

HB 1319

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 16-cv-02009-RPM

GREAT NORTHERN INSURANCE COMPANY,
an Indiana Corporation,

Plaintiff,

v.

100 PARK AVENUE HOMEOWNERS ASSOCIATION, INC.,
a Colorado Corporation,

Defendant.

no cite yet

ORDER GRANTING SUMMARY JUDGMENT

Great Northern Insurance Company (Great Northern) initiated this civil action by a Complaint for Declaratory Judgment and to Compel Appraisal filed on August 8, 2016 (Doc. 1). The plaintiff seeks to disqualify George Keys from acting as an appraiser in the appraisal process initiated by its insured 100 Park Avenue Homeowners Association, Inc., (100 Park) pursuant to the provision in Customer Classic Insurance Policy Number 3596-36-41 WUC reading as follows:

If you and we do not agree on the amount of the loss or damage, either party may make a written demand for an appraisal of the loss or damage. In this event, you will select and pay a competent and impartial appraiser, and we will select and pay a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree on an umpire, either may request that a judge of a court having jurisdiction make the selection. Each appraiser will separately state the value of the property and the amount of the loss or damage. If the appraisers do not agree, they will submit their statements to the umpire. Agreement by the umpire and either of the appraisers will be binding on you and us.

The dispute is the amount of loss or damage to the defendant's property as a result of a weather event on June 24, 2015. The complaint alleges that Keys is biased in favor of policy holders and has a close relationship with Derek O'Driscoll, a public adjuster representing 100 Park on its insurance claim and with the Merlin law Group, an association of lawyers providing counsel for 100 Park.

The Plaintiff supports these conclusions alleging specific facts in paragraphs 32, 33, 34 a through j.

The defendant filed an answer with counterclaims on August 31, 2016 (Doc. 5) signed by Christopher N. Mammel of the Merlin Law Group and JoAnne M. Zboyan of Springer and Sternberg, P.C. As to the allegations I paragraph 34 and its sub-paragraphs, the response reads as follows:

100 Park denies that Mr. Keys is not fair, competent or impartial as such undefined policy terms impact on his qualifications to serve as an appraiser and is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, including subparagraphs a. through j., and on that basis denies such allegations and demands strict proof thereof.

The counterclaims request that the court order Great Northern to proceed with the appraisal process and award damages for breach of contract, unreasonable delay under C.R.S. § § 10-3-1115 and 1116 and for common law bad faith. A jury trial was demanded.

The plaintiff filed a motion to dismiss or stay action on the counterclaims until the appraisal process is complete. (Doc. 19).

The parties filed a Stipulated Motion to Stay Proceedings on October 21, 2016 (Doc. 25) which was granted on that day (Doc. 27). The plaintiff then filed an

unopposed motion to file an amended complaint on November 23, 2016 (Doc. 30) and the amended complaint was filed on November 23, 2016 (Doc. 30) pursuant to this Court's order of that date. (Doc. 31).

The factual allegations to show Keys' bias and association are in paragraphs 36a through h, 37 and 39a through d. In the answer the defendant again denies these allegations for lack of knowledge or information sufficient to form a belief as to their truth.

Great Northern Filed a motion for summary judgment on the claim of disqualification of Keys on January 13, 2017 (Doc. 34). The factual allegations concerning Keys are again summarized. In its response (Doc. 37) the defendant does not deny these allegations asserting that they lack foundation and are immaterial. The principal defense is that the Colorado Division of Insurance issued a modified Bulletin No. B-5.26 in 2015 as a guidance for the appraisal process in insurance policies. It gives a definition of a "fair and competent" appraiser which does not include any bias. In its argument the defendant suggests that an insurance appraisal involves an element of advocacy by the appraisers selected by the insured and the insurers with the umpire selecting between them. That is not what the contract provision calls for.

The appraiser must be "competent and impartial." The word "impartial" is not in the Bulletin. Great Northern has not challenged Keys' competence. It objects to his partiality toward insureds generally and toward the defendant because of his past associations with its public adjuster and counsel.

Impartial is a commonplace word with an established meaning. The simplest dictionary definition is "Not partial or biased" in Webster's II New Riverside University

Dictionary. "Partial" is defined as "Favoring one person or side over another" in the same dictionary.

Under the terms of this insurance contract and the facts supplied by the plaintiff which have not been denied, George Keys is not an impartial appraiser in this case. Accordingly, it is

ORDERED, that George Keys is disqualified from serving as an appraiser on the claim made by the defendant under the subject insurance policy and it is

FURTHER ORDERED that 100 Park Avenue Homeowners Association, Inc., will select a competent and impartial appraiser within thirty days and proceed with the appraisal process. Further proceedings on the defendant's counterclaims are stayed until completion of the appraisal process.

DATED: March 13, 2017

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge