

Third District Court of Appeal

State of Florida, July Term, A.D. 2010

Opinion filed December 29, 2010.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-693
Lower Tribunal No. 09-86708

Citizens Property Insurance Corporation,
Appellant,

vs.

Oswaldo Maytin,
Appellee.

An Appeal from a non-final Order from the Circuit Court for Miami-Dade County, John Schlesinger, Judge.

Hinshaw & Culbertson and Maureen G. Percy and Paul R. Wallace, for appellant.

Amado Alan Alvarez, for appellee.

Before SUAREZ, CORTIÑAS and LAGOA, JJ.

SUAREZ, J.

Citizens Property Insurance Corporation (“Citizens”) appeals a non-final order granting Oswaldo Maytin’s motion to compel appraisal of a claim under his

homeowners' insurance policy with Citizens. After Maytin filed suit for breach of contract against Citizens, he moved to compel appraisal. Citizens answered the complaint and asserted that Maytin failed to comply with post-loss conditions and prevented Citizens from fully inspecting his property, thereby, precluding the invocation of the appraisal clause under the insurance policy.

On the authority of Citizens Property Insurance Corp. v. Galeria Villas Condominium Association, No. 3D10-807 (Fla. 3d DCA Nov. 24, 2010), we reverse the trial court's grant of the motion to compel appraisal and remand for an evidentiary hearing to determine if Maytin complied with the post-loss conditions under the policy. See First Home Ins. Co. v. Fleurimond, 36 So. 3d 172 (Fla. 3d DCA 2010); see also Sunshine State Ins. Co. v. Corridori, 28 So. 3d 129, 131 (Fla. 4th DCA 2010) (“[W]here the ‘insured cooperates to some degree or provides an explanation for its noncompliance, a fact question is presented’ regarding the necessity or sufficiency of compliance Whether appellees’ compliance with the policy terms was necessary or sufficient is a dispute of fact.”) (citation omitted); U.S. Fid. & Guar. Co. v. Romay, 744 So. 2d 467 (Fla. 3d DCA 1999).

Reversed and remanded.