IN THE COURT OF APPEALS OF IOWA

No. 9-160 / 98-0221
Filed May 26, 1999

ERIN DAEHN and NANCY DAEHN,
Appellees,

vs.

AMERICAN MUTUAL INSURANCE ASSOCIATION,
Appellant.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

Defendant appeals a jury verdict in favor of the plaintiffs which awarded them $16,925 for damages to their house's roof and siding as a result of a hail storm.

AFFIRMED.

Gary J. Rolfes of Mayer, Mayer, Lonergan & Rolfes, Clinton, for appellant.

Tricia Spratt Fairfield of Norton & Norton, Lowden, for appellees.

Heard by Huitink, P.J., and Streit and Zimmer, JJ.

STREIT, J.

American Mutual Insurance Association contends the appraisal process, utilized pursuant to its homeowner's insurance policy, and the ultimate arbitration award, are binding on the parties. Because we find a question of material fact existed as to whether the arbitration award could be set aside for mistake or misfeasance prior to trial, and that sufficient evidence presented at trial would convince reasonable minds mistake and misfeasance did occur, we affirm all rulings of the trial court.

I. Background Facts & Proceedings.

Four months after the Daehns purchased their home, a hail storm damaged its roof and aluminum siding. The shingles on the roof and siding were approximately fifteen years old. The Daehns notified American Mutual Insurance Company of the occurrence and the parties agreed to obtain estimates for repair. Both contractors who did the initial estimates assumed total replacement of the shingles and siding was necessary. American Mutual's adjuster claimed total replacement was not warranted and offered to replace only the damaged shingles and siding.

Because the parties could not agree on whether the policy entitled the Daehns to total replacement or partial replacement of the shingles and siding, they initiated the insurance policy's appraisal process. Both parties selected an appraiser and those appraisers agreed upon an umpire. The Daehn's appraiser assessed the total replacement cost at $15,950. American Mutual's appraiser suggested repair rather than replacement, and assessed the cost of partial replacement at $6352.33. The

umpire adopted American Mutual's appraiser's assessment. American Mutual tendered payment to the Daehns for $6352.33. The Daehns refused payment.

The Daehns filed suit against American Mutual seeking to recover damages under the insurance policy. American Mutual moved for summary judgment, contending the umpire's decision was binding on the parties. The court denied the motion. The trial jury found in favor of the Daehns for $16,925. American Mutual motioned for judgment notwithstanding the verdict and new trial. The motions were denied. American Mutual appeals all rulings.

II. Motion for Summary Judgment.

American Mutual contends the trial court erred in denying its motion for summary judgment because the parties invoked the appraisal process agreed to in the insurance policy and the decision reached by the umpire under that process is binding as a matter of law.

Our review of a grant or denial of summary judgment is at law. Iowa R.App. P. 4; *Gabrilson v. Flynn*, 554 N.W.2d 267, 270 (Iowa 1996). Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997). We review the record in the light most favorable to the party opposing summary judgment; in this sense, we consider a motion for summary judgment as we would a motion for directed verdict. *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996). Under this standard,

summary judgment is inappropriate if reasonable minds would differ on how the issue should be resolved. *Id.*

An appraisal is a supplementary arrangement to arrive at a resolution of a dispute without a formal lawsuit. *Central Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 466 N.W.2d 257, 260 (Iowa 1991). Generally, provisions for appraisal of an insurance loss, whether under policy terms or pursuant to independent agreement, are valid and binding on the parties. *Id.* There are circumstances under which the appraisal decision is not binding, however, and may be set aside by a court. *See id.* An award will be set aside if the complaining party shows fraud, mistake, or misfeasance on the part of an appraiser or umpire. *Id.*

At trial, there were several factual disputes creating a question as to whether the arbitration agreement was binding on the parties due to mistake or misfeasance on the part of an appraiser or umpire. The plaintiff presented evidence the insurance company's appraiser and the umpire failed to apply the provisions of the insurance policy or applicable law regarding replacement cost. The plaintiff also presented evidence the umpire who made the ultimate appraisal decision was biased. The evidence presented would lead reasonable minds to differ on how the issue should be resolved. *Id.* Accordingly, the trial court did not err in reserving resolution of these issues for trial. The trial court's denial of the defendant's motion for summary judgment is affirmed.

