

FILED
09-16-2019
CIRCUIT COURT
DANE COUNTY, WI
2019CV002555
Honorable Stephen E
Ehlke
Branch 15

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STONE CREEK CONDOMINIUM
OWNERS ASSOCIATION, INC.,

Plaintiff,

v.

Case No. _____

Case Code: 30701

TRAVELERS INSURANCE COMPANY d/b/a
THE CHARTER OAK FIRE
INSURANCE COMPANY,

Defendant.

COMPLAINT

NOW COMES the Plaintiff Stone Creek Condominium Owners Association, Inc. by and through its attorneys DeWitt LLP, by Kevin M. Scott, and as for a Complaint against the Defendant, Travelers Insurance Company d/b/a The Charter Oak Fire Insurance Company, states as follows:

PARTIES

1. Plaintiff Stone Creek Condominium Owners Association, Inc. ("Plaintiff") is a Wisconsin non-stock corporation with a principal office address of 6273 University Avenue, Suite E, Middleton, Wisconsin 53562.

2. Defendant, Travelers Insurance Company d/b/a The Charter Oak Fire Insurance Company ("Travelers") is a foreign insurance company licensed to do business in the State of Wisconsin with a statutory home office located at One Tower Square, Hartford Connecticut 06183.

3. Plaintiff is a homeowner's association related to the Stone Creek condominium development located in Middleton, Wisconsin.

JURISDICTION AND VENUE

4. This court has Jurisdiction over this matter as this action centers around an insurance claim regarding real property located in this state.

5. Venue is proper in Dane County as this action centers around an insurance claim related to real property located in this County.

FACTUAL ALLEGATIONS

STONE CREEK CONDOMINIUMS ARE DAMAGED BY A COVERED LOSS

6. The Stone Creek condominium development consists of twenty multi-unit buildings located in Middleton, Wisconsin ("Stone Creek").

7. Travelers issued an insurance policy to Plaintiff—Policy No. 680-2F566001-17-42 (the "Policy").

8. The Policy was in effect and force at all relevant times.

9. On or about September 19, 2016, a hail-producing storm occurred on and around the Stone Creek condominium development (the "Storm").

10. The Storm caused damage to Stone Creek's buildings (the "2016 Damage").

11. Plaintiff timely submitted a claim for the 2016 Damage, to which Travelers assigned Claim No. E8K8808001H (the "2016 Claim").

12. Travelers has admitted that there is coverage for the 2016 Damage.

13. Travelers provided Plaintiff with an estimate dated May 10, 2017 of the cost to repair the 2016 damage (the "First Travelers Estimate").

14. According to the First Travelers Estimate, the Replacement Cost Value ("RCV") of the 2016 Damage was \$15,245.22.79 and the Actual Cash Value ("ACV") was \$12,858.08.

15. The First Travelers Estimate only noted damage to four of the twenty buildings at Stone Creek.

16. A true and correct copy of the First Travelers Estimate is attached as **Exhibit A**.

17. No damage to any roof of any building at Stone Creek was identified in the First Travelers Estimate.

18. However, although damage to skylights was noted, Travelers never paid for that damage.

**PLAINTIFF RECEIVES INDEPENDENT NOTICE OF HAIL DAMAGE
TO THE ROOFS AND MAKES A NEW CLAIM**

19. Plaintiff hired Paladin Construction, LLC ("Paladin") in August of 2017 to replace the roofs on certain buildings at Stone Creek.

20. Upon inspection, Paladin notified Plaintiff that it observed extensive hail damage to the roofs upon inspection as well as extensive damage to other portions of the buildings that were not noted on the First Travelers Estimate (the "Hail Damage").

21. Shortly after receiving notice of the Hail Damage, on or about September 11, 2018, Plaintiff hired The Adjustment Firm Inc. ("TAF") to serve as its Public Adjuster in relation to the claim.

22. Josh Hansen ("Hansen") of TAF notified Travelers of the Hail Damage by email dated September 11, 2018.

23. Via that same email, Hansen requested an extension of ninety (90) days to resolve the outstanding issues presented by the discovery of the Hail Damage.

24. Travelers granted the requested extension.

25. However, Travelers Claim Professional Ron Haislip noted that it “had a roofing consultant on this claim and all of the hail damage was addressed, so I’m curious to see what the roofer is claiming we did not address properly....”

26. Hansen provided Travelers adjuster Kimberly Burnell (“Burnell”) with an estimate of the damage present at Stone Creek dated October 30, 2018 (the “TAF Estimate”) via email on November 8, 2018.

27. The TAF Estimate states both the RCV and ACV of the Hail Damage at \$1,963,617.83.

28. A true and correct copy of the TAF Estimate is attached hereto as **Exhibit B**.

29. Via email dated November 8, 2018, Hansen requested another extension of the limitations period “so that the appropriate amount of time may be given for this claim to be re-inspected.”

