

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-015292

11/04/2015

HONORABLE LORI HORN BUSTAMANTE

CLERK OF THE COURT
T. Nosker
Deputy

KENNETH MCLAWS, et al.

DAVID A CHRISTOFFEL

v.

ALLSTATE INDEMNITY COMPANY

EVAN S GOLDSTEIN

MINUTE ENTRY

The court has reviewed and considered the following pleadings:

- Defendants' Rule 12(b)(6) Motion to Dismiss Plaintiff's First Amended Complaint
- Plaintiff's Response to Defendant's Rule 12(b)(6)
- Defendant's Reply in Support of Rule 12(b)(6) Motion to Dismiss Plaintiff's First Amended Complaint

Arizona Rules of Civil Procedure Rule 12(b)(6) allows for the dismissal of a claim for "[f]ailure to state a claim upon which relief can be granted." Arizona courts apply arbitration principles to disputes relating to insurance policy appraisal clauses because "appraisal is analogous to arbitration." *Meineke v. Twin City Fire Ins. Co.*, 181 Ariz. 576, 580, 892 P.2d 1365, 1369 (Ariz. App. 1994). Judicial review of appraisal awards is strictly limited, and pre-award claims are merged in the appraisal award. *Creative Builders, Inc. v. Avenue Developments, Inc.*, 148 Ariz. 452, 715 P.2d 308, 311-13 (Ariz. App. 1986). "[W]hen . . . parties agree to have value affixed by an appraisal, they must abide by their own agreement and are not entitled to a new determination by the courts." *Hirt v. Hervey*, 118 Ariz. 543, 545, 578 P.2d 624, 626.

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Plaintiffs Amended Complaint asserts a breach of contract claim against Allstate arising from damage caused by a hail storm on or around October 5, 2010. Allstate was notified of the loss on or around September 24, 2012. Plaintiff filed suit against Allstate on October 9, 2012. Pursuant to the terms of the policy between Plaintiff and Allstate, both parties *agreed* to resolve their dispute by submitting the claim to an appraisal panel. The parties do not dispute that they submitted their contractual claim to appraisal and that an appraisal award was issued on February 7, 2014, when the panel awarded Plaintiff \$11,036.58. It is undisputed that Allstate has paid the appraisal award minus the applicable \$250.00 deductible.

Plaintiff argues that the appraisal panel did not decide Plaintiff's damages for "attorney's fees, punitive damages, out-of-pocket expenses, emotional distress, and 'other damages.'" It is unclear why Plaintiff is still asserting she has a punitive damages claim because the court has already granted Defendant's Motion for Summary Judgment on the punitive damages claim. In addition, the claims for out-of-pocket expenses and emotional distress may apply if Plaintiff was still maintaining a cause of action for breach of duty of good faith and fair dealing but she is no longer pursuing a claim for breach of duty of good faith and fair dealing.

Plaintiff and Allstate's dispute was resolved by the appraisal process and the appraisal process extinguished Plaintiff's liquidated claim for breach of contract against Allstate. Accordingly,

IT IS ORDERED granting Defendants' Rule 12(b)(6) Motion to Dismiss Plaintiff's First Amended Complaint.