

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LEVI HOLDING, LLC dba Nino's
Bakery,

Plaintiff,

v.

Case No: 2:18-cv-361-FtM-29CM

SCOTTSDALE INSURANCE
COMPANY,

Defendant.

OPINION AND ORDER

This matter comes before the Court on plaintiff's Motion to Confirm Appraisal Award and for Entry of Final Judgment (Doc. #25) filed on February 11, 2019. Defendant filed a Response and Memorandum of Law in Opposition (Doc. #27) on February 25, 2019.

Plaintiff Levi Holding, LLC d/b/a Nino's Bakery filed this action in state court on April 23, 2018, and on May 23, 2018, defendant Scottsdale Insurance Company removed the case to federal court and invoked the appraisal process. In the Complaint (Doc. #2), plaintiff alleges one count for breach of contract with respect to an insurance policy issued by Scottsdale because defendant failed to pay full amount of damages for covered losses suffered on or about September 10, 2017, including repairs to the business, loss of business, and all other coverages. (Doc. #2, ¶¶ 4, 6, 16; Doc. #2-1, the "Policy").

On July 25, 2018, before a scheduling order was issued and before discovery commenced, the Court stayed the case pending completion of the appraisal process. (Doc. #19.) On April 1, 2019, defendant filed a Notice of Completion of Appraisal (Doc. #29) indicating that on or about February 8, 2019, the Umpire executed an appraisal award, which has been paid. Defendant's position is that the appraisal is complete and the case may be dismissed. Plaintiff states that business income loss was not appraised and is still subject to a judicial determination. (Doc. #25, ¶ 11.) See also Notice of Status Update Regarding Appraisal Process (Doc. #30, ¶ 4) ("The Appraisal award was issued and paid, however, there has been no attempt by Defendant to reach an agreement as to attorney's fees, or costs, or attempt to resolve the remaining issues in the claim.").

As the Complaint does assert business losses, which were not addressed by the appraisal process, the Court finds that confirmation would be premature and the case is not complete. Rather, the Court finds that the case should be reopened so that defendant may file an Answer to the Complaint on the remaining coverage issues. Thereafter, the parties will be required to file an Amended Case Management Report.

Accordingly, it is hereby


ORDERED:

1. Plaintiff's Motion to Confirm Appraisal Award and for Entry of Final Judgment (Doc. #25) is **DENIED** without prejudice as premature. The Clerk shall lift the stay and reopen the case.

2. Defendant shall file its answer to the Complaint within **FOURTEEN (14) DAYS** of this Order.

3. The parties shall file an Amended Case Management Report within **THIRTY (30) DAYS** of this Order.

DONE and ORDERED at Fort Myers, Florida, this 29th day of April, 2019.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record