CASE NO. A26-0131

STATE OF MINNESOTA
IN COURT OF APPEALS

Claims, Inc.,

Respondent,

vs.

Lionel Njitor and Yvonne Njitor,

Appellants.

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE CASE

This appeal arises from a straightforward breach of contract claim involving a public adjusting contract between Respondent, Claims, Inc. ("Respondent"), and Appellants, Lionel Njitor ("Lionel") and Yvonne Njitor ("Yvonne") (collectively "Appellants"). The parties entered into a clear contract whereby Respondent would assist Appellants with all aspects of their insurance claim and in exchange receive as payment 10% of all amounts the insurer pays on the claim. Appellants took no issue with the contract, the services provided, or the results. However, when it came time to pay for those services Appellants refused payment, breached the contact, and terminated the contract.

The Honorable Judge Sheridan Hawley of the Washington County District Court in the Tenth Judicial District of Minnesota issued summary judgment in favor of Respondent. The district court considered the many inapplicable defenses that Appellants raised in attempt to escape their payment obligation. The district court correctly rejected all of Appellants' arguments, upheld the plain language of the contract, and issued the according judgment in Respondent's favor.

Appellants have taken the approach of throwing everything at the court in the desperate hope that something lands enough for them to avoid summary judgment. Appellants argue more than ten different topics and subtopics on a simple and straightforward breach of contract claim. Appellants argue: that the contract is severable into parts and that the unestablished concept of a constructive total loss eliminates consideration for the severed dwelling part of the claim; that despite Respondent securing full recovery for the dwelling through its work, the work was insufficient to be

consideration; that the parol evidence rule does not apply so that Appellants can present unsupported alleged verbal conversations that directly conflict with the contract Appellants signed after the alleged conversation; that the contract is ambiguous (so that Appellants can argue for admission of parol evidence); that there was a verbal condition precedent to the contract that again was not part of the contract Appellants signed after the alleged conversation; that the contract language applying a fee to all payments the insurer makes on the claim somehow does not apply to payments the insurer makes on the claim that are directly made to the landlord of Appellants' temporary housing which Respondent secured; that the fee also does not apply to payments that are reimbursements for amounts Appellants pay to replace damaged proper and that the insurer then pays back to Appellants; a completely unsupported claim of fraud in the inducement that directly contradicts the parties entering into the contract after that alleged conversation; that Appellants were under duress when they executed a Promise to Pay agreement without making any objection at the time of signing; and that the Promise to Pay lacks its own consideration even though it induced Respondent to sign off on the insurance company check made payable to both Parties.

The Court needs only to read the unambiguous contract to fully understand the agreement between the Parties. In plain terms, the agreement was that Respondent would assist Appellants with all aspects of their fire insurance claim and in return Appellants would pay Respondents a fee equal to 10% of all payments the insurer issues for the claim. Respondent performed its obligations under the contract. Appellants raised every defense they could think of after the fact, including combining contradictory mutually exclusive

arguments leading to a paradoxical defense to the enforcement of the contract. Respondent will address and dismantle each and every one of Appellants' arguments against enforcement of this contract. Respondent respectfully requests the Court deny all of Appellants' alleged defenses to enforcement of the contract, as the district court did, and affirm the ruling of the district court.

STATEMENT OF LEGAL ISSUES

I. WHETHER THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE CONTRACT APPELLANTS BREACHED IS VALID AND ENFORCEABLE SUCH THAT RESPONDENT IS ENTITLED TO SUMMARY JUDGMENT.

The district court appropriately determined that the contract was clear and unambiguous. It held that the Appellants' alleged defenses to enforcement of the contract are all without merit and that summary judgment is appropriately awarded to Respondent. The district court properly addressed each of Appellants' arguments against enforcement of the contract, including: the overall breach of contract which included determining that the contract is unambiguous and rejecting parol evidence; the argument that the contract lacks consideration; the claim that Appellants executed the Promise to Pay under duress; Appellants claim of fraud in the inducement; and their contention that Respondent's fee does not apply to personal property depreciation or alternative living expenses. This case has one overall issue — enforcement of the clear and unambiguous Contract — with several tangential arguments.

STATEMENT OF THE FACTS

Appellants are property owners who suffered an insured fire Loss and needed assistance with their insurance claim. Respondent is a public adjusting firm which provides services related to assisting insureds with submitting, processing, and recovering on insurance claims.

On or about July 28, 2024, a fire caused damage at the property located at 6068 Summit Curve S., Cottage Grove, Minnesota (the "The Loss"). (Index 21 at Ex. 1). The Loss was assigned a single claim number by the insurer, claim number XXXXXXXX180. (*Id*. at Ex. 3-1). Appellants were referred to Respondent's services by a neighbor. Needing assistance with their large Loss fire claim, Appellants retained Respondent and signed a Residential Public Adjusting Contract (the "Contract") on August 12, 2024. (*Id*. at Ex. 1). The Contract provides a "Scope of Contract" whereby Appellants retained Respondent as their public adjuster to assist with the recovery of "all fire benefits" which includes but is not limited to: the building, contents, loss of use, living expenses, other structures, personal property, debris removal, landscaping, and temporary repairs. (*Id*.) The Contract provides that in exchange for assistance with the claim, Appellants will pay Respondent 10% "of amounts paid in settlement of the loss by Insurer(s) related to coverage(s) authorized under the Scope of Contract." (*Id*.)

Respondent performed its obligations under the Contract by assisting Appellants to recover over $920,000 of insurance payments.[1] (*Id*. at Ex. 7-1). Respondent sacrificed its

[1] The district court made a typographical or mathematical error in the order which should be corrected and can be done administratively. The court correctly held that Appellants owe

time and resources to assist Appellants with all parts of their insurance claim. This included drafting and submitting four Proof of Loss forms, one for each of the following components of the Loss: the Dwelling and Debris Removal, Other Structures; Personal Property; and Additional Living Expenses. (*Id*. at Ex. 2). Specifically related to the dwelling coverage Respondent performed measurements, created a Matterport 3D image of the structure, considered and referred Appellants to an attorney regarding a potential underinsured claim against their insurance agent (a lawsuit claim that a public adjuster cannot pursue as it is not an insurance policy recovery), obtained and reviewed the homeowner policy for all potential recovery, obtained the fire report to consider potential for a subrogation claim (which would get Appellants their deductible waived or reimbursed), addressed Allstate's concern with a lien on the dwelling which was placed by Appellant's Homeowner Association for an unpaid fine, obtained and provided loan information that Allstate requested, collected information to complete the four Proof of Loss forms, and followed through with obtaining Appellants' signatures on the Proof of Loss forms. (*Id*. at 11).