30. Burnell responded to Hansen by email dated November 8, 2018 stating—

Thank you for the information. In reviewing the hail reports, there have been 12 hail events since our inspection in October 2016. With that being said, there is no way for us to reinspect what damages were there at that time. The association should report a new claim and use the hail date that was closest to the date of the inspection by the contractor. Please let me know when the new claim is reported. I can attach these documents to that file as well.

31. Pursuant to Travelers’ instructions, Stone Creek filed a new claim for hail damage with a date of loss of June 16, 2017 (the “2017 Claim”).

TRAVELERS ADJUSTS THE 2017 CLAIM

32. Travelers provided Plaintiff with an Estimate dated March 15, 2019 in which it asserted that the RCV of the damage related to the 2017 Claim was \$547,960.80 and the ACV was \$358,709.86 (the "First Travelers 2017 Estimate").

33. A true and correct copy of the First Travelers 2017 Estimate is attached hereto as **Exhibit C**.

34. Travelers also provided Plaintiff a Statement of Loss bearing the same date identifying the same amount of loss for RCV and ACV related to the 2017 Claim (the "Travelers SOL").

35. A true and correct copy of the Travelers SOL is attached hereto as **Exhibit D**.

36. The First Travelers Estimate did not identify any damage to the roofs of Stone Creek's buildings.

37. After Hansen disputed the fact that the First Travelers Estimate did not identify any damage to the roofs of the Buildings, Travelers conducted a re-inspection of the property.

38. On May 24, 2019, Travelers sent an email to Hansen stating in pertinent part—

Based on prior claim E8K8808 and the outlined damage from this report, the additional roof damage for the current claim is to the following:

Stack vents-30
Roof vents-23
Ridge cap-5
Valley- 1

I will add the metals and shingles to the estimate, but these items should be able to be repaired.

Also noted was that the gutters were dented on E8K8808 and would not be part of this claim as they were previously damaged.

39. Travelers then provided Plaintiff with an Estimate dated June 6, 2019 in which it asserted that the RCV of the damage related to the 2017 claim was \$551,572.78 and the ACV was \$362,322.14 (the "Second Travelers 2017 Estimate").

40. A true and correct copy of the Second Travelers 2017 Estimate is attached hereto as **Exhibit E**.

**PLAINTIFF DEMANDS APPRAISAL OF THE LOSS AND
TRAVELERS BREACHES THE POLICY BY REFUSING TO DO SO**

41. As Plaintiff disagreed with the amount of loss due to hail identified by Travelers, Plaintiff demanded appraisal of the loss via letter from TAF to Travelers dated July 31, 2019.

42. The Policy provides the following language regarding the parties' right to demand appraisal—

E. PROPERTY LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

2. Appraisal

If we and you disagree on the value of the Property, the amount of Net Income and operating expense or the amount of the loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense or the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the

claim.

43. Travelers responded to Plaintiff's demand for appraisal by letter dated August 21, 2019 (the "August 21 Letter").

44. A true and correct copy of the August 21 Letter is attached as **Exhibit F**.

45. In the August 21 Letter Travelers refused to have the loss appraised per the terms of the Policy.

46. Travelers asserted that, although Plaintiff had "submitted a claim that on or about June 16, 2017, the insureds' property suffered hail damage" including damage to the roofs, upon inspection "[Travelers] found isolated, minor and repairable hail-induced damage to hip and ridge shingles on two of the twenty buildings as well as metal roofing accessories on additional buildings."

47. Travelers further asserted that a "hail history report" it had obtained "did not identify any hail activity at the property in 2017 or 2018" and that "[a]ccording to the report, the most significant hail event took place in 2016 which was subject of a prior claim E8K8808."

48. As such, Travelers asserted—

Your appraisal demand does not explain the reason(s) for the dispute or specify the items that are disputed. Please advise us in writing:

(1) Whether you disagree with how we have priced the areas for repair or replacement (see Travelers estimate of March 3, 2019). If so, please specify those areas of disagreement;

(2) Whether you are contending that additional undamaged areas of roofing must also be replaced to complete the repairs authorized in Travelers estimate. If so, please specify the basis for your position;

(3) Whether "matching" is the basis for the dispute, in whole or in part. "Matching" arises when the original material for a component of the building that requires repair is no longer available on the

market and there is a dispute as to whether comparable material on the market readily matches the undamaged areas of the building component. If so, please provide the basis for your "matching" position;

(4) Whether you are contending that Travelers estimate does not include the roofs or portions of roofs that were damaged by hail during the policy period. If so, please specify which roofs or portions of roofs you contend are damaged by hail on the claimed date of loss, and provide all the facts and evidence supporting your position.

