IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 3D2024–491

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellant,

v.

ADAS WINDSHIELD CALIBRATIONS, LLC,
A/A/O SAMUEL BLEVEINS,

Appellee.

ANSWER BRIEF
OF ADAS WINDSHIELD CALIBRATIONS, LLC,
A/A/O SAMUEL BLEVINS

ON APPEAL FROM AN ORDER DEFERRING APPRAISAL ENTERED IN THE
COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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RECORD REFERENCE ABBREVIATIONS USED IN THIS BRIEF

The Appellant filed an Appendix along with its Initial Brief containing all the relevant lower court documents. Citations in this brief are made to that Appendix and are abbreviated as "A:__" providing pinpoint citations to the document's Bates numbering.

INTRODUCTION

Appellant appeals from the trial court's order denying its motion to dismiss the underlying lawsuit and compelling appraisal under its insurance policy. The Appellee, an assignee under the policy who fixed the insured's windshield, disputed the manner in which Appellant paid for those repairs in its post-loss handling of the claim—by employing an arbitrary internal methodology that failed to comply with the policy's requirement to pay the prevailing competitive price for the windshield. Appellee opposed compelling appraisal at this juncture of the litigation as the Appellee had raised *still pending declaratory judgment counts* in its operative complaint targeted at the very appraisal Appellant wished to compel and the use of the arbitrary pricing methodology.

First and foremost, jurisdiction is lacking here. The trial court did not determine any party's entitlement to appraisal under the insurance policy, but rather postponed such determination until it could resolve the Appellee's still pending counts for declaratory relief aimed specifically at uncertainties within the appraisal provision. Appraisal is very much still on the table for the Appellant, but it simply must wait until the adjudication of those

declaratory judgment counts. That type of inchoate ruling is not embraced by Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).

Second, even if the Court could exercise jurisdiction over the appeal, it will readily find that the facts and law of this case are in complete parity with the Court's *People's Tr. Ins. Co. v. Marzouka*, 320 So. 3d 945 (Fla. 3d DCA 2021) opinion. The Court's precedent authorizes the trial court, in its discretion, to resolve the pending declaratory judgment counts prior to sending the parties to appraisal. The trial court's exercise of that discretion was made all the more reasonable given that the Appellee sought declarations related to the very appraisal the parties would soon enter. Which is to say, ignoring those counts would have been the only *un*reasonable course of action.

Dismissal, or in the alternative affirmance, of the Appellant's appeal is warranted.

STATEMENT OF THE CASE AND FACTS

I. THE DISPUTE BETWEEN THE PARTIES.

The litigation follows a dispute between the Appellee, ADAS Windshield Calibrations LLC, a/a/o Samuel Blevins, ("ADAS"), against the Appellant, State Farm Mutual Automobile Insurance Company ("State Farm"), over the interpretation of an insurance policy's terms and the parties'

compliance with those terms. A:59–81 (the operative Complaint). *And see* A:200–265 (the Policy). ADAS alleges that State Farm breached its insurance contract with its insured, Samuel Blevins, when State Farm employed an arbitrary (and inadequate) method of paying ADAS the cost of replacing Mr. Blevins' windshield following a car accident. A:60. Specifically, ADAS claimed that State Farm breached its insurance contract by failing to pay for windshield repairs at a "prevailing competitive price" as stipulated in the Policy, instead applying an undisclosed "Program Pricing" not detailed in the Policy's terms, and not consistent with the definition of a "prevailing competitive price." A:61–62.

The Policy allows State Farm to pay for the repairs to a covered vehicle in several ways, one of which is to pay a "repair estimate" written based upon the "prevailing competitive price" of the repair:

> (1) We have the right to choose one of the following to determine the cost to repair the covered vehicle:
>
> …
>
> (c) A repair estimate that is written based upon or adjusted to:
>
> > (i) the prevailing competitive price;
> >
> > (ii) the lower of paintless dent repair pricing established by an agreement we have with a third party or the paintless dent repair price that is competitive in the market; or

> (iii) a combination of (i) and (ii) above.

A:249. The Policy defines the "prevailing competitive price" as the following:

> The prevailing competitive price means prices charged by a majority of the repair market in the area where the covered vehicle is to be repaired as determined by a survey made by us. If asked, we will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the covered vehicle to its pre-loss condition.

A:249.

ADAS's suit claims that State Farm ignored the provision above and instead chose to pay using a different methodology; namely, a bid or repair estimate generated by State Farm's own internal network, which is inconsistent with the Policy's language. A:61–62. *And see* A:127–128. That is, while State Farm requested a "bid" from a repair shop that came in under ADAS's invoiced price, that bid was not representative of the "repair market" but rather sourced from providers who are required to be a part of State Farm's own internal "Offer and Acceptance Program." A:66. That program, it was alleged, requires all bidders to give bids in accordance with State Farm's Program Pricing as opposed to the repair market in the area. A:67.

The Policy further provided that if State Farm and its insured disagreed as to the amount of the repair of glass (like a windshield), "an appraisal will

be used as the first step toward resolution." A:216. The Policy set out some of the "rules and procedures" of the appraisal as follows:

> (a) The owner and we will each select a competent appraiser.
>
> (b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or we may petition a court that has jurisdiction to select the third appraiser.
>
> (c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.
>
> (d) The appraisers shall only determine the cost of repair, replacement, and recalibration of glass. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.
>
> (e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the owner of the covered vehicle and us.
>
> (f) We and you do not waive any rights by submitting to an appraisal.

A:216.

Worth noting, the provision calls for the parties to "petition a court that has jurisdiction to select the third appraiser" in the event that the parties' appraisers cannot agree on a third appraiser within 30 days. *Id*.