Additionally, Respondent used its knowledge and expertise to guide Appellants to avoid special investigation or suspicion of fraud. (*Id*. at Ex. 13 at Response 15, 16) (Appellants listed $5500 in cash, $6,500 for Grandma's jewelry, $10,500 for jewelry, $12,500 for Nordstrom purses and handbags, and other items that Respondent advised to remove because they would raise suspicion and would not be paid as Appellants had no

$71,379.42 for the dwelling, other structure and debris removal, $7,437.54 for ALE, and $7,261.91 for recoverable depreciation of contents. However, these amounts add up to $86,078.87 while the court conclude the total amount was $87,078.87. The $86,078.87 amount aligns with Respondents request, argument, and proposed order. The $87,078.87 is a clear error.

receipts or proof of possessing and of these items.) On September 23, 2024, Respondent submitted the Proof of Loss forms to Appellants' insurer, Allstate. (*Id*. at Ex. 2). Appellants acknowledge that they received no payment prior to Respondent submitting these Proof of Loss forms. (*Id*. at Ex. 10 at Response 4-6). As a direct result of Respondent's work, Allstate issued its first payment on October 2, 2024. (*Id*. at Ex. 4). The payment in the amount of $713,794.20 was for the dwelling, other structures, and debris removal, on which Respondent is owed a 10% fee of $71,379.42. (*Id*. at Ex. 1).

The $713,794.20 check from Allstate for the dwelling, other structures, and debris removal was made payable to Respondent, Appellants, and Appellants' mortgage company. (*Id*. at Ex. 4). On October 15, 2024, the parties executed a Promise to Pay whereby Appellants affirmed their obligation to pay Respondent $71,379.42 once the check processed in exchange for Respondent executing the check. (*Id*. at Ex. 5). Respondent endorsed the check which permitted Appellants to also endorse the check and send it to their mortgage company for processing. (*Id*. at Ex. 11-6). On October 23, and October 26, Respondent sent emails to Appellants requesting a status of the payment they had promised to pay. (*Id*. at Ex. 12). On October 27, 2024, Appellants responded and for the very first time raised objection to paying Respondent. (*Id*.)

Allstate also issued personal property payments totaling $208,605.43 — for which Appellants paid Respondent $20,860.54. (*Id*. at Ex. 10 at Response 4). At the time Appellants breached the Contract, Respondent had secured a contents valuation which permits Appellants to recover an additional $72,619.11 once Appellants replaced their damaged property. (*Id*. at Ex. 7). Appellants attested that they intend to replace their

property and recover this additional $72,619.11. (*Id*. at Ex. 10 at Response 7). Respondent is owed and additional $7,261.91 as its 10% fee for the additional contents recovery.

Additionally, Respondent assisted Appellants with submitting a Proof of Loss for Alternative Living Expenses ("ALE") and assisted with finding and securing a suitable alternative place to live while the home is rebuilt. (*Id*. at Ex 8 and 11). Appellants received $6,197.95 per month in Additional Living Expenses, for an anticipated 12-month total of $74,375.40 (*Id*. at Ex. 10 at Response 4 and 7). Appellants owe Respondent 10% of the ALE recovery as well for a fee of $7,437.54.

Procedurally, the Parties brought cross motions for summary judgment in district court. Respondent argued that under the clear and unambiguous four corners of the Contract and the Promise to Pay, Appellants owe Respondent 10% of the recoveries for dwelling/other structures/debris removal ($71,379.42), recoverable contents depreciation ($7,261.91), and alternative living expenses ($7,437.54), totaling an unpaid fee of $86,078.87. (Index 19, 28, 34). In district court, Appellants asserted affirmative defenses including lack of consideration, duress as to the Promise to Pay, and fraud in the inducement. (Index 23, 31, 36).

The district court held that the Contract has consideration and Respondent performed all of its obligations under the Contract that entitled it to payment, that there was no fraudulent inducement, and that Appellants owe Respondent 10% of all of their insurance recovery amounts. (Index 43). The district court also determined that Appellants were not under duress during the execution of the Promise to Pay agreement. (*Id*. at 10-14). The district court issued judgment in Respondent's favor in the amounts of:

$71,379.42 – for the dwelling, other structures and debris removal;

$7,437.54 for alternate living expenses; and

$7, 261.91 for recoverable depreciation of contents.

(*Id*. at 1).

Appellants now appeal the order and seek reconsideration of all of their ill-fated arguments that the district court rejected. Respondent respectfully requests this Court affirm the holding of the district court in its entirety.

ARGUMENT

I. LEGAL STANDARD.

A. Standard Of Review.

An appellate court reviews a district court's ruling on interpretation of a contract *de novo* and considers the facts in the light most favorable to the nonmoving party. *Nichols v. Tri–Nat'l Logistics, Inc*., 809 F.3d 981, 985 (8th Cir. 2016).

II. APPELLANTS OWE RESPONDENT $86,078.87 UNDER THE CLEAR AND UNAMBIGUOUS TERMS OF THE ENFORCEABLE CONTRACT.

This appeal is resolved by a simple and straightforward reading of the Contract. The Contract is clear and unambiguous, it is properly supported by consideration, and the parol evidence rule prohibits all of Appellants arguments that the agreement was allegedly different than what the Contract memorializes. Respondent performed its obligations under the Contract. Appellants failed to make payment, their obligation under the Contract.

A. The Contract Is Clear And Unambiguous.

The Contract is written in simple terms that are plain and unambiguous. The district court appropriately held that "[t]he contract is not ambiguous as it outlines the clear obligations of [Respondent} and [Appellants], and it is a completed, integrated contract." (Index #43 at. 8). The district court therefore rejected the admission and parol evidence noting that "neither party argues that the terms of the written contract are ambiguous such that this barred evidence is required to clarify any ambiguity." (*Id*. at 6).

Appellants contend that the Contract is ambiguous in a few ways, none of which have any merit and none of which warrant inclusion of parol evidence. Appellants' proposed alternative interpretation of the Contract is unreasonable and therefore does not support their claim of ambiguity. The four corners of the Contract are clear and unambiguous. Therefore, evidence outside the direct interpretation of the documents is neither necessary nor permitted. The district court properly held that under the plain terms of the contract, Appellants owe Respondent $86,078.87.

Interpretation and application of contractual terms is a legal issue which is generally appropriate for Summary Judgment. *Knudsen v. Transp. Leasing/Cont., Inc.*, 672 N.W.2d 221, 223 (Minn. Ct. App. 2003). "The initial question of whether a contract is ambiguous is a question of law" which the Court reviews de novo. *Lamb Plumbing & Heating Co. v. Kraus-Anderson of Minneapolis, Inc.*, 296 N.W.2d 859, 862 (Minn. 1980). "In making that determination, a court must give the contract language its plain and ordinary meaning." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). "A contract is ambiguous if its language is ***reasonably susceptible*** of more than one

interpretation. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995) (emphasis added).

