

Ernest R. Kutzik, et al., Appellants, v. St. Paul Fire and Marine Insurance Company, Respondent

No. C2-90-776

Court of Appeals of Minnesota

1990 Minn. App. LEXIS 1103

November 6, 1990, Decided

November 13, 1990, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

PRIOR HISTORY: Appeal from District Court, Ramsey County; Hon. Otis H. Godfrey, Judge.

DISPOSITION: Affirmed.

CORE TERMS: appraisal, summary judgment, appraisal fee, appraisers', granting respondent, affirming

COUNSEL: Ernest R. Kutzik, Miriam D. Kutzik, pro se, St. Paul, Minnesota.

Charles Noel, Minneapolis, Minnesota.

Louis J. Torinus, Attorney pro se, Stillwater, Minnesota, Non-party respondent.

James F. Dunn, Attorney pro se, St. Paul, Minnesota, Non-Party Respondent.

JUDGES: Crippen, Presiding Judge, Foley, Judge, and Robert H. Schumacher, Judge.

OPINION BY: SCHUMACHER

OPINION

UNPUBLISHED OPINION

Appellants Ernest and Miriam Kutzik challenge the trial court's order affirming the appraisal award, granting fees, and granting respondent St. Paul Fire and Marine Insurance Company's motion for summary judgment. We affirm.

FACTS

Appellants were insured by respondent at the time their house was damaged by fire. The parties disagreed on the amount of the damages and submitted the matter to an Appraisal Board. The Appraisal Board made an

award and appellants, dissatisfied with the award, moved the district court to have it set aside.

Appellants refused to pay an appraisal fee to appraisers Louis Torinus and James Dunn in contravention [*2] of *Minn. Stat. § 65A.01, subd. 3* (1989). Torinus and Dunn filed motions seeking an order compelling appellants to pay their appraisal fees.

The trial court granted the appraisers' motions and ordered respondent to stop payment on the settlement draft issued to appellant, and to issue another draft in the same amount payable to the court. The Court Administrator was directed to make disbursements to Torinus and Dunn for their fees, and to pay the remainder to appellants. The trial court granted respondent's motion for summary judgment, denied all of appellants' motions and affirmed the appraisal award. Appellants contend the trial court erred by) affirming the appraisal award, 2) granting non-party motions for fees, 3) ordering seizure of the award proceeds, and 4) granting respondent's motion for summary judgment.

DECISION

1) Appellants have not met their burden of proving the appraisal award's invalidity under *Minn. Stat. § 572.19, subd. 1* (1988). The award correctly complied with the statutory requirements by itemizing the damages for the dwelling, contents and living expenses. *Minn. Stat. § 65A.01, subd. 3* (1988).

2) Although Torinus and Dunn were not parties to the action, the [*3] trial court had jurisdiction to oversee the appraisal process, including the payment of fees pursuant to *Minn. Stat. § 65A.01, subd. 3*.

3) The trial court had the authority to seize appellants' award and distribute monies from it to Torinus and Dunn for their fees. *Minn. R. Civ. P. 67.03*.

4) There are no genuine issues of material fact and the court did not err in its application of the law; summary judgment was properly granted. *Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427 (Minn. 1988)*.

Affirmed.