

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

LAS BRISAS CONDOMINIUM  
HOMES CONDOMINIUM  
ASSOCIATION, INC.,

Plaintiff,

v.

Case No.: 2:21-cv-41-KCD

EMPIRE INDEMNITY  
INSURANCE COMPANY,

Defendant.

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**ORDER**

Before the Court is Defendant Empire Indemnity Insurance Company's motion for summary judgment. (Doc. 209.)<sup>1</sup> Plaintiff Las Brisas Condominium Homes Condominium Association has responded in opposition. (Doc. 213.) For the reasons below, Empire's motion is denied.

This lawsuit stems from Hurricane Irma. At the time of the storm, Las Brisas held an insurance policy with Empire. (Doc. 81 ¶ 8.) Las Brisas allegedly suffered roof damage during the hurricane and submitted a claim. According to the complaint, Empire adjusted the claim in bad faith by dragging its feet to

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<sup>1</sup> Unless otherwise indicated, all internal quotation marks, citations, and alterations have been omitted in this and later citations.

limit its exposure after its field adjuster reported significant damage to the property. (Doc. 72.)

Pertinent here, Las Brisas seeks seven categories of relief: attorney's fees, expert fees, interest and prejudgment interest, non-taxable costs, costs of appraisal, "[o]ther damages according to proof," and punitive damages. (Doc. 72 at 7.) In its motion for summary judgment, Empire asserts Las Brisas cannot recover several of these damages. (Doc. 209.)

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). Because parties may move for summary judgment on a part of a claim or defense, they may seek summary judgment on "a particular element of damages." *Davis Grp., Inc. v. Ace Elec., Inc.*, No. 6:14-CV-251-ORL-TBS, 2015 WL 3935422, at \*7 (M.D. Fla. June 26, 2015). But "[t]he primary purpose of granting summary judgment is to avoid unnecessary trials when there is no genuine issue of material fact in dispute." *Duff v. Prison Health Servs.*, No. 8:09-CIV-374-T-33TGW, 2011 WL 4542507, at \*7 (M.D. Fla. Sept. 26, 2011). As a result, courts generally disfavor "partial summary judgment under F.R.C.P. 56(a) on issues that are not dispositive of a party's liability as to a certain claim[.]" *Bloch v. Beard Marine Air Conditioning & Refrigeration, Inc.*, No. 18-CV-61821-CIV, 2019 WL 13218125, at \*3 (S.D. Fla. Nov. 7, 2019). And "nothing requires a court to decide a non-case-dispositive

issue raised in a summary judgment motion if a trial may ultimately moot the issue.” *Davis Grp., Inc.*, 2015 WL 3935422, at \*7; *Stormo, v. State National Insurance Co.*, No. CV 19-10034-FDS, 2021 WL 4973835, at \*2–3 (D. Mass. Oct. 26, 2021) (“Courts generally refuse to entertain motions for partial summary judgment on damages where a party’s liability has not yet been determined.”).

Summary judgment is not the ideal vehicle for addressing Empire’s arguments against damages. First, the motion does not prevent an unnecessary trial or narrow the issues. *Duff*, 2011 WL 4542507, at \*7. It only seeks to limit the relief Las Brisas may pursue. As a result, even if the Court grants summary judgment, the underlying claim will proceed. Second, the motion places the cart before the horse. The jury may side with Empire. If so, the Court need not determine what damages are recoverable. Thus, judicial efficiency counters any benefit of resolving Las Brisas’ hypothetical entitlement to certain damages before trial. *Davis Grp., Inc.*, 2015 WL 3935422, at \*8.

Empire’s concerns about the relief sought are better addressed through motions in limine or jury instructions. *See Colvin v. Sanchez*, No. 14-CV-05400-LB, 2020 WL 1450555, at \*1 (N.D. Cal. Mar. 25, 2020). Such mechanisms can regulate the evidence and focus the jury on the recoverable damages, assuming

Las Brisas succeeds on the merits. Accordingly, Empire's Motion for Summary Judgment (Doc. 209) is **DENIED**.

**ORDERED** in Fort Myers, Florida this January 5, 2024.



Kyle C. Dudek  
United States Magistrate Judge

Copies: All Parties of Record