

**IN THE THIRD DISTRICT COURT OF APPEAL
MIAMI, FLORIDA**

SANS SOUCI CONDOMINIUM
ASSOCIATION, INC.,

Appellant,

v.

Case No. 3D24-0863

AMERICAN COASTAL
INSURANCE COMPANY,

Appellee.

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**APPELLEE’S RESPONSE IN OPPOSITION TO MOTION TO STAY
PENDING APPEAL AND FOR EXPEDITED REVIEW OF MOTION**

Pursuant to the Court’s Order dated October 22, 2024, appellee American Coastal Insurance Company (“ACIC”) responds in opposition to appellant Sans Souci Condominium Association, Inc.’s (“Appellant’s”) Motion to Stay Pending Appeal and for Expedited Review of Motion (the “Expedited Motion to Stay”). Appellant cannot satisfy the elements necessary to stay the trial court proceedings during this non-final appeal.

Introduction

After three evidentiary hearings over three years, the trial court denied Appellant’s motion to compel appraisal in this first-party insurance dispute. On appeal, Appellant challenges the trial court’s finding that appraisal was not ripe because Appellant did not sufficiently disagree with ACIC’s coverage

decision. Appellant also challenges the trial court's denial of Appellant's motion for reconsideration.

Six months after these orders and days before the trial docket, Appellant orally moved to stay all proceedings in the trial court during this non-final appeal. The trial court denied Appellant's request. To show that the trial court abused its discretion, Appellant must demonstrate a likelihood of success on appeal and that there is a risk of irreparable harm if the stay does not issue. Appellant has met neither requirement.

First, Appellant fails to establish any likelihood of success because Appellant disregards the standard of review and the record evidence. The Expedited Motion to Stay (like the Initial Brief) contends that there was testimony supporting Appellant's position. Even if true, that contention is irrelevant on appeal. This appeal considers whether competent substantial evidence supports the trial court's findings. Ample testimony from other witnesses supports the trial court's findings, which should be affirmed.

Appellant's arguments on reconsideration fare no better. The Court has no jurisdiction to consider this argument because orders simply denying reconsideration are not immediately appealable. Even if the Court had jurisdiction, the trial court did not abuse its discretion by declining to change

its ruling based on new evidence that Appellant inexplicably withheld and chose not to produce for four years.

As to the risk of irreparable harm, Appellant again overlooks the scope of this appeal. Appraisal merely sets the amount of the loss. Even if the jury determines damages, Rule 9.130(f), Florida Rules of Appellate Procedure, prevents entry of a final order until this appeal concludes. The trial court proceedings do not alter the order under review, and there is no risk that Appellant will be adversely affected in the unlikely event that this Court reverses. To the contrary, trial is necessary to resolve issues outside the scope of this appeal. The Court should deny the Expedited Motion to Stay.

Procedural and Factual Background

This four-and-a-half-year-old lawsuit involves a fire loss at Appellant's condominium property on January 8, 2019. (IB 1, 3).¹ After the loss, Appellant hired a public adjuster named Robert Inguanzo and submitted an insurance claim to ACIC. (AB 2). ACIC's field adjuster, Michael Hayes, investigated the loss with Mr. Inguanzo. (AB 2). ACIC's desk adjuster, John Pemberton, ultimately accepted coverage on ACIC's behalf and issued three payments totaling \$241,734.77. (AB 2-3).

¹ Citations to Appellant's Initial Brief are: (IB [page number]). Citations to Appellee's Answer Brief are: (AB [page number]). Citations to the appendix to this response are: (App. [pdf page number] ([transcript page]:[line])).

Appellant sued ACIC on April 13, 2020, and moved to compel appraisal. (AB 4). ACIC responded that appraisal was premature because Appellant never expressed any disagreement with ACIC's valuation of the loss. (AB 4-5). The trial court held three evidentiary hearings over the course of three years to decide whether Appellant disputed ACIC's coverage decision before seeking appraisal. (AB 5).

Before and during those evidentiary hearings, ACIC pointed out that Appellant inexplicably refused to produce a competing valuation of the loss or identify any deficiency with ACIC's payment. (AB 28-29). Instead, Appellant's only argument was that after ACIC's final payment, Mr. Inguanzo verbally disputed ACIC's coverage decision with Mr. Hayes and Mr. Pemberton. (AB 5-7, 8-9). The trial court heard directly from Mr. Pemberton and Mr. Hayes, both of whom contradicted Mr. Inguanzo and testified that these conversations never happened. (AB 7-9). That testimony was corroborated by the absence of any records of Mr. Inguanzo's alleged conversations. (*Id.*).