When "a contract is unambiguous, a court gives effect to the parties' intentions as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent." *Christensen L. Off., PLLC v. Olean*, 916 N.W.2d 876, 886 (Minn. Ct. App. 2018) (internal quotations omitted). Further, "when a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction." *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

Appellants sought out Respondent and requested assistance with their insured house fire Loss. Both of the Appellants signed the Contract. (Index 21). The Contract has a list of categories of loss which Respondent would provide assistance to recover the benefits thereof. (*Id.*) The Parties selected all of the boxes and even wrote in the "other" line "all fire benefits." (*Id.*)

2. Scope of Contract: Insured(s) hires Adjuster to assist in the preparation, presentation and adjusting of insurance claim with Insurer(s) under the following types of coverage that may apply:

☑ Building	☑ Living Expenses	☑ Debris Removal	☑ Rekeying/Temporary Repairs
☑ Contents	☑ Other Structures	☑ Landscaping/Trees/Shrubs	☑ Jewelry/Furs/Antiques/Guns/Collectibles
☑ Loss of Use	☑ Personal Property	☑ Fire Department Services	☑ Other all-fire benefits

In exchange for Respondent's services, Appellants would pay to Respondent 10% "of amounts paid in settlement of the loss by Insured(s) related to coverage(s) authorized under the Scope of Contract." (*Id.*)

The plain terms of the Contract show that the Parties intended for Respondent to provide assistance with all aspects of the fire Loss and Respondent would be entitled to a fee equal to 10% of all payments the insurance company makes on the claim. The Contract does not provide an exception for amounts that are paid directly to a landlord, amounts paid as reimbursement, amounts paid to a contractor, or amounts paid to the mortgage company. The 10% fee applies to all payments the insurance company makes on the Loss.

Appellants argue for the first time on appeal that the Contract is ambiguous in regards to the use of the word "may" in the sentence preceding the list of coverages for which Respondent will provide assistance. Appellants contend that the "may" means that providing services or payment for all of the checked boxes is optional and either party may at any time elect to include or exclude their duties related to that category. Accordingly, Respondent could simply choose not to submit for recovery of debris removal and Appellants would lose out on that recovery. Similarly, as Appellants attempt to execute in this matter, Appellants could accept services for any or all of these categories and then elect not to include them in the contract so as to avoid paying for the services already rendered. This interpretation would render the Contract illusory with neither side having any real obligation. Accordingly, Appellants' interpretation of the Contract is unreasonable.

The plain and clear reading of the word "may" in this Contract is to state that the applicable insurance policy may or may not have coverage for all of these categories. Therefore, Respondent would seek recovery for all of the checked categories, so long as that category is available under the insureds' policy. That is exactly what Respondent did.

Appellants were obligated to pay a fee to Respondent equal to 10% of the payments the insurer makes on the fire claim. This is what Appellants failed to do, thus breaching the Contract.

The Contract is clear and unambiguous. The Contract must be given its plainly intended effect which is that Respondent provides assistance with Appellants' entire insurance claim and Appellants pay Respondent 10% of all amounts the insurer pays on the claim. No further analysis is required to determine that Appellants owe Respondent $86,078.87.

B. The Contract Has Consideration.

The Parties made an exchange of promises whereby each agreed to give up something in exchange for the return of something from the other. This is adequate consideration to form a binding contract. Appellants do not dispute that the Contract as a whole has consideration and that Appellants receive benefit from Respondent's services. Appellants made partial payment on the Contract.

However, Appellants argue that the Contract is severable into parts and that when sliced just right, a particular section would not have consideration. This argument fails because the Contract is not severable. Further, even if the Contract were severable in the sections that Appellants argue for, there is still consideration for those sections.

C. The Contract Is Not Severable.

Appellants erroneously assert that the Contract is severable because of the fact the Scope of Contract provides twelve different types of coverage that the insured can elect to hire the adjuster to assist with. (App. Brief at 17). However, Minnesota caselaw has already

established that an insurance claim is not severable. The Minnesota Court of Appeals established that "misrepresentations of the value of personal property lost in the fire related to all right to recover on the policy, including coverage for the building loss." *Collins v. USAA Prop. & Cas. Ins. Co.*, 580 N.W.2d 55, 58 (Minn. Ct. App. 1998); see also *Henning Nelson Const. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 654 (Minn. 1986) ("[W]illful or intentional misstatements calculated to deceive the insurer operate to void the policy.") The Court specifically stated that the plaintiffs' argument that the contents claim is a distinct claim from the dwelling failed because that reasoning does "not extend to Collins' ***indivisible claim for property loss*** in the June 1995 fire." *Collins*. 580 N.W.2d at 57. (emphasis added). Accordingly, if an insured commits a material misrepresentation on any part of the claim, even on the contents coverage, the insured will recover nothing under the Policy, even on the dwelling coverage. The insurance claim is one indivisible claim that is interwoven and cannot be isolated into component parts.

Respondent assisted with all aspects of Appellants' insurance claim which permitted recovery on the claim as a whole. Appellants intended to submit an extensive and suspicious list of contents, including expensive designer accessories, jewelry which they had no evidence of ever purchasing, and over $5,000 of cash. (Index 21 at Ex. 13, Response 15). These items lacked sufficient support to recover and would have surely raised flags with the insurance company, triggering a Special Investigations Unit ("SIU") inquiry with Examinations Under Oath ("EUOs") and potential claim denial. Appellants ultimately did not submit for these items per the expert advice of Respondent. (*Id*.) Accordingly,

Respondent's agreeably valuable work on the contents coverage[2] permitted payment on the dwelling coverage. This further confirms that the Contract is not severable because Respondent's expert advice relating to the contents list preserved recovery for all aspects of the claim.

Lastly, the line where Appellants seek to sever the Contract does not make any sense. Appellants acknowledge that they owe the Respondent's fee on the 5% increase for other structures and the 5% debris removal applied only to the other structures.[3] (Index 32 at ¶ 3-5). Yet, Appellant denies owing for the debris removal extension on the dwelling. Even if the Contract were severable by the categories listed on the Contract, which it is not, Appellants seek to split the one category of debris removal to pay for only part of that single category of recovery. This eliminates Appellants' own argument about how the Contract is allegedly severable by category. Appellants agreeing to pay part of the debris removal shows that the entire claim is intertwined because the single category of debris removal is an extension to multiple other parts of the claim — the dwelling and other structures. It is not possible to divide the claim into its coverage parts as they are interwoven.

