

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
05/22/2002

05/20/2002

CLERK OF THE COURT
FORM V000A

HONORABLE REBECCA A. ALBRECHT

L. Falkenburg
Deputy

CV 2001-008706

FILED: _____

DARRY BROWN, et al.

STEPHEN C RYAN

v.

STATE FARM FIRE AND CASUALTY
COMPANY, et al.

WILLIAM R PHILLIPS

DAVID S SHUGHART III

MINUTE ENTRY

The defendants filed a Motion to Confirm the Appraisal Award. In the context of its response, the plaintiff filed a Motion for Summary Judgment as to Breach of Contract. Both motions have been under advisement. The court has reviewed the memoranda filed, the legal file, the applicable case and statutory law and considered the arguments of counsel.

Very briefly, the plaintiff's property was damaged by fire. According to the plaintiffs, their property does not conform to current Mesa ordinances and because the buildings on the property did not conform with the City of Mesa zoning ordinances, the premises cannot be rebuilt and should have been declared a 'constructive total loss'. In working to resolve the claim the parties both invoked the policy's appraisal provisions. The process began and at some point prior to the hearing the plaintiff decided not to participate any further.

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The plaintiff asserts that the defendants breached the insurance contract by refusing to declare the property a complete loss and paying the policy limits. The appraisal process according to the plaintiffs should never have been necessary.

Based upon the court's review of the facts of this case, as presented in the pleadings, the policy and the cited case law, the court cannot find that the defendants breached the insurance contract.

The court's authority to sustain an objection to an award is contained in ARS §12-1512.

A. Upon filing of a pleading in opposition to an award, and upon an adequate showing in support thereof, the court shall decline to confirm and award and enter judgment thereon where:

1. The award was procured by corruption, fraud or other undue means;
2. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
3. The arbitrators exceeded their powers;
4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 12-1505, as to prejudice substantially the rights of a party; or
5. There was no arbitration agreement and the issue was not adversely determined in proceedings under § 12-1502 and the adverse party did not participate in the arbitration

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hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

There is no evidence presented to the court, which persuades the court that the court should refuse to affirm the appraisal under paragraphs 1, 4 or 5.

The plaintiff suggests that the third appraiser appointed by the court was biased, however, the plaintiff points to no facts which persuades the court that the appraiser failed to fairly consider this matter. Further, the plaintiff had the opportunity to object to the appraiser and did not do so.

The plaintiff also expresses concern about the procedures used by the third arbitrator. While the policy and statutes describe the parameters of authority, the arbitrators do have some opportunity to use reasonable procedures to resolve the dispute. The plaintiffs withdrew from active participation in the appraisal process. When their appraiser withdrew, they refused to nominate another appraiser, they did not attend or present any evidence at the hearing. A decision with which the plaintiffs do not agree was rendered. There is nothing before this court that persuades the court that the arbitrators exceeded their powers or that the arbitrators conducted the hearing in such a manner that the rights of the plaintiffs were or would have been prejudiced.

IT IS ORDERED denying the Plaintiff's Motion for Summary Judgment on breach of contract.

IT IS FURTHER ORDERED affirming the appraisal award.