Weighing this testimony, the trial court rejected Mr. Inguanzo's story and accepted Mr. Pemberton's and Mr. Hayes's testimony. The trial court denied Appellant's motion and found that there was insufficient evidence of a "conversation concerning a disagreement as it relates to the amount of the

loss.” (AB 10). The trial court rendered an order memorializing that ruling (the “Order Denying Appraisal”) on April 12, 2024. (AB 10).

On May 1, 2024—more than four years after filing this lawsuit and five years after the date of loss—Appellant sent an email to ACIC with Mr. Inguanzo’s 2019 photographs and two 157-page estimates seeking hundreds of thousands of dollars in additional damages. (AB 10-11). On the same day, and without explaining the decision to withhold this information for years, Appellant moved for reconsideration or rehearing. (AB 11). Appellant believed that the trial court should change its ruling because “[ACIC] now has estimates and photographs of the loss[.]” (AB 11). The trial court denied the motion (the “Order Denying Reconsideration”) on May 6, 2024.

On May 10, 2024, Appellant noticed this non-final appeal under Rule 9.130, Florida Rules of Appellate Procedure. Appellant seeks review from both the Order Denying Appraisal and the Order Denying Reconsideration. Appellant did not move for a stay pending appeal. Appellant filed three motions seeking extensions of seventy days to file the Initial Brief.

Between Appellant’s first and second motions for extensions of time, on June 16, 2024, the trial court issued an order scheduling this case for trial during the four-week docket commencing October 21, 2024 (the “Trial Order”). (App. 4). Appellant served the Initial Brief on August 12, 2024,

about two months after the Trial Order. ACIC then obtained two extensions of time, filing the Answer Brief on October 21, 2024.

Shortly before trial was scheduled to begin, the trial court denied the parties' requests to continue trial for purposes of conducting additional discovery. When the trial court denied that request and held the parties to the trial date, Appellant moved orally during a pretrial hearing to stay the entire trial court proceedings pending the outcome of this appeal. (App. 15 (4:12-15)). Counsel argued that the trial would interfere with this Court's jurisdiction. (App. 14 (3:21-25)). The trial court inquired how long ago the orders on appeal were entered. (App. 15-16 (4:16-5:9)). The trial court denied the stay, observing that no final order would be entered until this appeal is resolved.² (App. 16 (5:1-9)).

Appellant's counsel then requested a continuance based on a vacation schedule. (App. 16 (5:10-20)). The trial court accommodated this request by postponing the trial beyond the first week of the docket, but left the case scheduled for the following week because this is the trial court's oldest case. (App. 17 (6:9-13)). On the same day, Appellant filed the Expedited Motion for Stay.

² This observation is consistent with Rule 9.130(f), Florida Rules of Appellate Procedure. (*Infra* pp. 11-14).

Standard of Review

The Court reviews the trial court's denial of Appellant's motion to stay pending appeal under a "highly deferential abuse of discretion standard." *Sunbeam Television Corp. v. Clear Channel Metroplex, Inc.*, 117 So. 3d 772, 772 (Fla. 3d DCA 2012). The reason for such deference is that the trial court is "most familiar with the controversy and is in the best posture to determine the appropriateness and conditions of a stay." *Id.*

Argument

The Florida Supreme Court has held that to stay issuance of an appellate mandate, the movant must show (1) a likelihood of success on the merits and (2) irreparable harm. *State ex rel. Price v. McCord*, 380 So. 2d 1037, 1039 (Fla. 1980). This Court and others apply the same standard to motions under Rule 9.310, Florida Rules of Appellate Procedure. See *Sepich v. Papadopoulos*, 145 So. 3d 156, 157 n.6 (Fla. 3d DCA 2014) (quoting *Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999)) ("Factors which are considered by this Court in deciding whether to grant a stay include the moving party's likelihood of success on the merits, and the likelihood of harm should a stay not be granted."); accord *Everett v. Everett*, 196 So. 3d 483, 484 (Fla. 1st DCA 2016) ("In deciding the motion for stay,

the lower tribunal was to consider the likelihood of prevailing on appeal and irreparable harm to the appellant if the motion is not granted.”).

Appellant Has Not Established a Likelihood of Success on Appeal

The Expedited Motion to Stay fails to establish a likelihood of success on appeal because Appellant overlooks the standards of review and limited scope of this appeal. Appellant’s challenge to the Order Denying Appraisal fails because the trial court’s findings are supported by competent substantial evidence from Mr. Pemberton and Mr. Hayes. The Court will not reweigh that decision. Appellant’s arguments on reconsideration are beyond the Court’s jurisdiction and nonetheless fail to demonstrate that the trial court abused its discretion by declining to change its earlier ruling.