And so it was that State Farm refused to pay ADAS's bill for the cost of repairing its insured's windshield and instead sourced a bid from its "Offer and Acceptance Program." A:66. Naturally, State Farm's bid — commensurate with State Farm's internally prescribed Program Pricing and not the repair market in the area — fell far short of ADAS's invoiced price. A:127. ADAS disagreed that State Farm's "Program Pricing" was in fact a "prevailing competitive price" as defined by the terms of the Policy, but State Farm demanded that the parties enter appraisal to resolve the dispute. A:61; A:127–129.

II. THE UNDERLYING LITIGATION FEATURES A PURSUIT OF DECLARATORY RELIEF.

ADAS filed two *types* of counts against State Farm, and four counts total. A:59–81. This is an important fact.[1]

In its first count, ADAS claimed that State Farm breached the Policy by self-sourcing a bid instead of paying a "prevailing competitive price." A:61–

[1] Initially, ADAS filed a simple breach of contract count. A:4–11. State Farm moved to compel appraisal, A:26–33, and ADAS amended its complaint to include the requests for declaratory relief targeted at resolving uncertainties within the appraisal process. A:34–58. The trial court granted ADAS leave to amend its complaint seemingly in the same order that it now on appeal. A:278. As part of that order, ADAS withdrew the fifth count in its complaint.

62. Adas contends State Farm's use of a "sham bid process" in its "predetermined Program Pricing" constitutes a breach of the Policy. A:61.

In its second, third, fourth, and fifth counts, ADAS asked for *declaratory relief* against State Farm to resolve ambiguities all relating to the appraisal provision in the Policy. A:63–76. These counts are critical to the resolution of the appeal, and they will be summarized below in great detail.

In its second count, ADAS sought a declaratory judgment regarding the ambiguous methodology set out in State Farm's insurance policy, specifically the "prevailing competitive price" and "bid or repair estimate" methodology used to determine State Farm's repair costs. A:66–67. ADAS contended these terms lacked clear definitions, allowing State Farm to apply the undisclosed and self-determined "Program Pricing" that is neither outlined nor authorized within the Policy. A:67. ADAS argued that, as a result, these undefined terms are open to multiple interpretations and thus resolution of the ambiguity will, at minimum, assist the appraisal panel in determining the value of the repairs and whether State Farm's "Program Pricing" was consistent with the terms of the Policy. A:67.

In its third count, ADAS requested a declaration that the appraisal provision was unenforceable because it requires the parties to "petition a court that has jurisdiction to select the third appraiser" and yet no cause of

action exists for such a petition. A:69 ("[W]hat cause of action could be filed to force a court to choose an appraiser?").[2] Aside from that seminal question unaddressed by the Policy, ADAS pointed out that the appraisal provision "fails to adequately describe the procedural and substantive rules that govern the appraisal process" and requested a declaration from the trial court regarding the rules that would govern the upcoming appraisal process:

- **Rules or Procedures for Challenging a Biased or Incompetent Appraiser**: Uncertainty regarding whether there are established procedures to challenge or disqualify an appraiser or umpire deemed biased or lacking competency.
- **Determination of Competency and Impartiality of Appraisers**: Uncertainty regarding who is responsible for determining whether an appraiser or umpire is competent and impartial, as this affects the credibility of the entire appraisal process.
- **Rules Governing the Appraisal Process**: Uncertainty regarding the rules and procedures that govern the appraisal process is critical for transparency and ensuring that all parties are aware of the standards and methods to be followed.
- **Evidentiary Standards Governing Final Determination**: Uncertainty regarding the evidentiary standards appraisers or umpires must use in their final determination, which is

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[2] The Fifth District Court of Appeal's decision in *State Farm Florida Ins. Co. v. Roof Pros Storm Div., Inc.*, 346 So. 3d 163 (Fla. 5th DCA 2022) provides a useful discussion on the subject matter jurisdiction of our state's circuit and county courts to consider such actions and is the genesis of the declaratory relief sought.

crucial for ensuring decisions are based on reliable and relevant evidence.

- **Procedure for Appealing or Challenging Invalid Determinations**: Uncertainty regarding any available procedures for appealing or challenging decisions that are arbitrary, capricious, or otherwise invalid, which is essential for accountability and fairness in the appraisal outcomes.

A:69–70.

In its fourth count, ADAS asked for a declaration as to whether the parties' chosen "competent appraiser" had to be impartial. A:71–73. "Upon information and belief," ADAS had reason to believe that State Farm's appraiser had a "pre-existing financial relationship with" State Farm and "only serves large insurance companies." A:71–72. And thus, ADAS has a present need for determining whether the parties' appraisal had to be impartial in addition to being "competent." *Id*.

For ease of reference, ADAS's declaratory action counts are summarized in the table below:

Count	Allegation	Key Issues Raised	Relief Sought
II. Declaratory Relief – Ambiguity of Terms	Ambiguity in "prevailing competitive price" and "bid or repair estimate" policy terms	Terms lack clear definitions, making them open to multiple interpretations	A declaratory judgment that these terms are vague and ambiguous

III. Declaratory Relief – Unenforceability of Appraisal Provision	Appraisal process is unenforceable in Florida	Appraisal provision requires petition in court that does not possess subject matter jurisdiction to rule on request	A declaratory judgment that the appraisal provision is unenforceable due to its inability to be performed
IV. Declaratory Relief – Failure to Select Competent and Impartial Appraiser	State Farm failed to appoint a "competent" or impartial appraiser	Allegations that State Farm's appraiser is biased, lacks relevant experience, and has a pre-existing financial relationship with State Farm	A declaratory judgment that State Farm's chosen appraiser does not meet competency requirements and that the Policy requires impartial appraisers

III. STATE FARM MOVES TO COMPEL APPRAISAL.

State Farm moved to dismiss, or in the alternative stay, ADAS's suit to comply with the appraisal process outlined in the Policy. A:105–129. State Farm acknowledged it owed coverage for the repair of the windshield but disputed ADAS's invoiced amount of $1,086.31. A:105–106. Despite the other claims in ADAS's complaint, including whether State Farm's bid process was consistent with its own Policy, State Farm invoked the appraisal provision in the policy suggesting to the trial court that ADAS was not entitled to litigate its breach of contract count or the several declaratory action counts. A:105–109.