The Contract is also not severable based upon the Proof of Loss submissions. The dwelling and debris removal are submitted on the same Proof of Loss form. Appellants

[2] Appellants paid Respondent the 10% fee on the contents portion of the claim, with the exception of the recoverable depreciation payment. (Index 21 at Ex. 11-7). Appellants do not dispute that Respondent provided valuable assistance with the contents portion of the claim.

[3] Appellants acknowledge that they owe $3,399.06 for Respondent's fee applied to the other structures and part of the debris removal recovery but still have not paid it.

agree to pay for some debris removal and reject paying for the remainder of the debris removal along with the dwelling recovery which are all part of one Proof of Loss.

Overall, the Contract is not severable and Respondents acknowledge that there is consideration for the Contract. Accordingly, the Contract, including the requirement to pay 10% of the dwelling payment and debris removal is valid and enforceable.

D. Even If The Contract Is Severable, The Dwelling, Other Structures, And Debris Removal Portions Have Consideration.

Respondent provided value to Appellants specifically for the dwelling coverage. Consideration is "[s]omething (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act." CONSIDERATION, Black's Law Dictionary (12th ed. 2024). "Consideration is something of value given in return for a performance or promise of performance that is bargained for; consideration is what distinguishes a contract from a gift." *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. Ct. App. 1996).

Appellants erroneously contend that the Contract lacks consideration because Allstate had deemed their home a total loss prior to Appellants executing the Contract with Respondent. Appellants then argue that Allstate was already going to issue payment for the full policy limit and therefore Respondent provided no value under the Contract. Appellants' contention is incorrect for multiple reasons.

i. Respondent submitted the Proof of Loss which triggered Allstate's payment.

Allstate did not issue payment on this Loss, including for the dwelling, until after Respondent submitted all four Proof of Loss forms. (Index 21 at Ex. 3). On August 6, 2024,

Allstate issued an "estimate representing [its] current evaluation of the coverage damaged to [Defendants'] insured property and may be revised as we continue to evaluate [Defendants'] claim." (*Id*. at Ex. 9). The estimate provided a value beyond the Policy limit for the dwelling. (*Id*.) However, Allstate did not state that it would pay this amount and in fact did not pay anything on the dwelling until after Respondent drafted and submitted a Proof of Loss on the dwelling on September 24, 2024. (*Id*. at Ex 10, Response 4-6).[4] Allstate issued its dwelling Loss payment on October 2, 2024. (*Id*. at Ex. 3). This payment was made directly in response to Respondent submitting the Proof of Loss forms that the insurance company required.

As further clear proof of the value that Respondent provided to Appellants, Respondent argued for and succeeded in adding the extensions for other structures and debris removal. Allstate's initial Loss valuation on August 6, 2024, states that the amount of Loss is over the policy limit and payment is reduced to **$647,432.00**. (*Id*. at Ex 9-3). This is the policy limit for the dwelling. (Index 25 at 6). However, Respondent expressed to Allstate that there are two policy limit extensions: other structures, and debris removal. The other structures extension is 5% of the Policy limit which is $32,372. The debris removal extension is also 5% of the limit and applies to the dwelling as well as the other structures. The debris removal payments are $32,371.60 (5% of the dwelling limit) and $1,618.60 (5% of the other structures extension). This is why the payment from Allstate

[4] Respondent submitted all four Proof of Loss forms on September 24, 2024, so that Allstate did not delay payment for any coverage category, such as the dwelling, while Allstate waited for information on another coverages, such as the personal property.

was **$713,794.20** ($647,432 + $32,372 + $32,371.60 + $1,618.60 = $713,794.20) instead of just the **$647,432** Allstate had in its initial estimate. (Index 21 at Ex 3, 4).

Additionally, Respondent performed measurements of the damaged home, created a Matterport 3D image of the structure, considered and referred Appellants to an attorney regarding a potential underinsured claim against their insurance agent (a lawsuit claim that a public adjuster cannot pursue as it is not an insurance policy recovery), obtained and reviewed the homeowner policy for all potential recovery, obtained the fire report to consider potential for a subrogation claim (which would get Appellants their deductible waived or reimbursed), addressed Allstate's concern with a lien on the dwelling which was placed by Appellant's Homeowner Association for an unpaid fine, and obtained and provided loan information that Allstate requested. (*Id*. at Ex. 11). Accordingly, considering arguendo that the Contract were severable by their coverage categories, Respondent provided Appellants valuable consideration specifically for the dwelling portion of the claim.

ii. Appellant's contention that this was a "total loss" is inaccurate and immaterial.

Appellants erroneously contend that Allstate agreed to issue payment for a "total loss" on the dwelling prior to Plaintiff's involvement. (App. Brief at 12). However, there was no determination that this Loss was a total loss under the legal definition. *Auto-Owners Ins. Co. v. Second Chance Invs., LLC*, 827 N.W.2d 766, 770 (Minn. 2013) ("A building is not a total loss ... unless it has been so far destroyed by the fire that no substantial part or portion of it above ground remains in place capable of being safely utilized in restoring the

building to the condition in which it was before the fire.") There is another concept called a constructive total loss whereby the amount to restore the property from the loss exceeds the policy limits. The U.S. District Court of Minnesota highlights that Minnesota has not adopted the constructive total loss concept but explains how it would apply if it did: ***"[a]ssuming that Minnesota law allows for constructive total loss in the case of fire insurance***, the Minnesota Supreme Court has suggested that it would apply when 'the expense of recovering or using the property exceeds its value' even if some or all of 'the insured property is totally or partially uninjured.'" *Darmer v. State Farm Fire & Cas. Co.*, 611 F. Supp. 3d 726, 739 (D. Minn. 2020) (emphasis added). Minnesota law is unsettled on the concept of a constructive total loss.

Appellants erroneously contend that because Loss value exceeded the policy limit, Allstate was simply going to pay the full policy limit without any additional requirements. (App. Brief at 12). In support of this, Appellants cite only their own account of conversations with Allstate. (*Id*. at 12-13, , Index 24 at ¶8).[5] However, the documents show that Allstate valued the Loss above Policy limits but did not issue or agree to issue payment for the policy limit until after Respondent submitted the required Proof of Loss forms for

[5] Appellants lack supporting documentation for their contentions. Appellants provide a self-serving affidavit from Mr. Njitor. (Index 24). However, Mr. Njitor's baseless assertions are refuted by documentation. Mr. Njitor's affidavit asserts that Allstate told him the Loss was a "total loss" and that Allstate informed him already that they were going to pay the full policy limit. (*Id*.) This conversation allegedly took place prior to Appellants signing the Contract on August 12, 2024. Yet, Allstate did not make this payment until September 26, 2024, after Respondent submitted the required proof of Loss forms.

all coverages. Respondent submitting the Proof of Loss forms directly caused Allstate to issue payment on the dwelling, other structures, and debris removal.