The Expedited Motion to Stay argues first that Appellant is likely to prevail because there was “sufficient evidence presented to establish that appraisal was ripe” during the three evidentiary hearings. (Expedited Motion to Stay, p. 6 ¶ 18). This contention, even if true, is immaterial. On appeal, the Court reviews the trial court’s findings for competent substantial evidence. (AB 14-15). Where testimony is conflicting, the trial court’s findings are necessarily supported by competent substantial evidence regardless of the weight of any conflicting testimony. (AB 18-19).

Over the course of three years and three evidentiary hearings, the trial court evaluated whether Appellant disputed ACIC's coverage decision. (AB 16-17). As in the trial court, the Expedited Motion to Stay claims that Appellant made this showing because Mr. Inguanzo disputed ACIC's coverage decision with Mr. Hayes and Mr. Pemberton. (Expedited Motion to Stay pp. 7-10 ¶¶ 21-27).

Appellant's argument fails under the correct standard of review. The question is not whether Appellant can point to testimony supporting Appellant's position but whether competent substantial evidence supports the trial court's decision. The Expedited Motion to Stay omits that both Mr. Hayes and Mr. Pemberton testified that Mr. Inguanzo never disputed ACIC's decision. (AB 20-21). The trial court credited this testimony over Mr. Inguanzo, finding there was insufficient evidence of a "conversation concerning a disagreement as it relates to the amount of the loss." (AB 10). Appellant has no likelihood of reversing the Order Denying Appraisal because the trial court's finding is supported by competent substantial evidence from Mr. Hayes and Pemberton.

Appellant also claims to have a likelihood of success based on Appellant's new evidence and argument on reconsideration. (Expedited Motion to Stay, pp. 12-13 ¶¶ 33-34, 21 ¶ 45). Shortly after the Order Denying

Appraisal and four years into the case, Appellant finally produced Mr. Inguanzo's photographs from 2019 and two 157-page competing estimates. (*Id.* at 12-13 ¶ 34). Appellant asked the trial court to reconsider the Order Denying Appraisal because this newly produced evidence reflects a dispute about the value of the loss. (*Id.* at 13-21 ¶¶ 35-44).

Appellant has no likelihood of prevailing on this second issue because it lies beyond the Court's jurisdiction. Orders simply declining to reconsider earlier non-final orders are not immediately appealable under Rule 9.130, Florida Rules of Appellate Procedure. (AB 24-28). The trial court's discretionary decision to adhere to an earlier non-final decision is not among the enumerated immediately appealable non-final orders. (*Id.*).

Were the Court to reach the Order on Reconsideration, the Expedited Motion to Stay again overlooks the standard of review. A trial court properly denies reconsideration when a party presents new evidence or argument that could have been raised earlier. (AB 28). Over years of litigation, ACIC repeatedly pointed out that Appellant inexplicably refused to produce a competing valuation that might allow ACIC to know whether the parties truly disagreed about the coverage decision. (AB 28-29). As in the trial court, Appellant offers no explanation for the tactical decision to withhold this information until after the evidentiary hearings.

The trial court did not abuse its discretion by declining to reconsider and change its ruling given Appellant's unjustified decision to withhold this evidence. Appellant's tactics prevented both ACIC and the trial court from understanding Appellant's position for years, raising new additional evidentiary concerns given intervening repairs and the potential waiver of appraisal since the Order Denying Appraisal. (AB 29-31).

Under the record and appropriate standards of review, Appellant fails to establish any likelihood of obtaining a reversal of either the Order Compelling Appraisal or the Order Denying Reconsideration.

Appellant Has Not Established Irreparable Harm

To meet the second necessary element for a stay, the Expedited Motion to Stay claims that a jury trial would "strip [Appellant] of the bargained for benefit" of appraisal, cause Appellant to incur "costs and risks of litigation," and prevent Appellant from conducting discovery. (Expedited Motion to Stay, pp. 22-24 ¶¶ 48-56). None of these grounds approach the type of harm sufficient to impose a blanket stay at this late stage of the case. To the contrary, Rule 9.130(f), Florida Rules of Appellate Procedure, ensures that Appellant's rights are protected regardless of the outcome in this appeal.

Contrary to Appellant's position at the pre-trial hearing, trial will not interfere with the Court's jurisdiction because nothing in the trial court will

alter the order on appeal. (See App. 14 (3:21-25)). Assuming Appellant is correct and appraisal should set the amount of the loss, Appellant's rights are protected because Rule 9.130(f) prevents the trial court from entering a final order. Even if the case proceeds through a jury trial and this Court were to reverse the appraisal order, the jury's damage findings would not lead to entry of a final order. The parties would simply proceed to appraisal, which would then determine the amount of the loss.

