

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BUENA VISTA OF DEEP CREEK
CONDOMINIUM ASSOCIATION,
INC.,

Plaintiff,

v.

Case No.: 2:23-cv-957-SPC-KCD

CLEAR BLUE SPECIALTY
INSURANCE COMPANY,

Defendant.

_____ /

ORDER

This is an insurance dispute stemming from Hurricane Ian. The parties now agree that their case should go to appraisal. (Doc. 13.)

When an insurance policy contains an appraisal provision, “the right to appraisal is not permissive but is instead mandatory, so once a demand for appraisal is made, ‘neither party has the right to deny that demand.’” *McGowan v. First Acceptance Ins. Co., Inc.*, 411 F. Supp. 3d 1293, 1296 (M.D. Fla. 2019) (quoting *United Cmty. Ins. Co. v. Lewis*, 642 So. 2d 59, 60 (Fla. 3d DCA 1994)). And like other stipulations about dispute resolution, the Court enforces contractual appraisal provisions by non-dispositive order. *See Positano Place at Naples II Condo. Ass’n, Inc. v. Empire Indem. Ins. Co.*, No. 2:21-cv-181-SPC-MRM, 2022 WL 714809, *2 (M.D. Fla. Mar. 10, 2022)

("[B]ecause appraisal will not dispose of any claims or defenses, the Court does not treat the motion to compel appraisal as one for summary judgment.").

As the parties have agreed that appraisal is appropriate, their request will be granted. Further, the parties request a stay during appraisal. The Hurricane Ian Scheduling Order contemplates such relief if the parties agree that appraisal is appropriate. (Doc. 6 at 2.) Thus, the case will be stayed. All deadlines and events in the Hurricane Ian Scheduling Order (Doc. 6) are suspended. The parties have agreed that the appraisal panel must itemize the awarded damages by coverage, to be accompanied by a supporting estimate. Though the parties cite no contractual provision that requires such an award, because the parties agree, their request will be granted.

According, it is hereby **ORDERED**:

1. The Joint Stipulation for Appraisal and Stay of the Case (Doc. 13) is **GRANTED**, and the appraisal panel must itemize the awarded damages by coverage, to be accompanied by a supporting estimate.

2. This case is **STAYED** pending appraisal, and the Clerk must add a stay flag to the file and **ADMISTRATIVELY CLOSE THE CASE**.

3. The parties are **DIRECTED** to file a joint report on the status of appraisal on or before **February 26, 2024**, and every ninety days thereafter until appraisal has ended.

4. Within 15 days of a signed appraisal award, the parties are **DIRECTED** to jointly notify the Court of (a) what issues, if any, remain for the Court to resolve; (b) whether the stay needs to be lifted; and (c) how this action should proceed, if at all.

ORDERED in Fort Myers, Florida this November 27, 2023.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record