Even if there is an argument for this Loss to be considered a constructive total loss, the law on it is certainly not clear enough that Appellants and Respondent would have known that the Loss would automatically be paid, which it was not. See *Charles v. Hill*, 260 N.W.2d 571 (Minn. 1977) (holding that forbearance of action that the party believes is a valid claim is still consideration even if the a later determination finds that the claim was not actually valid.)

Accordingly, at the time of entering into the Contract, the Parties believed that further work was necessary to recover payment on the dwelling, and it was. Both Parties believed that Respondent would give up time and provide expertise on the dwelling portion of the claim while both Parties believed Appellants would pay Respondent 10% of the insurance payment on the dwelling coverage. In reality, Appellants required and utilized Respondent's skill, expertise, and time to elicit payment from Allstate. However, Appellants failed to hold up their end of the bargained for exchange when they refused to issue payment for the services Respondent provided.

iii. Respondent performed all obligations under the Contract, including adjusting the Loss.

Appellants argue that the Contract lacks consideration because Allstate valued the claim at over policy limits and therefore Respondent was not required to do all activities that some losses required to achieve the desired results. Specifically, Appellants — making this argument for the first time on appeal — contend that the contract provides the

Respondent will "assist in the preparation, presentation and adjusting" of the Loss but that Respondent did not need to do that in this case. The Parties' believe that these actions, along with other, were necessary recover on the dwelling claim. Accordingly, Respondent made a promise to give up time and devote resources for these actions, and all actions necessary to recover the dwelling claim. Respondent certainly provided at least some necessary actions to recover on the dwelling claim. Respondent's earnest promise to give something up along with it actually giving up time and resources is sufficient consideration. Further, Respondent performed all necessary tasks to secure maximum recovery on the dwelling portion of the claim.

It is undisputed that Respondent *prepared* the dwelling "Sworn Statement in Proof of Loss," provided direction for the Appellants to properly execute the document before a notary, and then *presented* the official statement of the claim to Allstate. This action alone satisfies preparation and presentation of the insurance claim. In fact, submission of the Proof of Loss is the mode the insurance policy requires to prepare and present the claim to Allstate. Appellants contend that Respondent failed to "adjust" the Loss. Appellants use the Black's Law Dictionary definition for adjustment which is as follows:

> The ascertainment of the cause and the extent of an insured's loss and the amount of indemnity that the insured is entitled to receive under an insurance policy after (1) proper allowances and deductions have been made and (2) the indemnity portion for which each underwriter is liable has been established.

ADJUSTMENT, Black's Law Dictionary (12th ed. 2024)

Respondent performed all of these actions. Again, Respondent completed the Proof of Loss for the dwelling. (Index 21 at Ex. 2). Respondent wrote on the Proof of Loss the

cause of the Loss to be fire, the amount of Loss to be $1,216,098.15, the amount of Loss for other structures and the debris removal extension — which required considering the proper coverages afforded under the policy by each (the only) carrier which liability was established. (*Id*.)

Appellants seem to argue that if Respondent did not ascertain the amount of loss through its own calculations or estimating process that Respondent has not *ascertained* the amount of Loss. However, under that logic, the adjuster would need to be the first to determine that the cause of Loss was a fire, otherwise the adjuster would simply be using the information that it *ascertained* through methods other than its own assessment. Appellants were the first to determine the cause of Loss was a fire. Respondent *ascertained* the cause of Loss when appellants told Respondent the cause of Loss, along with Allstate confirming the cause of Loss was a fire. Respondent *ascertained* the amount of Loss with information provided by Allstate.

If either the cause of Loss or amount of Loss needed additional work and effort, Respondent would have performed all necessary actions to adjust the Loss. However, these issues were not disputed, and Respondent was able to *ascertain* the cause and amount of Loss without independent investigation. Respondent then analyzed the coverage of the applicable policy and identified how much Appellants should receive from its only insurer for all coverages while also considering the deductions. This is how Respondent was able to *prepare* the Sworn Statement in Proof of Loss containing all of this information and *present* it to Allstate, which then triggered Allstate's payment.

Ultimately, Respondent's work on the claim resulted in Appellants receiving their desired results on the insurance claim, without Appellants having to navigate the complex insurance claim process on their own. While Appellants now attempt to dissect the Contract into parts, then subparts, and components of the subparts, the Contract is one indivisible agreement which Respondent performed, exceptionally. Even at the granular level, Respondent performed every aspect of the Contract. Appellants, however, did not perform their end of the deal, at the macro level. Accordingly, Respondent asks this Court to affirm the district court's order and uphold the judgment in Respondent's favor.

III. THE PAROL EVIDENCE RULE BARS ALL OF APPELLANTS' ARGUMENTS AGAINST THE ENFORCEMENT OF THE CONTRACT.

The Parties entered into a clear contract that established the terms of their agreement. Appellants argue that verbal communications prior to entering into the written Contract override the contractual terms and release Appellants of their obligation to pay the contractually agreed upon amounts to Respondent. All arguments related to communications, promises, or representations prior to the agreement being memorialized in writing are prohibited by the parol evidence rule.

The parol evidence rule prohibits parties from claiming that the agreement between the parties is different than what is in the written contract. *Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. Ct. App. 2001) ("The rule generally prohibits the admission of extrinsic evidence to alter or contradict the terms of a written instrument.") "The parol evidence rule makes inadmissible evidence concerning discussions prior to or contemporaneous with the execution of a written instrument when that evidence contradicts or varies the terms of the

written agreement." *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 17 (Minn. 1982). "The parol evidence rule seeks to minimize the risk of future litigation by encouraging parties to put their entire agreement in writing, providing that when parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement." *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 713 (Minn. 1985).

There are only two acknowledged exceptions to the parol evidence rule. *Id*. If the writing is ambiguous, then extra contractual evidence can be used to help fill in the gaps of the intent of the parties which is not established by the written contract. *Id*. The second is when the "written agreement intentionally misstated the true consideration to deceive a third party." *Id*. Neither of these exceptions apply to this case.

The district court agreed with Respondent's position regarding parol evidence and concluded the Contract "is not ambiguous, as it outlines the clear obligations of [Respondent] and [Appellants], and is a completed, integrated contract." (Index 43 at 8). Accordingly, the district court found "the evidence sought to be introduced by [Appellants] is inadmissible to show that the contract is not the parties' final agreement." (*Id*.)

