

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

WHITE SURF CONDOMINIUM
MANAGEMENT ASSOCIATION, INC.,

Plaintiff,

v.

Case No: 6:17-cv-1203-Orl-40TBS

LEXINGTON INSURANCE COMPANY,

Defendant.

ORDER

This case comes before the Court without oral argument on Plaintiff's Motion to Confirm Appraisal Award (Doc. 45) and Defendant's response in opposition (Doc. 46).

Plaintiff White Surf Condominium Association, Inc. filed this lawsuit against its insurer, Defendant Lexington Insurance Company, in state court, alleging breach of a commercial insurance policy for failure to pay for damages to Plaintiff's property caused by Hurricane Matthew (Doc. 3). Plaintiff demands trial by jury (Id.). Defendant removed the case (Doc. 1) to this Court where it requested a stay of the litigation and an order compelling appraisal, pursuant to the terms of the policy (Doc. 17). The motion was granted in part (Doc. 19), the parties proceeded to appraisal, and an award was rendered by the appraisal panel (Doc. 45-3). Defendant contests the award, and has filed a counterclaim for declaratory relief, questioning whether the appraiser appointed by Plaintiff was impartial (Doc. 31). The stay has been lifted (Doc. 36) and Plaintiff filed this motion to confirm the appraisal award. The motion is accompanied by the Affidavit of Juan Cartaya, the subject appraiser, averring that he billed and was paid on an hourly basis and "never had any financial interest in the outcome of the appraisal process in this

case” (Doc. 45-2). Defendant opposes the relief as premature, noting the pendency of its counterclaim (Doc. 46, ¶¶ 13-17). Defendant argues that the instant motion seeks, essentially, a summary judgment before it has even had the chance to depose Mr. Cartaya about his records and fee arrangement (Id., ¶ 16).

The Court agrees with Defendant. Whether one of the appraisers was impartial has been raised in the pleadings and is (apparently) the ultimate issue in the case. As the impartiality or not of the appraiser is a mixed question of law and fact, Defendant is entitled to proceed with discovery in the normal course before the issue is joined for resolution in a motion for summary judgment or at jury trial. Accordingly, Plaintiff’s motion is **DENIED, without prejudice** to reassertion in a motion for summary judgment or at trial.

DONE and ORDERED in Orlando, Florida on February 5, 2019.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to Counsel of Record