The narrow scope of this appeal also illustrates that a stay is improper because a trial will be necessary regardless of whether the parties proceed to appraisal. Appraisal is a limited form of arbitration that sets the amount of loss. See *U.S. Fid. & Guar. Co. v. Romay*, 744 So. 2d 467, 469 (Fla. 3d DCA 1999). Appraisal does not resolve the entire controversy. *Id.* (citing *Preferred Ins. Co. v. Richard Parks Trucking Co.*, 158 So. 2d 817 (Fla. 2d DCA 1963)). Other aspects of that controversy, including ACIC's liability and defenses, must be resolved at trial. Staying all proceedings in the trial court until the end of this appeal makes little sense when many of the issues that must be tried have nothing to do with this appeal.

The delay in this case includes Appellant's decision not to seek a stay until the week before trial and six months after entry of the orders on appeal. Such delay can itself indicate a lack of harm warranting a stay of all

proceedings. For example, in *Destiny Fulfilled Outreach Ministries, Inc. v. Investments SWK, LLC*, 359 So. 3d 750 (Fla. 4th DCA 2023), a tenant’s motion to stay litigation was properly denied where the tenant litigated “for several months” before seeking a stay on the eve of trial. The same is true in the context of temporary injunctions, the elements of which are analogous to a stay pending appeal. See *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (“A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.”); *Mora v. Karr*, 697 So. 2d 887, 888 (Fla. 4th DCA 1997) (“[T]he fact that they delayed seeking relief until eight or nine months after construction commenced would warrant denial of injunctive relief . . .”).

Appellant’s concern about the marginally increased cost of litigating damages to the jury does not support a stay. See *Rodriguez v. Miami-Dade Cnty.*, 117 So. 3d 400, 405–06 (Fla. 2013) (“[W]e reiterate that the continuation of litigation and any ensuing costs, time, and effort in defending such litigation does not constitute irreparable harm.”); *Walgreen Co. v. Rubin*, 229 So. 3d 418, 421–22 (Fla. 3d DCA 2017) (“Florida’s courts are consistent in holding that undue burden or expense arising from a discovery order does not constitute irreparable harm.”); *Rollins, Inc. v. Garrett*, No. 6:05-CV-671-

PCF-KRS, 2005 WL 2149293, at *4 (M.D. Fla. Sept. 6, 2005) (“The harm suffered in having to litigate a dispute in a forum not of one’s choosing is no different from the harm suffered after having a motion to dismiss or motion for summary judgment denied, or having one’s case transferred or remanded to a different court.”). On the other hand, staying all proceedings in the trial court pending resolution of the largely peripheral issue on appeal will cause harm to ACIC given the already extended lapse between the date of loss and the time of trial. ACIC properly adjusted the loss in this case and paid what was owed. For the last three years, Appellant stonewalled ACIC’s discovery efforts while Appellant sought to compel appraisal. Now, five years after the loss, ACIC desires to resolve the issues that must be tried before memories fade and evidence is lost.

Once again, Rule 9.130(f) provides the answer, as it expressly contemplates that trial may proceed during this appeal. *See Robinson v. Robinson*, 998 So. 2d 1171, 1172 (Fla. 2d DCA 2008) (“Thus, the trial court in this case could conduct a final hearing in the dissolution and even enter an order containing findings and determinations from that hearing, but it could not enter a final judgment while the nonfinal appeal was pending unless this court expressly authorized it to do so.”); *see also Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1131 n.4 (Fla. 3d DCA

2018). Appellant will be protected because a final order cannot be entered until this appeal is resolved.

Conclusion

The Court should deny the Expedited Motion to Stay because Appellant has failed to establish a substantial likelihood of success on appeal or harm sufficient to warrant a stay.

Respectfully submitted,

/s/ Patrick M. Chidnese

Patrick M. Chidnese
B.C.S. Appellate Practice
Florida Bar No. 089783
patrick@bcflalaw.com
Frieda C. Lindroth, Esq.
Florida Bar No. 1032336
frieda@bcflalaw.com
Bickford & Chidnese, LLP
307 S. Willow Ave., Suite 100
Tampa, FL 33606
Telephone: (813) 576-0095

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29, 2024, I electronically filed the foregoing through the Florida Courts E-Filing Portal, which will automatically provide copies to all counsel of record.

Paul B. Feltman, Esq.
Alvarez, Feltman, Da Silva & Costa, P.L.
2525 S.W. 27th Ave., Suite 200

Miami, FL 33133
PFeltman@afdc.legal
AArbide@afdc.legal

Counsel for Appellant

Austin L. Flickstein, Esq.
Bressler, Amery & Ross, P.C.
515 East Las Olas Blvd., Suite 800
Fort Lauderdale, FL 33301
miainsurance@bressler.com
aflickstein@bressler.com
hzelinger@bressler.com
lbaz@bressler.com
forellana@bressler.com

/s/ Patrick M. Chidnese
Attorney