As to those outstanding declaratory relief counts, State Farm contended that "[t]here is no bona fide, actual, present need for declaration as the Appraisal Provision has been litigated extensively and declared unambiguous, valid and enforceable by Florida courts." A:121. State Farm argued that "there are neither facts justifying the Court's analysis nor rights dependent on any purported facts" because ADAS's "arguments are based either on irrelevant facts or speculation." A:122. The only two issues State Farm believed to be viable were "moot as Florida courts have already found that no such requirements exist" in a standard appraisal provision. A:122.

The trial court held a hearing on the motion. A:265–273.

State Farm stood on its arguments, articulating that State Farm "timely and properly invoked the appraisal provision" and the provision is intended "to resolve the dispute without the need for a lawsuit or litigation which is appraisal." A:267–268.

ADAS's counsel responded, pointing out that ADAS was "seeking declaratory actions that are directed to the actual appraisal process," and those had to be resolved in advance of going to appraisal. A:268. ADAS went on to describe the several uncertainties it had with respect to the provision (tying those uncertainties to the counts of its Complaint): "[T]he problem that State Farm has as it has in all of their appraisal cases is that

they decided that they wanted to make their appraisers and the umpire not impartial. So we filed declaratory actions with regard to those. Also, we have filed declaratory actions with regards to the appraiser that they chose because they chose an appraiser who has been thrown out by courts all over the State of Florida." A:268–269.

To ameliorate State Farm's concerns that ADAS was utilizing the declaratory action counts to bypass the appraisal process in favor of litigation, ADAS agreed to stay "the breach of contract claim" and proceed "only on the declaratory counts first" consistent with Third District Court of Appeal precedent. A:269 (citing to *Progressive Am. Ins. Co. v. Dr. Car Glass, LLC*, 327 So. 3d 447 (Fla. 3d DCA 2021)).

The trial court, after considering the parties' arguments, exercised its discretion in pertinent part, as follows:

> I believe, [State Farm], that [ADAS] does carry the day on this issue here today because when you do have declaratory relief, the 3rd has spoken on this as well, so I will stay the breach of contract action pending the determination of the declaratory counts as alleged as argued by [ADAS].
>
> You both might want to take a look at this Supreme Court Case as well [*Am. Coastal Ins. Co. v. San Marco Villas Condo. Ass'n, Inc.*, 379 So. 3d 1099 (Fla. 2024)] as I think it — it is insightful to the degree that it places a lot discretion in this regard with the trial courts of this great state which just brings happiness to this trial judge's heart.

> With the discretion we still have or don't have, it's nice to be refreshingly reminded that the trial Courts do have it. I think that's a more prudent course of action; therefore, the motion to dismiss is denied. But to the degree that [ADAS] is conceding that we should stay the breach of contract action and only leave the discovery on the declaratory counts — and he's dropping count — or withdrawing count five of the complaint, in part, [State Farm's] motion may be is otherwise necessarily granted in that regard.

A:271–272.

Thereafter, the trial court, consistent with its on-the-record pronouncement, entered an order on State Farm's motion to compel appraisal effectively deferring the appraisal until ADAS's declaratory relief counts were resolved:

ORDER ON DEFENDANT'S MOTION TO DISMISS AND COMPEL APPRAISAL

THIS CAUSE having come before the Court on the 6th day of February, 2024, on Defendant's Motion To Dismiss and Compel Appraisal and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon:

ORDERED AND ADJUDGED that:

1. Defendant's Motion to Dismiss and Compel Appraisal is hereby DENIED.
2. Count I of Plaintiff's Amended Complaint for Breach of Contract is STAYED pending resolution of Counts II-IV for Declaratory Relief.
3. Plaintiff withdraws Count V of the Amended Complaint.

Defendant shall file an Answer within thirty (30) days of the entry of this Order. Discovery shall proceed only as to Counts II, III and IV of Plaintiff's Amended Complaint for Declaratory Relief, the responses to which shall be filed within thirty (30) days of the entry of this Order.

A:278 (the "Order Deferring Appraisal").

From the Order Deferring Appraisal, State Farm has appealed under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv). A:280.[3]

SUMMARY OF ARGUMENT

The Order Deferring Appraisal warrants either dismissal for lack of jurisdiction or affirmance due to the trial court's proper exercise of discretion.

First and foremost, jurisdiction is lacking here because the trial court did not determine any party's entitlement to appraisal under the Policy. Rather, the Order Deferring Appraisal merely postponed such determination until resolution of ADAS's pending declaratory judgment counts. Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) does not embrace that type of inchoate ruling—orders that simply deny a motion to dismiss, or impose conditions on appraisal without determining entitlement, fall outside the Rule's narrow scope.

Second, even if the Court could exercise jurisdiction over the appeal, it will readily find that the trial court properly postponed compelling appraisal until it could resolve ADAS's declaratory judgment claims that were targeted specifically at uncertainties within the very appraisal provision State Farm

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[3] The Rule provides for the appeal from orders that determine "the entitlement of a party to an appraisal under an insurance policy[.]" Fla. R. App. P. 9.130(a)(3)(C)(iv).

sought to invoke. This measured approach follows this Court's guidance in *Marzouka*, 320 So. 3d 945, which recognizes trial courts' authority to resolve declaratory claims before ordering appraisal.

State Farm's argument that the Policy creates conditions precedent to litigation does not change the analysis. The Policy's "full compliance" provision does not bar declaratory relief claims, and the appraisal provision is expressly circumscribed to determining repair costs rather than precluding litigation of other claims. Not to mention, the provision attempts to bestow upon trial courts subject matter jurisdiction which they do not possess—namely, the authority to appoint appraisers without statutory authorization. Worth noting, try as State Farm might, this Court cannot reach the merits of ADAS's declaratory claims in this appeal, as those issues do not tag along with review of this nonfinal order.