Appellants contend that there were discussions about not including the dwelling as part of the Contract agreement. (App. Brief at 8). Yet, they then signed the Contract that had to check the box for the dwelling as an opt-in selection. (Index 21 at Ex. 1). In case checking every single coverage box option was not clear enough, the Parties wrote in the "other" category, "all fire benefits." (*Id*.) Further, the Contract states that it is "the entire agreement between the parties and shall not be modified without written agreement of both Parties." (*Id*.) The Contract also says in bold and capital type "**I/WE HAVE READ BOTH**

SIDE OF THIS CONTRACT AND UNDERSTAND AND AGREE TO ITS TERMS AND ACKNOWLEDGE HAVING RECEIVED A COPY OF THIS AGREEMENT" (*Id*.)

Appellants seek to introduce a conversation that took place prior to execution of the Contract which directly conflicts with the express terms of the Contract. This is exactly the kind of parol evidence the rule excludes. Appellants had opportunity to decline signing the Contract or alter the Contract prior to signing it. Appellants acknowledged that the Contract is the full agreement, that they read it, and that they agreed to it. (*Id*.) Appellants did not alter the contract, they did not object to receiving assistance on the dwelling portion of the claim, executed the Promise to Pay, and only raised objection to issuing the payment on the dwelling claim after receiving the benefits of Respondents services. Because the Contract is clear and because the verbal evidence Appellants seek to introduce is contradicted by the express terms of the Contract that was signed after the verbal account, the parol evidence rule bars admission of the verbal account of the agreement.

Appellants attempt to avoid the application of the parol evidence rule by contending that the prior conversations create a condition precedent. Appellants then contend that Respondent promised to recover specifically for the solar panels and remodeling loan as a condition precent to receiving payment. While it is unclear what Appellants mean by recover the "remodeling loan," neither of these alleged requirements are a condition precent. Requiring Respondent to recover specifically for solar panels and the remodeling loan would be regular terms that would need to be included in the Contract, like all of the specific categories and obligations that are actually stated in the Contract.

Further, these items are incorporated into the categories of coverage that the Contract applies to and they were recovered to their fullest possible extent. The solar panels are an "other structure." The remodeling loan is presumably the increased value of the dwelling from a recent remodeling loan. Respondent recovered the full policy limit on both of these categories. Respondent could not have done a better job of recovering these categories.

Appellants argument that Respondent was required to recover payment specifically for the solar panel and remodeling loan is in direct conflict with its contention that Appellants never intended the dwelling or other structures to be part of the Contract. Appellants argue both that Appellants never intended the dwelling or other structures to be part of the Contract and that Respondent failed its obligation to recover for specific parts of the dwelling and other structures. These arguments are irreconcilable. Appellants have not shown any reason to admit parol evidence of conversation taking place prior to the execution of the Contract. This Court should affirm the district court's ruling on this matter.

IV. THE DISTRICT COURT CORRECTLY CONCLUDED RESPONDENT DID NOT FRAUDULENTLY INDUCE APPELLANTS INTO SIGNING THE CONTRACT.

Likely in an attempt to avoid the directly on-point parol evidence rule, Appellants seek to introduce evidence of conversations prior to the signing of the Contract under the guise of a fraud in the inducement defense. The district court recognized an exception to the parol evidence rule for claims of fraud in the inducement and considered evidence of conversations between the parties prior to signing of the Contract. (Index 43 at 11). The district court properly denied Appellants claims of fraud in the inducement.

To prevail on a claim of fraud in the inducement as a defense to the Contract, Appellants must prove: "(1) [Plaintiff] made a misrepresentation of material fact, (2) [Plaintiff] knew the material fact to be false or asserted the fact without regard to its falsity, (3) [Plaintiff] intended [Defendants] to act, (4) [Defendants] reasonably relied on the representation and acted on it to [their] detriment; and (5) [Defendants] suffered actual damages." *Witzman v. Wolfson*, No. C9-01-1405, 2002 WL 338155, at *5 (Minn. Ct. App. Mar. 5, 2002) (internal quotations omitted).

Appellants contend that "[Respondent] made fraudulent misrepresentations about how [Respondent] would be paid." (Index 23 at 10). Specifically, Appellants contend that Respondent promised to get more money than the policy limit for the solar panel and the remodeling loan and that Respondent would only be paid on the dwelling for additional amounts Appellants recovered over the policy limit.

The district court considered Appellants' evidence of this alleged conversation. The district court concluded that Appellants "fail[ed] to satisfy the requirement of showing that the contract was entered into through fraudulent inducement." (Index 43).

Appellants fail to meet any of the criteria for a fraudulent inducement claim, but most obviously fails to show that Appellants reasonably relied upon a false statement and that they suffered injury because of it. First, if Respondent made a promise to recover more than the policy limits on the Loss, it would be unreasonable for anyone to rely upon that, especially when the Contract states otherwise. The Contract makes no promise of recovery over the Policy limits and states that Respondent's fee applies to all amounts Allstate pays

on the Loss. It is unreasonable to rely upon a statement that is then directly contradicted by the Contract the Parties execute shortly thereafter.

Further, one of the very few policy provisions that insureds base the purchase of their policy on is the policy limit. The coverages and limits of the policy are clearly listed on the declarations page. (Index 25 at 6). The coverage limit is identified in the aptly name column titled "Limits of Liability." (*Id*.) The policy then states that Allstate will not pay more than "the Limit of Liability applicable to the **building structures(s)** as shown in the Policy Declarations for **Dwelling Protection-Coverage A or Other Structures Protection Coverage B**" (*Id*. at 25). The Policy contains similar statements in each of the coverage categories, including debris removal. (*Id*. at 23).

The firm and clear limitation of the insurer's liability makes it unreasonable for anyone to rely upon a promise to recover more than the policy limit for any category of coverage. Respondent maintains that it did not make a promise to recover more than the policy limit for any category of coverage. At best, Appellants misunderstood Respondent discussing the limit extensions for other structures and debris removal. However, to recover beyond the stated policy limit is not possible, Respondent would not make such a representation, and it would be unreasonable for anyone to rely upon that representation.[6] It is also unreasonably to rely on Respondent's alleged representation that its fee would apply only to amounts recovered over the policy limit both because that recovery is

[6] The only way to recover more than the policy limit is either through suing the insurance agent for procuring insufficient insurance limits or to succeed on a bad faith claim against the insurer. Both of these require an attorney to pursue rather than a public adjuster who can assist with insurance policy recovery but cannot practice law.

impossible and because the Contract states that the fee applies to all payments made by the insurer.

Appellants also fail to show that they have suffered damages as the result of the alleged fraudulent inducement. Appellants acknowledge that they have never filed an insurance claim before. (Index 21 at Ex. 13-3, 13-4). They needed assistance with their claim, including the dwelling coverage. Respondent provided the needed assistance and Respondent recovered the policy limit. Appellants contend that they relied upon the false claim that Respondent would help recover more than the policy limit for the dwelling. Since that is not possible, Appellants could not could not have ended up any better than they actually did in this case.