III. Motion for Judgment Notwithstanding the Verdict.

American Mutual contends the trial court erred in denying its motion for judgment notwithstanding because there was insufficient evidence of mistake or misconduct by American Mutual's arbitrator and the umpire.

We review the court's denial of a motion for judgment notwithstanding the verdict for correction of errors at law. Iowa R.App. P. 4. We view the evidence in the light most favorable to the nonmoving party. *Mensink v. American Grain*, 564 N.W.2d 376, 379 (Iowa 1997)(citations omitted). If there is substantial evidence to support the claim the motion should be denied. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Id.*

We find substantial evidence supports the Daehns' claim American Mutual's appraiser and the umpire mistakenly applied the replacement cost provision of the insurance policy.

The insurance policy provided covered property losses would be settled by paying the smallest of "the cost to repair or replace the damaged property with property of like kind and quality." The policy also provided buildings and structures would be settled at replacement cost, but not exceeding the smallest of "the replacement cost of that part of the building damaged for equivalent construction and use" or "the amount actually and necessarily spent to repair or replace the damaged building." However, the commonly accepted meaning for replacement cost is "the

amount of money it would cost to replace the structure by restoring it to its former state of existence or condition." *City of Denison v. Clabaugh*, 306 N.W.2d 748, 752 (Iowa 1981).

The Daehns had numerous witnesses testify the only way to obtain property of like kind and quality was to replace all the shingles and siding. For example, one of the Daehns' witnesses, a contractor, testified it was impossible to replace individual shingles on the roof due to the damage that would occur to the remaining shingles on the home when replacing individual shingles. Another contractor testified the only way to return Daehns' home to the condition it occupied prior to the storm would be to completely replace the aluminum siding, and partial replacement would be extremely difficult and may not be successful.

Because we find reasonable minds would accept the evidence on the record as adequate to support the conclusion total replacement of the shingles and siding was required under the insurance policy, we find sufficient evidence American Mutual's appraiser and the umpire were mistaken in using the cost of repair amount in assessing their loss estimate.

We also find substantial evidence supports the conclusion the umpire was biased. The Daehns presented evidence that eighty percent of the umpire's work was for insurance companies, he never read the policy covering the Daehns' home, he accepted the appraisal of American Mutual's appraiser without making an independent investigation, and he provided the copy of his appraisal only to American

Mutual, rather than both American Mutual and the Daehns. Based on these facts, we find reasonable minds could conclude the umpire was biased.

For these reasons, we affirm the trial court's denial of American Mutual's motion for judgment notwithstanding the verdict.

IV. Motion for New Trial.

American Mutual contends the trial court abused its discretion in denying its motion for new trial because insufficient evidence supports the conclusion the Daehns were entitled to full replacement of the siding and roof under the policy. We review the granting or denial of a motion for new trial for abuse of discretion. *Lane v. Coe College*, 581 N.W.2d 214, 216 (Iowa App. 1998). In consideration of the evidence on the record, as discussed above, the verdict is supported by sufficient evidence on the record. We also find American Mutual's contention the verdict of $16,925 is excessive without merit. The verdict is the exact amount of the bid by Holst Construction, who was performing the repair at the time of trial. For these reasons, we affirm the trial court's denial of American Mutual's motion for new trial.

We affirm all rulings of the trial court.

AFFIRMED.

No. 98-0221. [9-160] DAEHN v. AMERICAN MUTUAL INS. ASSN

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge. **AFFIRMED.** Heard by Huitink, P.J., and Streit and Zimmer, JJ. Opinion by Streit, J. (7 pages $2.80)

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