Whether through dismissal for lack of jurisdiction or affirmance of the trial court's reasonable exercise of discretion, the Order Deferring Appraisal should stand.

ARGUMENT

I. STANDARD OF REVIEW.

State Farm posits that the applicable standard of review of an order on a motion to dismiss to comply with an appraisal provision is de novo. *See* Initial Brief of Appellate State Farm Mutual Automobile Insurance Company ("IB") at 17 (citing the Fifth District Court of Appeal's *NCI, LLC v. Progressive Select Ins. Co.*, 350 So. 3d 801, 805–06 (Fla. 5th DCA 2022)). But that's not this Court's law nor is it the appropriate circumstance for that type of review.

Here, the Order Deferring Appraisal merely reflects the trial court's discretion to "decide the order in which the issues" would be determined by appraisal and the court. *Barbato v. State Farm Florida Ins. Co.*, 319 So. 3d 96, 97 (Fla. 3d DCA 2021) (internal citations omitted). In this specific context, the Court has said that a trial court "ordinarily has discretion to determine the order in which it disposes of the declaratory judgment counts and the breach of contract count." *Progressive Am. Ins. Co. v. Dr. Car Glass, LLC*, 327 So. 3d 447 (Fla. 3d DCA 2021). Which is to say, the trial court's discretion will be reviewed for abuse of that very discretion. *Barbato*, 319 So. 3d at 97.

Relatedly, State Farm is requesting that the Court review the trial court's refusal to dismiss ADAS's declaratory judgment actions (though it did not specifically request that relief below) and that ruling would be, as

intended by the same authority relied on by State Farm, reviewed "for an abuse of discretion." *NCI, LLC*, 350 So. 3d at 805–06. *Accord Express Damage Restoration, LLC v. First Cmty. Ins. Co.*, 314 So. 3d 532, 534 (Fla. 3d DCA 2020) (discussing the circumstances for an abuse of discretion review); *Kelner v. Woody*, 399 So. 2d 35, 37 (Fla. 3d DCA 1981) (applying the abuse of discretion standard).

I. THIS COURT LACKS JURISDICTION FOR THE APPEAL BECAUSE THE TRIAL COURT DID NOT DETERMINE ANY PARTY'S RIGHT TO APPRAISAL UNDER THE POLICY.

Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) allows for interlocutory review of orders that "determine … the entitlement of a party to an appraisal under an insurance policy." The Rule — even when it applied to orders determining a right to arbitration — has always been construed narrowly, as it must be. The Rule only applies when orders explicitly determine a party's right to appraisal. Here, the Order Deferring Appraisal made no such determination: there was no determination that State Farm was or was not entitled to appraisal under the Policy. A:278. The Order merely denied State Farm's motion to dismiss the litigation in favor of appraisal and deferred a final ruling on entitlement "pending resolution of Counts II-IV for Declaratory Relief." A:278. State Farm's appeal wants for

jurisdiction under this Court's precedent strictly interpreting the plain text of the Rule governing nonfinal appeals.

Let's take another look at the Order Deferring Appraisal. The Order denies State Farm's motion to dismiss and compel appraisal without explication, stays ADAS's breach of contract claim which was subject to State Farm's appraisal provision, and allows the parties to proceed litigating ADAS's counts for declaratory relief:

> **ORDER ON DEFENDANT'S MOTION TO DISMISS AND COMPEL APPRAISAL**
>
> THIS CAUSE having come before the Court on the 6th day of February, 2024, on Defendant's Motion To Dismiss and Compel Appraisal and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon:
>
> ORDERED AND ADJUDGED that:
>
> 1. Defendant's Motion to Dismiss and Compel Appraisal is hereby DENIED.
> 2. Count I of Plaintiff's Amended Complaint for Breach of Contract is STAYED pending resolution of Counts II-IV for Declaratory Relief.
> 3. Plaintiff withdraws Count V of the Amended Complaint.
>
> Defendant shall file an Answer within thirty (30) days of the entry of this Order. Discovery shall proceed only as to Counts II, III and IV of Plaintiff's Amended Complaint for Declaratory Relief, the responses to which shall be filed within thirty (30) days of the entry of this Order.

A:278.

Generally, "a defendant cannot appeal a nonfinal order which denies a motion to dismiss." *Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465, 468 (Fla. 1st DCA 2011) (internal citations omitted). The Florida

Constitution, however, grants the district courts of appeal jurisdiction to "review" some "interlocutory orders," but only to "the extent provided by rules adopted by the supreme court." Art. V, § 4(b)(1), Fla. Const. "Florida Rule of Appellate Procedure 9.130 is the rule adopted by the Florida Supreme Court, and it lists the nonfinal orders that are appealable to the district courts." *Gomez v. S & I Properties, LLC*, 220 So. 3d 539, 540–41 (Fla. 3d DCA 2017).

Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) allows for interlocutory review of orders that "determine … the entitlement of a party to an appraisal under an insurance policy." Fla. R. App. P. 9.130(a)(3)(C)(iv). In various iterations, this Court has held that orders that merely deny a motion to dismiss based on an arbitration or appraisal provision are not appealable under the Rule.[4] And where an order does not definitively determine entitlement at all, the Court has held that it is equally unappealable under the Rule.

Three decisions, each by this Court, inform the jurisdictional analysis.

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[4] Rule 9.130(a)(3)(C)(iv) formerly provided for review of orders pertaining to arbitration and courts applied that text to orders pertaining to appraisal. Now the rule explicitly governs orders that "determine … the entitlement of a party to an appraisal under an insurance policy" and orders addressing arbitration are governed under Rule 9.130(a)(3)(I).