Appellants will argue that having to pay for the assistance on the dwelling claim is their detriment. However, Appellants requested and accepted Respondent's assistance with submitting the dwelling Proof of Loss. Also, Appellants indisputably sought Respondent's assistance with the contents claim. As established herein, the insurance claim is one claim, with one claim number, and the Contract is indivisible, especially by coverage categories.

In summary, Appellants sought Respondents assistance with their claim — all aspects of the claim. Appellants received assistance with all aspects of their claim. For the dwelling specifically, Appellants obtained the maximum recovery. Appellants do not contend the 10% fee on insurance payments is improper. Accordingly, Appellants got exactly the assistance that they wanted and needed which led to a maximum recovery and they owe a rate that is agreeably fair. Even if Appellants succeeded on all other aspects of the fraudulent inducement defense, Appellants suffered no detriment and no damages.

V. THE DISTRICT COURT PROPERLY HELD THAT RESPONDENT IS ENTITLED TO 10% OF THE CONTENTS DEPRECIATION AND ALTERNATIVE LIVING EXPENSES RECOVERY.

The plain terms of the Contract show that Appellants owe 10% of all insurance claim payments for this Loss. (Index. 21 at Ex. 1). The Contract plainly states "Insure(s) agrees to pay and assigned to Adjuster 10% (ten) not to exceed 10% of amounts paid in settlement of the loss by insurer(s) related to coverage(s) authorized under the Scope of Contract." (*Id*.).[7] Under the Scope of Contract, the Parties selected all types of coverage and also wrote in "all fire benefits." (*Id*.) The Contract further provides "'In settlement of the loss' includes all includes all payments made by Insurer(s) in full or partial resolution of the claims, including payments maybe by agreement, court judgment, mediation, arbitration, appraisal and other forms of dispute resolution." (*Id*.) The Contract clearly applies an adjuster fee of 10% to all payments the insurance company makes under the coverages of the policy for this Loss.[8]

Appellants contend that the Contract is not clear that it applies to payments the insurance company makes directly to a landlord for alternative living expenses or to payments made to Appellants after they purchase items that insurance covers and reimburses them for. Appellants never truly explain why these payments would not be

[7] The form Contract has a blank for the percentage that will be the adjuster's fee followed by the restriction that the amount will not exceed 10%. The parties in case wrote in 10% verifying that the adjuster fee if 10% which did not to exceed 10% and is therefore valid and agreeable.

[8] Appellants do not dispute the amount of the fees for alternative living expenses or the contents depreciation but instead only dispute the application of the 10% fee to payments that go to the landlord or are reimbursement. Accordingly, Respondent will not recap the math in this brief, but if the Court would like to review the calculation of these damages, that is explained in Respondent's memorandum of law in support of its motion for summary judgment. (Index 19).

"amounts paid in settlement of the loss by insurer(s) related to coverage(s) authorized under the Scope of Contract." However, these are payments to which the 10% fee applies under the terms of the Contract and these are payments that Respondent helped to secure for Appellants.

Appellants requested Respondent's assistance with securing a suitable house for their entire family to live in while their home was being repaired. (Index 21 at Ex. 8). Appellants originally found a temporary living arrangement that was insufficient for their family and was not comparable to their destroyed home. Respondent identified a comparable and suitable house. (*Id*.). Appellants were unable connect with the landlord or make any progress toward securing the housing. (*Id*.) Respondent directly contacted the landlord to secure the rental home. (*Id*.) Appellants now contend that it was their understanding of the Contract that all of this help and assistance would be free because the payments go directly to the landlord. This makes no sense and is not a reasonable interpretation of the Contract.

Alternative Living Expense is a category of coverage under the policy. The Appellants made a claim with Allstate for payment of these amounts owed under the terms of the policy. Allstate paid the Alternative Living Expenses in settlement of that claim for benefits under the policy. Allstate can make that payment to the Appellants so they can pay the rent, or directly to the landlord. The Contract does not differentiate between payments made directly to the insured or payments made on the insured's behalf to a third-party. The indisputable fact is that the insurer paid the Alternative Living Expenses in settlement of claim.

Appellants also contend that they should not pay the public adjuster fee on the payment for the depreciation on contents because this is a reimbursement and the Contract does not clearly include a fee on this recovery. (App. Brief at 29). Again, the Contract provides that the 10% fee applies to "all amounts paid in settlement of the loss buy Insurer(s)." (Index 21 at Ex.1). Appellants fail to provide any reason why reimbursement payments the insurance company makes under the coverage of contents is somehow not subject to the adjuster fee. Appellants were only able to recover those reimbursement payments because Respondent itemized, valued, and submitted via the Proof of Loss all of Appellants contents destroyed by the fire.

Appellants' insurance policy provides that Allstate will pay the Actual Cash Value ("ACV") of their personal property and then will pay the depreciation (the difference between the ACV and the Replacement Cost Value "RCV") upon the insured incurring that cost. (Index 25). For example, if a pair of jeans costs $50, the current value of the destroyed jeans may be only $30. The insurer must pay the $30 immediately and then will pay the additional $20 once the insured submits a receipt showing that they replaced the item. This prevents the insured from profiting in what is known as a "fire sale" to collect more money than the value of their lost property. If the insurer paid the full $50 and the insured did not replace the jeans, the insured would have received $50 of value while only losing $30 of value, therefore profiting $20. However, if the insured purchases the new pair of jeans, the insured has then incurred an expense of $50 and should be reimbursed for the entire amount of their expense.

Respondent secured the proper ACV and RCV of the claim through its work and submissions to Allstate. Because of these submissions, Allstate paid the contents ACV of $208,605.43 and agreed that the RCV is $281,224.54. Appellants were able to recover the additional $72,619.11 — the depreciation — upon making actual repair or replacement.[9] Appellants agree that the values were set as a result of Respondent's work and Appellants paid Respondent the 10% fee on the ACV payment.

Appellants breached and terminated the Contract prior to recovering the depreciation payment on the contents. However, the depreciation amount was already established and Appellants acknowledged in the Answers to Interrogatories that they anticipate replacing their property and recovering the depreciation. (Index 21 at Ex. 10, Response 7). Accordingly, the depreciation on contents is also a payment made in settlement of the insured Loss and the 10% fee applies to this recovery.

Under the plain terms of the Contract, Respondent's 10% fee applies to all payments the insurer makes on the Loss. This includes payments made to the landlord, reimbursement payments, payments made to the mortgage company, and payments made directly to repair contractors or any other third-party on behalf of Appellants. Accordingly, Respondent requests the Court affirm the district court's grant of summary judgment on this issue.

