

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1621

CASTLE KEY INSURANCE
COMPANY,

Appellant,

v.

MARK FISCHER,

Appellee.

On appeal from the Circuit Court for Bay County.
Frances S. King, Judge.

March 16, 2021

OSTERHAUS, J.

Castle Key Insurance Company appeals a nonfinal order denying its motion to abate litigation and compel appraisal. Castle Key argues that appraisal is appropriate because it accepted partial coverage on the insured's claim. We agree and reverse.

Mark Fischer filed a claim with his insurer, Castle Key, after his Panama City property sustained damage from Hurricane Michael. Castle Key tendered a check admitting coverage for some damage while declining to cover damage to fences, trees, and landscape attached to the property. Fischer tendered a proof of loss much higher than Castle Key's estimate, and Castle Key demanded appraisal pursuant to the homeowner's insurance

policy. Fischer then sued Castle Key, and Castle Key moved to abate the litigation and compel appraisal. The trial court denied the motion.

We review a nonfinal order denying a motion to compel appraisal de novo. *State Farm Fla. Ins. Co. v. Sheppard*, 268 So. 3d 1006, 1007 (Fla. 1st DCA 2019) (citing *MKL Enters. LLC v. Am. Traditions Ins. Co.*, 265 So. 3d 730, 731 (Fla. 1st DCA 2019)).

Here, Castle Key paid a portion of the claim by tendering a check to Fischer but denied coverage for other damage to the property. Like our decisions in *Sheppard* and *MKL Enterprises*, the insurer did not “wholly deny” coverage, and thus appraisal is appropriate and should not have been denied. *See Sheppard*, 268 So. 3d at 1007 (reversing trial court’s denial of motion to compel appraisal where insurer paid for water damage but declined to cover costs of repairing leaky pipes that caused the water damage); *MKL Enters.*, 265 So. 3d at 731 (finding insurer did not “wholly deny” coverage because it tendered a check, admitting coverage for some damage while declining to cover all repair costs).

We also reject Fischer’s waiver and ripeness arguments. Castle Key did all it needed to do before demanding appraisal and did not act inconsistently with its appraisal right. It promptly investigated Fischer’s claim, partially accepted coverage, and tendered a check. Later, it sent a mediation notice at the first indication of a dispute between the parties after receiving a letter of representation from Fischer’s counsel. *See State Farm Fla. Ins. Co. v. Lime Bay Condo., Inc.*, 187 So. 3d 932, 936 (Fla. 4th DCA 2016) (recognizing that the mediation notice requirement in § 627.7015(2), Florida Statutes, ripens only after the insurer is put on notice that there is a dispute involving a material issue of fact); *People’s Tr. Ins. Co. v. Lavadie*, 306 So. 3d 285, 290 (Fla. 3d DCA 2020) (same). Castle Key then demanded appraisal within one week after the filing of Fischer’s proof of loss showing the parties to be far apart on the issue of the amount of the loss.

Accordingly, we REVERSE the trial court’s order denying Castle Key’s motion to abate litigation and discovery and compel appraisal and REMAND with instructions to enter an order granting Castle Key’s motion.

B.L. THOMAS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Scot E. Samis of Traub Lieberman Straus & Shrewsberry LLP, St. Petersburg; David Molhem of Molhem & Fraley, P.A., Tampa, for Appellant.

Chad A. Barr and Virginia E. Davis Horton of the Law Office of Chad A. Barr, P.A., Altamonte Springs, for Appellee.