First, in *Gomez v. S & I Properties, LLC*, 220 So. 3d 539 (Fla. 3d DCA 2017), the Court held that a trial court's refusal to dismiss a complaint based on an arbitration provision was not appropriately reviewable under Rule 9.130(a)(3)(C)(iv). *Id*. at 542. *And see Weber v. Bonilla-Mathe*, 807 So. 2d 170, 170 (Fla. 3d DCA 2002). Here, while State Farm's motion was styled as a "Motion to Dismiss and Compel Appraisal," the trial court's order reflects that it did not determine whether State Farm was entitled to appraisal at all and merely treated the motion as a motion to dismiss, as evidenced by its directive that State Farm file an answer within 30 days. Which is to say, the Order Deferring Appraisal merely denies State Farm's motion to dismiss that was based on an appraisal provision—it does not actually determine State Farm's entitlement to appraisal.

Second, as held by the Court in *El Cid Condo. Ass'n, Inc., No. II v. Pub. Serv. Mut. Ins. Co.*, 780 So. 2d 325 (Fla. 3d DCA 2001), when a trial court's order merely imposes conditions on or delays appraisal, rather than denying entitlement to it altogether, the order is not appealable under Rule 9.130(a)(3)(C)(iv). Here, the trial court has not definitively ruled that State Farm is not entitled to appraisal—it has simply allowed the declaratory judgment claims to proceed first while staying the breach of contract claim. That is merely the "imposition of conditions" on State Farm—i.e., resolve the

declaratory judgment counts first—and not a determination that State Farm is not entitled to the appraisal. *El Cid Condo. Ass'n, Inc., No. II*, 780 So. 2d at 325.

Third, an older decision of the Court—*See. Title & Ins. Co. v. Curtis*, 155 So. 2d 855 (Fla. 3d DCA 1963)—demonstrates a still relevant principle of law. In *Curtis*, the movant sought to dismiss a suit on the sole basis that the claims were governed by an arbitration provision. *Id*. at 856. The trial court denied the motion and the movant appealed. *Id*. The Court refused to exercise jurisdiction over the appeal simply because the movant "construed the order denying the motion to dismiss as an order denying an application to compel arbitration…." *Id*. Which is to say, a "trial court may construe a motion to dismiss as a motion to compel arbitration and make a determination on a party's entitlement to [appraisal] in its order on the motion… [or], [a]lternatively, a trial court may decide a motion to dismiss that asserts an entitlement to [appraisal] without reaching the [appraisal] issue." *Hopewell, LLC v. Alarion Bank*, 84 So. 3d 1073 (Fla. 1st DCA 2012). That's the case here. The trial court resolved State Farm's motion "without reaching the appraisal issue." *Id*.

The Order Deferring Appraisal, which primarily addresses State Farm's request to dismiss all ADAS's claims and allows the case to proceed on the

declaratory judgment counts, does not qualify as an appealable non-final order determining entitlement to appraisal. The Order effectively rules that appraisal is simply not yet ripe. That's not an order determining entitlement; that order is still to come.

The Court should dismiss for lack of jurisdiction.

II. THE TRIAL COURT REASONABLY EXERCISED ITS DISCRETION IN DETERMINING THAT ADAS'S DECLARATORY COUNTS REQUIRED RESOLUTION BEFORE COMPELLING THE PARTIES TO APPRAISAL BECAUSE ADAS SOUGHT DECLARATORY RELIEF REGARDING THAT VERY APPRAISAL PROVISION.

Even if the Court determines there is jurisdiction to hear this appeal, the trial court reasonably determined that it should defer on State Farm's request to enter appraisal until it resolved ADAS's counts for declaratory judgment as those claims were targeted at the appraisal that the parties were about to engage in. As this Court has held, dismissing ADAS's lawsuit without first adjudicating those claims would result in a "functional equivalent of summary judgment." *Marzouka*, 320 So. 3d at 950. The trial court, recognizing this Court's precedent, reasonably deferred sending the parties into appraisal "pending resolution of Counts II-IV for Declaratory Relief" and refused a premature adjudication of those counts. A:278.

The Court will see that State Farm spends most of its time ignoring this Court's precedent in favor of repeatedly denigrating ADAS's declaratory judgment claims — calling them "manufactured," "not genuine," "hypothetical," "transparent" — but those claims remain unresolved below. IB at 16, 17, 25, 27. Like them or not, the declaratory judgment counts were targeted specifically at the Policy's appraisal provision and thus stood in the way of ordering the parties to appraisal. And the trial court's refusal to prematurely adjudicate ADAS's those claims is not up for review as a tag along to this nonfinal appeal.

If not dismissed, the Court should affirm the appeal due to the trial court's reasonable exercise of its discretion.

A. Appraisal Provisions are Preferred but Declaratory Relief Directed at Such Provisions are Respected.

There is no denying that in Florida "[a]ppraisal clauses are preferred, as they provide a mechanism for prompt resolution of claims and discourage the filing of needless lawsuits." *First Protective Ins. Co. v. Hess*, 81 So. 3d 482 (Fla. 1st DCA 2011); *Citizens Prop. Ins. Corp. v. River Manor Condo. Ass'n, Inc.*, 125 So. 3d 846, 853 (Fla. 4th DCA 2013). But of course, "[a]ppraisals" like other provisions in an insurance policy "are creatures of contract and the subject or scope of appraisal depends on the contract

provisions." *Florida Ins. Guar. Ass'n v. Branco*, 148 So. 3d 488, 491 (Fla. 5th DCA 2014). *And see United Cmty. Ins. Co. v. Lewis*, 642 So. 2d 59 (Fla. 3d DCA 1994); *State Farm Fire & Cas. Co. v. Feminine Fashions, Inc.*, 509 So. 2d 376 (Fla. 3d DCA 1987). Which is to say, the interpretation of those contractual provisions dictates the parameters of the appraisal. *See State Farm Florida Ins. Co. v. Parrish*, 312 So. 3d 145, 149 (Fla. 2d DCA 2021).