[9] Technically, the insured is provided the ACV money and is able to use those insurance funds to pay for replacement of items, then submit those for more payment and then use that payment to pay for more replacement and does not need to use their own funds to replace their property. However, the Parties do not need to determine if Appellants used their own money and were reimbursed or if they used the ACV money insurance paid them already because that has no effect on the fee amount under the Contract.

VI. THE DISTRICT COURT CORRECTLY CONCLUDED THE PROMISE TO PAY IS ENFORCEABLE.

The Court's analysis of the Promise to Pay is only relevant if the Court rejects the validity of the Contract. Appellants already owe Respondent 10% of the dwelling payment check under the plain terms of the Contact. The Promise to Pay is just Respondent's request for reassurance of Appellants intent to perform their obligation — make the payment — prior to releasing Respondent's hold on the dwelling funds. If the Contract is upheld, this Promise to Pay does not change either Parties' obligation. If the Contract is not valid as to the dwelling coverage, then this Promise to Pay proves the intent and amount that Appellants agree to pay to Respondent for the services rendered on this recovery.

The Contract provides Respondent an interest in the payments from the insurance company. (Index 21 at Ex. 1). This is a common provision in public adjusting contracts which insurers are familiar with. Accordingly, when a public adjuster provides this partial assignment contract to the insurer, the insurer simply includes all interested parties on the check and lets them sort out who gets what. (*Id*. at Ex. 5). Allstate in this matter issued the dwelling check to Appellants, Respondent, and the mortgage company. (*Id*. at Ex. 4). In order to process the check, two of the parties would need to execute the check and permit the third to process the funds. The mortgage company has priority rights on the Property and also has the least motivation to process the check, so mortgage companies simply refuse to sign the check. This meant that Respondent would need to sign off on the check in order for anyone to get funds from it. Accordingly, Respondent agreed to sign the check and release its hold on the funds in exchange for Appellants affirmation that it would issue

payment to Respondent once the funds were available. (*Id*. at Ex. 5). Appellants freely signed the Promise to Pay, processed the check, but then refused to issue the payment they owed under the Contract as well as the Promise to Pay. (*Id*.)

A. Appellants Were Not Under Duress When They Voluntarily Signed The Promise To Pay.

The district court cited *Hoskin v. Krsnak*, 25 N.W.3d 398, 410 (Minn. 2025) as it acknowledged that "duress in the context of a contract is found when there has been a coercion of such a character as to overcome the free will of the victim." (Index 43 at 10). The district court stated that Appellants "do not explain how Plaintiff engaged in any act of coercion and that their state of mind was sufficiently in duress. They also do not express that any act by Plaintiff overcame their free will." (*Id*. at 11). Accordingly, the district court properly determined that Appellants were not under duress when they signed the Promise to Pay. (*Id*.)

Appellants' assertions and allegations that Respondent "made unlawful threats to coerce the Njitors to sign the Promise to Pay" are factually and legally baseless. As a legal matter, Appellants fail to even allege how Respondent removed their free will and forced them to execute the Promise to Pay. Appellants contend that Respondent refusing to endorse the check put Appellants in a tough financial spot. Yet Appellants failed to show their immediate financial distress or the lack of any other options to resolve the issue. Appellants did not display any will against signing the Promise to Pay at the time and made no argument as to how Respondent overcame that free will.

Further, any allegation of duress while signing the Promise to Pay is undermined by Appellants' lack of any objection, discussion, or hesitation in executing the agreement. Appellants signed the Promise to Pay on October 15, 2024. (*Id*. at Ex. 5). Appellants first objection to any part of the Contract or Promise to Pay was via email on October 27, 2024. (*Id*. at Ex. 12). Appellants never requested any other options or expressed any doubts regarding executing the Promise to Pay, the amount of fees, and certainly did not object to receiving assistance and services on the dwelling portion of the claim.

The district court properly concluded that Respondents were not under duress when they both executed the Promise to Pay. Accordingly, the Court should affirm the district court's holding that the Promise to Pay is valid and enforceable against Appellants.

B. The Promise To Pay Is Supported By Consideration.

If the Contract is upheld as valid, which it should be, then the Promise to Pay analysis is irrelevant. However, if the Contract fails to support the judgment on the dwelling portion of the Loss for any reason, the Promise to Pay verifies the amount Appellants must pay for Respondent's services. It is undisputed that Appellants sought and received Respondent's assistance with preparing and submitting the Proof of Loss forms, including the dwelling specifically. It is also undisputed that Respondent provided that assistance, along with other required services such as addressing the lien on the property and securing the mortgage payoff amount. Respondent then gave up its hold on the check as consideration for the Appellants' promise to pay for the services rendered. (*Id*. at Ex. 5).

Respondent certainly believed that it had an interest in the dwelling payment. Yet, Respondent agreed to give up its hold on the payment by executing the check in exchange

for Appellants' promise to pay Respondent's fee. Respondent's bona fide belief that it was giving up its proper hold on the check is sufficient consideration.

Ultimately, the Promise to Pay was an affirmation of the Appellants' obligations under the Contract. In the event the Contract is not enforceable as to the dwelling coverage, which it is, then the Promise to Pay stands on its own as the agreement that Appellants will pay for the services it already received in exchange for Respondent releasing its hold on the check.

The Promise to Pay is therefore valid and enforceable all on its own if necessary. The Court should affirm the district court's Order, with or without analysis of the Promise to Pay.

CONCLUSION

The Contract is valid, enforceable, and unambiguous — entitling Respondent to its 10% fee applied to all payments Allstate makes on Appellants' fire claim. Appellants' wide-ranging affirmative defenses lack merit. The Contract is unambiguous, supported by consideration (as an inseverable whole and as component parts), and was not entered into under fraudulent inducement. Respondent provided Appellants all the help they wanted and needed with their insurance claim to receive a proper and satisfactory recovery from Allstate. The only issue in this matter is that Appellants simply do not want to pay for the services they received.

The district court correctly evaluated the facts, applied the law, and reached the proper conclusion by awarding Respondent summary judgment. The district court properly determined that Respondent is entitled to recover "71,379.42 for dwelling, other structures

and debris removal, $7,437.54 for alternative living expenses, and $7,261.91 for recoverable depreciation of contents." (Index 43 at 1). The district court made a typographical or mathematical error in ordering payment of $87,078.87. This amount should be reduced to $86,078.87.

For the reasons stated herein, Respondent respectfully request this Court affirm the holding of the district court.

Respectfully submitted,

HELLMUTH & JOHNSON

Dated: March 20, 2026.

By: */s/ Anthony A. Remick*

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