Travelers is willing to submit to appraisal any disputes in categories (1) and (2) in the preceding 2 paragraph, if there is a disagreement.

49. Travelers then asserted that "Travelers will not submit coverage issues to appraisal...Category (4) is a coverage issue involving causation."

50. Travelers further asserted that it would agree to appraisal only if "[a]ny appraisal award shall be made specifically with respect to the items described in category (1) and (2) above.

51. Travelers' attempt to impose the above "terms" upon Plaintiff's demand for appraisal was an attempt to impose conditions upon the right to appraisal not found in the Policy.

52. Without basis in the Policy or law, Travelers denied Plaintiff the right to have the value of the loss determined by the appraisal panel.

53. Had an appraisal panel been allowed to set the amount of loss as provided in the Policy, Travelers would have been obligated to pay Plaintiff the amount of the loss as determined by the appraisal panel.

54. Instead, Travelers' actions have delayed and/or denied Plaintiff the benefits that would have resulted from having the amount of loss set by the appraisal panel.

55. Travelers' actions have been for the purpose of avoiding appraisal of damage to the roofs of the buildings so that it could unilaterally set the amount of loss, in violation of the terms of the Policy.

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

56. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

57. Plaintiff and Travelers are parties to the Policy—a contract for insurance.

58. At all relevant times, Plaintiff fully paid all premiums of insurance.

59. The hail damage present related to the 2016 and 2017 claims (the “Hail Damage”) is an insured loss under the Policy.

60. Travelers and Plaintiff each set the value of the Hail Damage at different amounts.

61. Each side had provided the other with a detailed estimate of its value of the loss.

62. Plaintiff properly demanded appraisal of the loss.

63. Travelers was required, per the terms of the Policy, to allow the appraisal panel to set the amount of loss at issue.

64. Travelers refused to do so without basis.

65. Therefore, declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist amongst the parties to the insurance contract, including specifically the appraisal set forth therein.

SECOND CAUSE OF ACTION: BREACH OF CONTRACT

66. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

67. Plaintiff and Travelers are parties to the Policy—a contract for insurance.

68. At all relevant times, Plaintiff fully paid all premiums of insurance.

69. The Hail Damage is a covered cause of loss under the Policy.

70. Plaintiff timely made two claims regarding the Hail Damage—the 2016 Claim and the 2017 Claim (collectively, the “Claims”).

71. The 2017 Claim was made at the direction of Travelers in lieu of an extension on the limitations period of the Policy.

72. Travelers has a duty to indemnify Plaintiff in relation to the Hail Damage.

73. Travelers has refused to timely pay the proper amount(s) in relation to the Hail Damage.

74. Plaintiff has suffered damages as a result of Travelers' refusal to abide by to its contractual obligation to timely pay the proper amount(s) in relation to the Hail Damage.

THIRD CAUSE OF ACTION: BAD FAITH

75. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

76. As is alleged above, Travelers has breached its contractual obligations under the Policy in adjusting the 2016 Claim and/or the 2017 Claim.

77. Travelers has refused to timely pay for items for which it is obligated to pay without reasonable basis, at times offering no explanation or contradictory reasons for its refusal to pay.

78. Travelers knows or should know that it has unreasonably refused to pay amounts it is obligated to pay, and that it refused to allow the loss to go to appraisal in violation of Policy terms.

79. Travelers' acts have violated Wisconsin regulations regarding unfair claims settlement practices.

80. Plaintiff has suffered damage as a result of Travelers' bad faith handling of the Claims.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order—

1. On Plaintiff's First Cause of Action —

a. Declaring that—

- i. Plaintiff has properly demanded appraisal;
- ii. Travelers has breached the insurance by refusing to participate in the appraisal process;
- iii. Compelling Travelers to immediately participate in the appraisal process per the Policy terms;
- iv. Awarding Plaintiff its costs per Wis. Stat. § 806.04(10);
- v. Awarding Plaintiff such other supplemental relief as may be necessary under Wis. Stat. § 806.04(8); and
- vi. Such other relief as the Court deems just and appropriate under the circumstances

2. On Plaintiff's Second Cause of Action, an Order awarding damages in an amount to be determined at trial.
3. On Plaintiff's Third Cause of Action, an Order awarding damages in an amount to be determined at trial.
4. Costs and attorney's fees related to this action.

Dated this 16th day of September, 2019.

**PLEASE TAKE NOTICE THAT THE PLAINTIFF DEMANDS TRIAL
OF THIS ACTION BEFORE A JURY OF TWELVE (12) MEMBERS.**

DEWITT LLP

Electronically Signed by Kevin M. Scott

Kevin M. Scott (SBN 1036825)
13845 Bishop's Drive, Suite 300
Brookfield, WI 53005
Telephone: 262-754-2848
Facsimile: 262-754-2845
kxs@dewittllp.com

Attorneys for Plaintiff