

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-002939

08/26/2016

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT  
C. Green  
Deputy

ROBERT CRAMER, et al.

MICHAEL N POLI

v.

STATE FARM FIRE AND CASUALTY  
COMPANY

ROBERT THOMAS SULLIVAN

MINUTE ENTRY

Courtroom ECB-511:

11:01 a.m. This is the time set for Oral Argument re: Defendant's Motion to Vacate Appraisal Award. Plaintiffs, Robert Cramer and Karolyn Cramer are represented by counsel, Michael N. Poli. Defendant, State Farm Fire and Casualty Company is represented by counsel, Bill Phillips.

Argument is presented.

**IT IS ORDERED** taking this matter under advisement.

Counsel for Plaintiffs state they will be filing a Motion to Modify Complaint and Defense counsel states that they will not object.

11:11 a.m. Matter concludes.

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LATER:

A court must “decline to confirm...and enter judgment” upon an appraisal award if “[t]he appraisers exceeded their powers.” A.R.S. 12-1512(A)(3). Relying on that statute, Defendant State Farm Fire and Casualty Company (“State Farm”) asserts that the appraisal award (“Appraisal Award”) at issue in this case should not be confirmed because the appraisers “exceeded their authority by unilaterally resolving disputed questions of coverage and determining what is due and owing...” Defendant State Farm Fire and Casualty Company’s Motion to Vacate Appraisal Award (“Motion to Vacate”) at p. 1. Plaintiffs Robert and Karolyn Cramer (“the Cramers”) ask that the Motion to Vacate be denied, asserting that State Farm has “failed to” establish that the appraisers “exceeded their authority.” Plaintiffs’ Response to State Farm’s Motion to Vacate Appraisal Award (“Response”) at p. 8.

The insurance policy at issue provides for appraisal only to determine “the amount of the loss.” *See* Motion to Vacate, Exhibit H at p. 14. The appraisers in this case were therefore not authorized to determine questions of coverage, or determine what the insurance company is required to pay. *See Hanson v. Commercial Union Ins. Co.*, 150 Ariz. 283, 286, 723 P.2d 101, 104 (App. 1986) (“The function of appraisers is to determine the amount of damage resulting to various items submitted for their consideration. It is certainly not their function to resolve questions of coverage...” (citation and internal quotations omitted)). In *Hanson*, the Court held that trial court erred in confirming an appraisal award where the appraisers exceeded their authority. *Id.* at 287, 723 P.2d at 105. In so holding, the *Hanson* court observed that the insurance policy at issue was “totally devoid of any authority to determine coverage deductibles, credits or offsets of any kind,” yet the appraisers considered such factors in arriving at their appraisal award. *Id.* at 286, 723 P.2d at 104.

A review of the Appraisal Award supports State Farm’s contention that the appraisers exceeded their authority. The Appraisal Award states that the appraisers “met and conferred to determine the total loss compensable,” and concludes that, after an offset of \$13,036.06 for a prior payment by State Farm, the “total amount due from State Farm” is \$92,799.81. Appraisal Award at pp. 6-7 (attached as Exhibit 1 to Application/Complaint for Confirmation of Appraisal Award and Entry of Judgment Thereon). As State Farm correctly notes,

[a]ppraisers are not authorized to render opinions on what is compensable under the coverage (i.e., coverage), and they are not authorized to determine whether a balance is owed by an insurer to an insured. But that is precisely what this award did...

Motion to Vacate Appraisal Award at p. 6.

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Denying that the appraisers exceeded the scope of their authority, the Cramers assert that the appraisers “merely...determine[d] the amounts owed to the [Plaintiffs] for each of the items presented to them for appraisal. They made no determination as to coverage or loss causation, as State Farm alleges.” Response at pp. 6-7. In support of their position, the Cramers note that the Appraisal Award contains a statement from the appraisers that they acted “without regard to policy coverage or loss causation.” Response at pp. 5-6, *quoting* Appraisal Award at p. 1.

The Court is not persuaded. By determining “the total amount due from State Farm” after adjusting for an offset, the appraisers necessarily determined issues of liability and coverage that are outside the scope of their authority. *See Hanson*, 150 Ariz. at 286, 723 P.2d at 104. *See also Dike v. Valley Forge Ins. Co.*, 797 F.Supp.2d 777, 782-83 (S.D.Tex. 2011) (“An appraiser must decide the amount of loss, not...construe the policy or decide whether the insurer should pay.”) (citation and internal quotations omitted); *Auto-Owners Ins. Co. v. Kwaiser*, 476 N.W.2d 467, 469 (Mich.App. 1991) (“We conclude that the issue of coverage is for the court, not the appraisers.”); *St. Paul Fire & Marine Ins. Co. v. Wright*, 629 P.2d 1202, 1203 (Nev. 1981) (“An appraiser’s power generally does not encompass the disposition of the entire controversy between the parties...but extends merely to the resolution of the specific issues of actual cash value and the amount of loss.”) (citation and internal quotations omitted); *Munn v. Nat’l Fire Ins. Co. of Hartford*, 115 So.2d 54, 56 (Miss. 1959) (“The appraisers are not arbiters. They have no power to arbitrate disputes between the property owners and the insurance company other than to value the property damage.”).

Because the appraisers exceeded their authority by determining the amount that is compensable and owed by State Farm, A.R.S. 12-1512(A)(3) requires the Court to decline to confirm the Appraisal Award. Accordingly,

**IT IS ORDERED** granting Defendant State Farm Fire and Casualty Company’s Motion to Vacate Appraisal Award.