

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
03/08/2002

03/06/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE COLLEEN MCNALLY

K. Ballard  
Deputy

CV 2000-015041

FILED: \_\_\_\_\_

DAVID JOEL BROTMAN, et al.

LEON J BRANDRIET

v.

ONE OF THE TRAVELERS PROPERTY  
CASUALTY

GEORGE H MITCHELL

RULING

The Court heard oral argument on cross-motions for summary judgment on February 13, 2002 and took the matter under advisement.

Plaintiffs brought suit alleging breach of contract and breach of covenant of good faith and fair dealing based upon a claim for payment of damages under a homeowner's insurance policy. Defendant seeks summary judgment on both claims. Plaintiffs seek partial summary judgment on the breach of contract claim.

Plaintiffs purchased a homeowner's insurance policy from Defendant covering May 8, 1999 to May 8, 2000. On August 17, 1999 a storm caused damaged to Plaintiffs' roof. Plaintiffs also claimed interior damage as a result of the storm. Although Defendant initially did not acknowledge the interior damage, Defendant ultimately paid for all damage claimed to the exterior and interior.

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The initial investigation by Defendant's appraiser found damages of \$226.80, based on the assessment of the exterior only. Since this amount was less than Plaintiffs' deductible, Defendant did not issue a check. Plaintiffs then hired a public adjuster who provided a total estimate for all damage, interior and exterior, in the amount of \$2,432.07.

After receiving this information, Defendant reopened their investigation. Defendant's adjuster met with the public adjuster on December 3, 1999. At that time Defendant questioned whether the interior damage was caused by the storm. On January 21, 2000, the public adjuster sent a letter to Defendant's adjuster stating that Plaintiffs formally demanded appraisal, but that they would be happy to abort the appraisal process in lieu of an agreed settlement. Defendant sent a check to Plaintiffs in the amount of \$2,112.07, apparently based primarily upon the public appraiser's estimate.

Plaintiffs returned the check and asked that it be reissued to include the public appraiser as a payee. Defendant then had the roof re-inspected by a contractor who found that the cost to repair the exterior damage was \$577.50. On April 21, 2000, Defendant re-issued a check in the amount of \$2,168.53 representing the full amount the public appraiser had estimated for repairing the interior, the highest amount estimated for repairing the exterior less the \$500 deductible.

Plaintiffs then allege that their public adjuster sent a series of letters to Defendant. Defendant denies receipt of the letters. The letters ask for Defendant's estimate or an explanation as to what the payment represented. The letters refer to the fact that the demand for appraisal had been aborted. There is no evidence in the record that Plaintiffs disputed the scope of the damages. The only evidence is that Defendant paid the highest amount quoted by any party regarding all claims made by Plaintiffs.

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Plaintiffs now seek damages for alleged mold damage to their home. The Court notes that the first document in the record showing a concern or allegation of mold damage was an evaluation conducted on September 22, 2000. The complaint in this matter was filed on September 20, 2000.

Summary judgment is appropriate where "the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c); **Orme School v. Reeves**, 166 Ariz. 301, 802 P.2d 1000 (1990). Further, summary judgment should be regarded in light of the facts opposing the motion for summary judgment.

There is no evidence to show breach of contract. The portion of the contract in dispute is whether the insurance company did not meet the terms and conditions under the appraisal provision. The contract provides that if the insured and the insurance company fail to agree on an amount for loss, either may demand an appraisal. Plaintiffs' documents show that they agreed to abort a request for appraisal if the parties could settle the claims. Defendant met their requirement under the contract by settling the claim for wind damage caused to the roof. Defendant accepted all Plaintiffs' submitted claims and agreed with the Plaintiffs on the amount of damages. There is no evidence upon which Plaintiffs could prove breach of contract.

There is no evidence showing that the Defendant acted in bad faith. A tort of bad faith arises when the insurer "intentionally denies, fails to process or pay a claim without a reasonable basis." **Noble v. Nat'l Am. Life Ins. Co.**, 128 Ariz 188, 190, 624 P.2d 866, 868 (1981). "The appropriate inquiry [to determine whether the insurer acted in bad faith is to determine] whether there is sufficient evidence from which reasonable jurors could conclude that in the investigation, evaluation, and processing of the claim, the insurer acted

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unreasonably and either knew or was conscious of the fact that its conduct was unreasonable." **Zilisch v. State Farm Mut. Auto. Ins. Co.**, 196 Ariz. 234, 238, 995 P.2d 276 (2000).

Defendant responded as soon as Plaintiffs requested that the claim be re-opened. Defendant agreed to Plaintiffs' scope and measure of damages and made payment accordingly. There is no evidence to show that the insured had further damages in which there was a need for the insurance company to respond. There is no evidence that Defendant "low-balled" the claim or intentionally delayed it. The evidence shows that the insurance company responded immediately upon any notification of the initial damages and the later damages discovered.

There is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED granting Defendant's motion for summary judgment. Defendant's counsel shall provide the Court with a formal written order consistent with the foregoing.

IT IS ORDERED denying Plaintiffs' motion for partial summary judgment.

IT IS FURTHER ORDERED denying Defendant's motion for sanctions.