themselves, and the Court will not adopt the method and analysis of Hartford's appraiser that Mr. Gay rejected. Although Plaintiff Hartford seems to assume it knows how Mr. Gay reached his results, the Court sees no basis in the record for these assumptions.

Plaintiff Hartford rests its entire first argument on a second letter from Mr. Gay where, responding to a request from Hartford's appraiser, Mr. Gay states the award includes both lost income and extra expenses. The restoration date was September 5, 2001, and lost income can be recovered for thirty days thereafter. Therefore, Hartford reasons, the award must include extra expenses from September 5 to October 5, 2001. There is nothing in Mr. Gay's letter award that says that, however, and Mr. Gay's second letter does not say definitively that the appraisers awarded extra expenses for this last thirty days. Moreover, there is nothing in the original award that suggests this either, one way or the other. The original award does not break out the calculations. Hartford refers to Exhibit A-4; but the Court has no evidence what this exhibit relates to or that Mr. Gay utilized this in his calculations or how it relates to the calculations in

the award letter. Here, Plaintiff Hartford simply appears to be seeking to reopen the appraisal and have the Court relitigate the amount of the award.

The appraisal award also has a figure for "adjusted net loss sustained." Plaintiff Hartford suggests that this includes within it an amount for repair and maintenance that it has already paid. Again, Plaintiff Hartford overstates its claim. It admits it does not know what the reasoning or method of the umpire was. It admits it does not know everything that went into this number. Yet it maintains there is a double billing. Mr. Gay's letter of September 19, 2006, states that Mr. Sandhaus and Mr. Newton, the two partisan appraisers, disagree on how to treat "R&M - fire" as it affects net income. One wants to use it as a reduction (Hartford's appraiser) and the other (Stone Artworx's appraiser) doesn't. Again, the Court finds here that Hartford is simply seeking to reopen the appraisal award and have the Court relitigage the amount of the award.

In conclusion, the Court finds that the relief Hartford is asking for would require the Court to reopen the loss award and rehear the dispute between the partisan appraisers, rather than accept as binding the appraisal down by the umpire. This the Court will not do.

Accordingly,

IT IS ORDERED the Court will enter judgment against Plaintiff Hartford in the amount of the appraisal award minus payments of $277,211.31 and $26,561.69. The judgment will have prejudgment interest from the date of thirty days after entry of the award by the umpire and appraiser. The parties will separately petition for attorneys' fees.