Where the terms of an insurance policy provision are not clear and unambiguous, declaratory relief is often an appropriate vehicle to determine the parties' rights and obligations under those terms. *See, e.g., N. Florida Mango, LP v. LLS Holdings, LLC*, 375 So. 3d 906, 913 (Fla. 4th DCA 2023). But that's not all: as the supreme court made clear in *Higgins v. State Farm Fire & Cas. Co.*, 894 So. 2d 5 (Fla. 2004), although declaratory relief is available to resolve ambiguity in an insurance policy, it is not available *only* to resolve such ambiguity. *See Id*. at 12. "[D]eclaratory relief is available to resolve questions concerning the application of unambiguous policy provisions to a disputed set of facts." *Cintron v. Edison Ins. Co.*, 339 So. 3d 459, 462 (Fla. 2d DCA 2022).

The declaratory judgment act, application of which is to be afforded liberal construction, is intended to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations such as

parties to the same contract. *Kelner*, 399 So. 2d at 37. The granting of such relief remains discretionary with the trial court, and the court's ruling is accorded great deference. *Id.* In exercising this discretion, the trial court:

> [M]ay render declaratory judgments on the existence or nonexistence:
>
> (1) Of any immunity, power, privilege, or right; or
>
> (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

§ 86.011, Fla. Stat. (2024). The trial court — and this Court — is to keep in mind that "requests for declaratory relief should be liberally construed." *Cintron*, 339 So. 3d at 461.

For that reason, while appraisals are certainly preferred in Florida as a vehicle to avoiding "needless" litigation, there are times when a need for declaratory relief is presented by ambiguous terms within the provision or simply to "resolve questions concerning the application of unambiguous policy provisions to a disputed set of facts." *Cintron*, 339 So. 3d at 461. *And see, e.g., Allstate Ins. Co. v. Suarez*, 833 So. 2d 762, 763 (Fla. 2002); *Heritage Prop. & Cas. Ins. Co. v. Romanach*, 224 So. 3d 262, 265 (Fla. 3d

DCA 2017); *Sec. First Ins. Co. v. Phillips*, 312 So. 3d 502, 504 (Fla. 5th DCA 2020).

B. This Court's Precedent is to Postpone Appraisal Until Relevant Declaratory Judgment Claims are Resolved.

The trial court correctly identified that while State Farm timely invoked the appraisal provision in the Policy, ADAS pleaded several declaratory judgment claims directed at the appraisal provision itself. ADAS's claims sought declarations regarding the validity of the provision and to address uncertainties with the process prescribed by the provision. While State Farm may think those claims have little merit, that was not for the trial court to decide in a motion to compel appraisal. Thus, the trial court appropriately exercised its discretion to allow those claims to be fully adjudicated before determining whether appraisal should be compelled.

The trial court's process was consistent with this Court's precedent on the topic. Featured before the trial court was *Dr. Car Glass, LLC*, 327 So. 3d at 447, wherein this Court held that "the trial court ordinarily has discretion to determine the order in which it disposes of the declaratory judgment counts and the breach of contract count." *Id.* at 447–448. The Court explained that "where declaratory counts challeng[e] the enforceability of an appraisal clause exist, courts must enjoy no less power to decide whether to

address such arguments in an adjudication of the merits of such counts, or in response to a motion to compel appraisal, before the appraisal can be enforced." *Id.* at 448 (internal citations omitted).

While State Farm disagrees that *Dr. Car Glass* applies, it altogether fails to address the case *Dr. Car Glass* drew from: This Court's *Marzouka*, 320 So. 3d 945, opinion. *Marzouka* controls and it is right on point. There, the insurer invoked the insurance policy's appraisal provision because the parties disagreed as to the amount of loss. *Id.* at 946. The insureds, like ADAS here, "respond[ed] that appraisal was premature because they challenged the validity of the provision itself through several counts for declaratory judgment." *Id.* at 948. The Court agreed with the insureds.

That is, the Court recognized that when declaratory judgment claims challenge the enforceability of the appraisal provision itself, "the trial court could not have granted the motion to compel appraisal... without improperly and prematurely adjudicating these issues with regard to the declaratory judgment claims." *Marzouka*, 320 So. 3d at 948. The Court stated:

> [W]here declaratory counts challenging the enforceability of an appraisal clause exist, courts must enjoy no less power to decide whether to address such arguments in an adjudication of the merits of such counts, or in response to a motion to compel appraisal, before the appraisal can be enforced, as well as to decide whether an evidentiary hearing is warranted.

Id. at 948. Accordingly, this Court held that the trial court must first dispose of the pending counts for declaratory relief prior to compelling appraisal.

State Farm attempts to distinguish *Dr. Car Glass* (and by extension, *Marzouka*) by arguing that ADAS's declaratory claims are not "genuine" challenges to the enforceability of the appraisal provision. IB at 16. To be sure, "improperly and prematurely adjudicating" ADAS's "declaratory judgment claims" is precisely what State Farm asks this Court to do here. *Marzouka*, 320 So. 3d at 948. The merits of ADAS's declaratory claims, as this Court recognized in *Marzouka*, were not at issue below nor are they at issue in this appeal. *See generally id*. at 949–950 (citing caselaw prohibiting the trial court from resolving declaratory action claims on a motion to dismiss). To adjudicate those claims now would be "the functional equivalent of summary judgment on those issues for purposes of the declaratory counts." *Id*. at 949.

State Farm tries to work around the authority above by claiming that its appraisal provision is a "condition precedent to litigation in court" and thus would preclude the bringing of a declaratory judgment claim against State Farm. IB at 19. As proof of that theory, State Farm offers a general proposition contained in all insurance policies; namely, the provision that states that "Legal action may not be brought against us until there has been

full compliance with all the provisions of this policy." IB at 21 (citing A:262). State Farm overlays this language over its entire Policy and the conditions therein, making an insured's "full compliance" with "all the provisions of this policy" a condition precedent in every type of dispute between the insurer and insured.

