

2019 WL 1646100

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District Court of Appeal of Florida, Third District.

SAFEPOINT INSURANCE COMPANY, Appellant,

v.

Daisy SOUSA, Appellee.

No. 3D18-1842

|
Opinion filed April 17, 2019

An Appeal from a non-final order from the Circuit Court
for Miami-Dade County, Spencer Eig, Judge. Lower
Tribunal No. 18-9574

Attorneys and Law Firms

Butler Weihmuller Katz Craig and [Anthony J. Russo](#) and
Mihaela Cabulea (Tampa), for appellant.

Marin, Eljaiek, Lopez & Martinez and [Anthony M.
Lopez](#), for appellee.

Before [EMAS](#), C.J., and [SALTER](#), J., and [LEBAN](#),
Senior Judge.

Opinion

[SALTER](#), J.

*1 Safepoint Insurance Company (“Insurer”) appeals
an order granting a motion by its insured, Daisy Sousa
(“Insured”), to compel appraisal pursuant to a provision
of a residential insurance policy (“Policy”) issued by the
Insurer. The appraisal was sought in connection with
damage caused by Hurricane Irma in September 2017.
Because the record demonstrates that the Insured failed
to comply with the post-loss conditions of the Policy, we
reverse the order and remand the case to the trial court.

Two days after the loss, a public adjuster reported the
nature and general extent of the damage to the Insurer on
behalf of the Insured. The Insurer's claims representative
visited the property and prepared an itemized, 15-page

estimate of replacement cost value, a total of \$ 47,838.64,
for the claim in November 2017. The Insurer requested the
Insured to submit a sworn proof of loss as required by the
Policy.

When the sworn proof of loss was not forthcoming, the
Insurer sent the Insured a notice of examination under
oath (“EUO”), requesting documents pertaining to the
damage and claim, including a renewed request for a
sworn proof of loss. The Insured provided testimony and
a limited number of documents at the EUO at the end of
November 2017, but did not submit a sworn proof of loss.
The Insurer renewed its request for a sworn proof of loss
and supporting documents in January 2018 and twice in
February.

At the end of February, the Insurer tendered a payment
of \$ 47,838.64, the itemized amount computed by its
claims representative three months earlier. The Insured
responded in March with the circuit court lawsuit that
has culminated in this appeal. The amended complaint
for breach of the Policy contended that the Insurer had
refused to pay the full amount of the claim.

The Insured moved in May 2018 to compel appraisal,
based on the differing computations of loss and
replacement value computed by the parties' estimators.
The motion for appraisal included a detailed, 23-page loss
estimate for the Insured's claim, totaling \$ 177,366.41,
dated March 27, 2018. That estimate was prepared by the
Insured's public adjuster, “Leading Public Adjusters, Inc.”
According to the record before us, the estimate was not
submitted previously to the Insurer with a sworn proof
of loss, with supporting documents, or at the time of the
Insured's EUO. The Insurer opposed the motion based on
the Insured's failure to comply with the Policy's post-loss
requirements. Following a non-evidentiary hearing, the
trial court granted the motion, and the Insurer appealed. ¹

Analysis

Our review of the Policy provisions pertaining to
coverage, post-loss conditions, appraisal, and conditions
precedent to suit, are subject to de novo review. [Noa v.
Fla. Ins. Guar. Ass'n.](#), 215 So.3d 141, 143 (Fla. 3d DCA
2017). In this case, section I.8. of the Policy provides that
no lawsuit can be commenced against the Insurer unless
“[t]here has been full compliance with all of the terms of
this policy.” The obligations to provide a sworn proof of

loss and documents supporting the claim are also spelled out clearly in the Policy.

*2 In [United States Fidelity & Guaranty Co. v. Romay](#), 744 So.2d 467, 471 (Fla. 3d DCA 1999) (en banc), this Court held that appraisal and suit are premature when the Insured has failed to comply with a residential insurance policy's post-loss conditions. We have applied that principle through multiple hurricanes and the subsequent claims. See, e.g., [State Farm Fla. Ins. Co. v. Fernandez](#), 211 So.3d 1094, 1095 (Fla. 3d DCA 2017) (“It is well-settled in Florida that all post-loss obligations must be satisfied before a trial court can exercise its discretion to

compel appraisal.”). The Insured's generalized description of loss at her EUO does not constitute a “sworn proof of loss” in compliance with the Policy, and the Insured has offered no reason for the failure to submit the public adjuster's itemized claim report before, rather than after, the EUO and lawsuit.

The order granting the Insured's motion to compel appraisal is reversed and vacated.

All Citations

--- So.3d ----, 2019 WL 1646100

Footnotes

1 The order directing appraisal is an appealable non-final order. See [Fla. R. App. P. 9.130\(a\)\(3\)\(C\)\(iv\)](#).

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