SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-118
Lower Tribunal No. 19-CA-003018

SFR SERVICES, LLC a/a/o MICHAEL CARBONARA and MARY CARBONARA,

Appellants,

v.

TOWER HILL PRIME INSURANCE COMPANY,

Appellee.

Appeal from the Circuit Court for Lee County.
Keith R. Kyle, Judge.

May 26, 2023

PER CURIAM.

Michael Carbonara and Mary Carbonara's roof was damaged by Hurricane Irma.[1] They submitted a homeowner's insurance claim to their insurer, Tower Hill Prime Insurance Company. Tower Hill assessed the cost of repair to be $7,726.94

[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

and denied payment because the amount was less than their deductible. Dissatisfied with Tower Hill's response, the Carbonaras assigned their claim to SFR Services, LLC, their roofing contractor. SFR submitted a claim to Tower Hill for $162,083.84, which Tower Hill refused to pay. SFR sued for breach of contract.

Tower Hill's responsibility under the policy was to pay the "actual cash value" of the loss. Ordinarily, "actual cash value" is defined as the "replacement cost minus depreciation." *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 443 (Fla. 2013). At the close of SFR's case, Tower Hill moved for directed verdict, pointing out that the cost to repair presented by SFR was insufficient proof of "actual cash value" because it did not account for depreciation.

Under different circumstances, Tower Hill's point might be well-taken. In this case, however, Tower Hill's policy defines "actual cash value" as:

> [t]he cost to repair or replace covered property, at the time of loss or damage, whether that property has sustained partial or total loss damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence *as determined by 'us.'*

(emphasis added).

The language of the particular policy at issue in this case placed the burden to establish the depreciation on Tower Hill. Under this policy, SFR did not have the initial burden to prove the amount of depreciation. Accordingly, the judgment for Tower Hill is reversed.

REVERSED and REMANDED.

WOZNIAK and MIZE, JJ., concur.
COHEN, J., concurs specially, with opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

COHEN, J., concurring specially, with opinion.

While I agree with the result reached, I write to state that there is a separate reason the trial court should not have granted a directed verdict. When an insured is entitled to "actual cash value" of a loss under the terms of an insurance policy, Florida courts have held that the "broad evidence rule" applies. *See Worcester Mut. Fire Ins. Co. v. Eisenberg*, 147 So. 2d 575, 576 (Fla. 3d DCA 1962) ("Florida will adhere to the so-called 'Broad Evidence Rule.' Under this rule, any evidence logically tending to establish a correct estimate of the value of the damaged or destroyed property may be considered by the trier of facts to determine 'actual cash value' at the time of loss.").

SFR admitted into evidence an estimate prepared by Mills Mehr & Associates, Inc. for Tower Hill. That estimate provided the basis for Tower Hill's determination of "actual cash value," and it included a 21% deduction for depreciation. Under the broad evidence rule, I see no reason why that percentage could not be used in conjunction with SFR's estimate. Tower Hill argues that the calculation of a 21%

deduction for depreciation cannot be used because SFR's estimate was for replacement of a greater number of tiles. However, there is no indication that the tiles included in the Mills Mehr estimate were of a different age or had additional wear and tear than any other tile on the roof. In any event, Tower Hill's argument would bear upon the weight afforded such evidence, not its admissibility.

Tower Hill pursues exactitude where Florida law does not require it. *See McCall v. Sherbill*, 68 So. 2d 362, 364 (Fla. 1953) ("[D]amages are not rendered uncertain because they cannot be calculated with absolute exactness. It is sufficient that there be a reasonable basis of computation although the result may be only approximate."); *W. Boca Med. Ctr., Inc. v. Marzigliano*, 965 So. 2d 240, 244 (Fla. 3d DCA 2007) ("The 'reasonable certainty' rule for the calculation of damages does not require mathematical precision[.]").

Erin M. Berger and Melissa A. Giasi, of Giasi Law, P.A., Tampa, for Appellants.

C. Ryan Jones and Scot E. Samis, of Traub Lieberman Straus & Shrewberry LLP, St. Petersburg, for Appellee.