For obvious reasons, there is no authority applying that language to declaratory relief under Chapter 86. That general provision has nothing to do with the Policy's appraisal provision; it's a standard insurance clause requiring "full" (or strict) compliance from an insured. *Compare* A:216 *with* A:262. And — lo and behold — the Court has already rejected the interpretation that State Farm desires in precisely this context. *See* *Express Damage Restoration, LLC v. First Cmty. Ins. Co.*, 314 So. 3d 532, 533 (Fla. 3d DCA 2020).

In *Express Damage Restoration*, the insurer prevailed upon the trial court to dismiss a suit against it because a similar provision in the Policy prohibiting any "legal action against [it]" "unless ... [t]here has been full compliance with all of the terms of this Insurance [Policy]," was violated by an insured who refused to enter into appraisal prior to filing suit. *Id*. at 533. The insured's assignee had brought a declaratory judgment account directed at the appraisal provision because the provision utilized a phrase that was

"subject to opposing interpretations." *Id*. at 534. The trial court (buying the condition precedent argument) dismissed the assignee's suit and compelled appraisal. *Id*.

This Court reversed the order dismissing suit holding that the assignee "is correct that the court procedurally erred in failing to deny the [insurer's] motion" because the trial court "decided the very question of construction that was the subject of the declaratory action." *Id*. at 534. Which is to say, the trial court committed the same error forewarned by the Court in *Marzouka*, 320 So. 3d at 948. The Court held that the assignee was entitled to a ruling on its declaratory action—the provision prohibiting legal action against the insurer "unless ... [t]here has been full compliance with all of the terms of this Insurance [Policy]" notwithstanding. *Express Damage Restoration*, 314 So. 3d at 535.[5]

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[5] The Court can compare its analysis with that in *NCI, LLC v. Progressive Select Ins. Co.*, 350 So. 3d 801 (Fla. 5th DCA 2022), which featured the same policy language and affirmed an order dismissing a lawsuit in favor of appraisal. The key distinction between *NCI* and *Express Damage Restoration* is that the trial court in *NCI* resolved the insured's declaratory judgment counts on their merit and "memorialized its findings in a detailed order that addressed and discarded each of NCI's arguments." *Id*. at 805. Which is to say, there were no pending declaratory judgment claims in *NCI*.

Besides, the Policy's general "full compliance" provision is at odds with the appraisal provision itself.[6] The Policy explicitly refers to appraisal as only the "first step" of resolving a dispute over the *cost of repair, replacement, or recalibration* of glass. A:216. The appraisal provision also specifically states that neither State Farm nor the insured "waive any rights by submitting to an appraisal." A:216. Those rights ostensibly include the right to file a lawsuit. *See* *Travelers Ins. Co. v. Bartoszewicz*, 404 So. 2d 1053, 1054 (Fla. 1981) (ambiguities in the terms of an insurance contract will be construed against the insurer.).

Not to mention, the right — or ability — to file a lawsuit is critical to ADAS's pursuit of declaratory relief. Recall, Count III of ADAS's complaint asks the trial court to declare the Policy's appraisal provision unenforceable in large part because it attempts to bestow upon the trial court subject matter jurisdiction which it does not possess. A:69. The provision tasks the trial court with appointing a third appraisal to complete the appraisal panel, but such a petition is not authorized by statute or rule as identified by the Second and Fifth District Courts of Appeal:

> Rather than file a breach of contract action or a complaint for declaratory relief (either of which could have been among the

[6] Perhaps more to the point as to why declaratory relief is warranted here.

> "class of cases" over which the circuit court would have had subject matter jurisdiction), State Farm opted to file a non-existent cause of action to simply appoint an umpire. As recently explained by our sister court addressing a similar petition, "Florida Statutes describe many different civil petitions that litigants may avail themselves of, but a petition to compel appraisal with a disinterested appraiser is not (yet) one of them. Nor is there a recognized common law cause of action for this kind of discrete claim." State Farm Fla. Ins. v. Parrish, 312 So. 3d 145, 148 (Fla. 2d DCA 2021). A year ago, our sister court concluded that this "would seem to be problematic." Id. Our sister court was right.

State Farm Florida Ins. Co. v. Roof Pros Storm Div., Inc., 346 So. 3d 163, 165 (Fla. 5th DCA 2022). The Policy here prescribes that the parties file the same "non-existent cause of action to simply appoint an umpire" in the trial court. *Id*. The irony, of course, is that under State Farm's own construction of the Policy ADAS would be prohibited from even filing that "non-existent cause of action" for failure to follow a condition precedent to suit.

Further to the point, the Policy's appraisal provision is limited only to determining the cost of repairs—the provision does not authorize the appraisers to "decide any other questions of fact, decide any questions of law" as seen below:

> (d) The appraisers shall only determine the cost of repair, replacement, and recalibration of glass. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.

A:216. And here, fundamental to ADAS's suit is that State Farm breached the Policy by employing a payment methodology not permitted by the Policy or its limits of liability. Which is to say, while the provision may be mandatory in that it requires the parties to resolve their dispute over the cost of the repairs through appraisal, it is not a condition precedent to any litigation between State Farm and its insureds, and this suit is about more than simply a dispute over the amount of repairs. *See* *Express Damage Restoration*, 314 So. 3d at 535. Where there are other claims at issue—say, declaratory judgment claims—those claims do not fall victim to the Policy's appraisal provision nor its general caveat that "full compliance" with the terms of the Policy is required. *Id*.

Finally, the suggestion that ADAS's declaratory judgment counts are just a vehicle for attorney's fees is offensive—and it crumbles under its own weight. *See* IB at 30. State Farm is not subject to fees simply by litigating ADAS's declaratory judgment counts. If the claims are as "manufactured," "not genuine," "hypothetical," "transparent" as State Farm suggests, it should have no problem resolving those claims on summary judgment and then, perhaps, even subjecting the proponent of those claims to fees for frivolous litigation. IB at 16, 17, 25, 27. There would be no fee exposure then.

The practical consequences cut against State Farm here. State Farm drafted an insurance policy provision that prompted bonafide uncertainties, including uncertainty as to whether State Farm would be permitted to hire a partial appraiser to represent it before the appraisal panel or which court of law would resolve the dispute between the appraisers if they cannot agree on a third appraiser. Inoculating State Farm from having to resolve those uncertainties prior to forcing their insured (or the insured's assignee) to enter appraisal would be the only unjust course of action. State Farm's paradoxical policy argument—allowing it to write ambiguous appraisal rules but not allowing a court to clarify the ambiguity until after the appraisal is complete and hence binding—should be rejected.

Not to mention, *Roof Pros Storm Div., Inc.*, 346 So. 3d at 165, and *Parrish*, 312 So. 3d at 148, cast serious doubt as to whether State Farm's appraisal provision is enforceable at all.

Here, trial court appropriately exercised its discretion to allow ADAS's declaratory relief claims to be fully adjudicated before determining whether appraisal should be compelled. Just as *Dr. Car Glass*, *Marzouka*, and *Express Damage Restoration* prescribed, the trial court here properly stayed the breach of contract claim while allowing the declaratory judgment counts

to proceed. This was a proper exercise of the trial court's discretion that is fully consistent with controlling precedent from this Court.

C. State Farm Did Not Challenge, Nor Could this Court Review, ADAS's Declaratory Judgment Counts.

One final point. State Farm launches a wholesale attack on ADAS's declaratory judgment claims deeming them "not genuine, viable challenges to the enforceability of the Policy's appraisal provision." IB at 25. State Farm goes on to reclassify each of the counts and then offers law demonstrating why the relief requested in each count is unobtainable. IB at 26–28. Here's the thing: State Farm did not seek that relief in the trial court nor could this Court review the trial court's order to the extent State Farm did.

Where nonfinal orders are involved, jurisdiction is strictly limited to the issues that are capable of review under Florida Rule of Appellate Procedure 9.130. Here, the Order Deferring Appraisal is arguably appealable under Rule 9.130(a)(3)(C)(iv), but issues "ancillary to that of the entitlement of party to [appraisal]" are simply "not appealable." *Alan v. Sandy T. Fox, P.A.*, 390 So. 3d 65 (Fla. 3d DCA 2023).[7] Which is to say, to the extent that State Farm

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[7] Rule 9.130(a)(3)(C)(iv) formerly provided for review of orders pertaining to arbitration and courts applied that text to orders pertaining to appraisal. Now (continued . . .)

is asking this Court to review the trial court's refusal to dismiss ADAS's declaratory judgment counts, that relief is outside the purview of this appeal.

Rule 9.130(a)(3)(C)(iv) does not encompass matters collateral to that of entitlement to appraisal. Courts have construed the relevant appellate rule "to mean that a party is entitled to interlocutory review by this court of an issue of entitlement to [appraisal]. We do not believe the rule permits an appeal where the issues relate to collateral matters, such as in this case." *Diversicare Mgmt. Services Co. v. Estate of Catt by & through Cook*, 267 So. 3d 560, 563 (Fla. 2d DCA 2019) (internal citations omitted). After all, "[t]he thrust of rule 9.130 is to restrict the number of appealable nonfinal orders. The theory underlying the more restrictive rule is that appellate review of nonfinal judgments serves to waste court resources and needlessly delays final judgment." *Travelers Ins. Co. v. Bruns*, 443 So. 2d 959, 961 (Fla. 1984).

This Court, in particular, has held fast to that point of law. *See, e.g., Alan*, 390 So. 3d 65; *Suntech Plumbing & Mech. Corp. v. Bella Isla, LLC*, 352 So. 3d 906, 907 (Fla. 3d DCA 2022); *Gomez v. S & I Properties, LLC*, 220 So. 3d 539, 542 (Fla. 3d DCA 2017).

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the rule explicitly governs orders that "determine … the entitlement of a party to an appraisal under an insurance policy" and orders addressing arbitration are governed under Rule 9.130(a)(3)(I).

Below, while State Farm implored the trial court to dismiss ADAS's declaratory judgment counts (A:120–122), it did so on the basis that the uncertainties raised by ADAS "ha[ve] been litigated extensively" and appraisal provisions such as State Farm's have been "declared unambiguous, valid and enforceable by Florida courts." A:121. Indeed, what State Farm argued to the trial court was that ADAS's declaratory relief counts were "moot" because "Florida courts have already found that no such requirements [contemplated by the declaratory judgment counts] exist" in a standard appraisal provision. A:122. That's not an argument for dismissal of ADAS's claims but rather for summary judgment. *See, e.g., Royal Selections, Inc. v. Florida Dept. of Revenue*, 687 So. 2d 893, 894 (Fla. 4th DCA 1997).[8]

The point is, even had State Farm asked the trial court to evaluate the sufficiency of ADAS's counts for declaratory relief (it didn't), this Court could not reach that issue in this appeal. That ruling does not tag along with the Order Deferring Appraisal. Which is to say, ADAS's Counts II–IV, requesting

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[8] Mootness, in the context of a declaratory judgment count, connotes a "lack of a justiciable controversy" not that the declaration sought has already been resolved by another court of law. *Progressive Select Ins. Co. v. Hilchey*, 2D2022-3466, 2024 WL 3882167, at *3 (Fla. 2d DCA Aug. 21, 2024).

declaratory relief, are alive and well and cannot be put at issue in this appeal. The Court should not hear State Farm in its attempts to denigrate the claims and seek a preadjudication of their merits. State Farm can do that back in the trial court, as appropriate on summary judgment.

CONCLUSION

ADAS respectfully requests that the Court either dismiss State Farm's appeal for lack of jurisdiction or, in the alternative, affirm the Order Deferring Jurisdiction as a proper exercise of the trial court's discretion.

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CERTIFICATE OF SERVICE

I certify that, on November 14, 2024, pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.516, this answer brief was served via the Florida courts ePortal on:

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I hereby certify that this brief was prepared in Arial, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and does not exceed 13,000 words, in compliance with Rule 9.210(a)(2)(B).

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