STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0604

Ariel, Inc.,
Appellant,

vs.

State Farm Fire and Casualty Company,
Respondent.

Filed December 16, 2024
Reversed and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-22-8407

Edward E. Beckmann, Beckmann Law Firm, LLC, Bloomington, Minnesota (for appellant)

Scott G. Williams, Lindsey A. Streicher, HAWS-KM, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Bentley, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

SYLLABUS

An insured's demand for an appraisal of its loss under a fire insurance policy is not a "suit or action" on the policy. Therefore, the two-year time limit provided in Minn. Stat. § 65A.01, subd. 3 (2022), does not apply to a demand for an appraisal so long as the insured may timely commence an action on the policy against the insurer.

OPINION

BRATVOLD, Judge

Appellant Ariel Inc. challenges the district court's decision to grant summary judgment to respondent State Farm Fire and Casualty Company and to deny Ariel's motion to compel appraisal of its loss.[1]

Ariel owns and manages a large commercial property in Minneapolis that was damaged in a fire. Ariel sought to recover its losses under a fire insurance policy issued by State Farm. State Farm paid some of Ariel's claimed losses from the fire but denied Ariel's request for an additional $1.5 million in fire losses.[2] Ariel sued, asserting breach of contract and requesting a declaratory judgment.[3] After commencing this litigation, Ariel demanded an appraisal to determine the amount of loss under the policy. After discovery closed, the district court decided State Farm's motion for summary judgment and Ariel's motion to compel appraisal.

On appeal, Ariel raises two issues. First, Ariel contends that the district court erred in determining that its motion to compel appraisal was untimely and that Ariel failed to satisfy a prerequisite that the parties disagree on the amount of loss before it demanded an

[1] Ariel brought its motion to compel appraisal as a partial-summary-judgment motion. The district court also treated Ariel's motion to compel appraisal as a partial-summary-judgment motion. This reflects Minnesota practice.

[2] The additional $1.5 million in dispute is for building-related losses. State Farm also paid for other fire-related losses, such as lost profits, that are not included in this discussion because these other insurance payments are not at issue on appeal.

[3] Ariel's complaint also alleged that State Farm violated the Unfair Claims Practices Act, Minn. Stat. §§ 72A.17-.32 (2022). Ariel later voluntarily dismissed that claim.

appraisal. Second, Ariel argues that the district court erred in determining that Ariel submitted insufficient evidence of its loss to survive summary judgment on its breach-of-contract claim.

Because the record demonstrates that Ariel's motion to compel appraisal was timely and that Ariel established that the parties disagreed on the amount of loss, we conclude that the district court erred in denying Ariel's motion to compel appraisal. We also conclude that the district court erred by granting summary judgment to State Farm. Thus, we reverse and remand to compel appraisal and for further proceedings consistent with this opinion.

FACTS

On May 29, 2020, a fire damaged Ariel's Minneapolis property. The fire department extinguished the fire, but several parts of the property were damaged, including the roof, elevators, flooring, drywall, plaster, and electrical system.

At the time of the fire, Ariel's property was insured under a "Businessowners Coverage Form" (the policy) issued by State Farm. The policy obligates State Farm to pay for "accidental direct physical loss" to "covered property" resulting from a "covered cause of loss," including fire loss. In the event of fire loss, State Farm may be liable, as relevant to this appeal, to "pay the cost of repairing or replacing the lost or damaged property." It is undisputed that the May 29, 2020 fire was a covered cause of loss.

Ariel worked with several businesses to handle its insurance claim with State Farm for fire losses. Ariel hired a general contractor to assess the scope of the damage, to oversee all necessary repairs, and to "handle [the insurance claim] entirely," including to "manage billing, the paperwork, [and] billing to State Farm." Ariel's owner testified in his deposition

that the "insurance company paid [Ariel], and frankly, we paid [the general contractor]." Ariel also hired a public adjuster to help identify the property's fire damage, write a scope of work for the repairs, and negotiate with State Farm.

Ariel worked with a State Farm claims specialist assigned to handle Ariel's claim. The claims specialist communicated with Ariel, the general contractor, and the public adjuster. The claims specialist sought to gather "supporting documentation that outline[d] their actual expenses" for repairs, including invoices, and to discuss the scope of repair. In May 2022, the public adjuster gave the claims specialist two documents that were identified in deposition testimony as "scopes of work." The public adjuster testified that the second "scope of work" documented the "full scope" of the loss and that the first "scope of work" was a "supplement" that showed the difference between all the repairs done by the general contractor and the repairs for which State Farm had paid. In the end, State Farm paid Ariel $3,344,526.24 for the loss, which it maintains represents the entire loss. Ariel argues that the public adjuster's first "scope of work" shows that it completed an additional $1,534,331.57 in repairs covered under the policy that have not been reimbursed by State Farm.

On May 24, 2022, the claims specialist spoke to the public adjuster, requesting additional documentation of actual expenses that Ariel incurred for fire repairs and informing the public adjuster that State Farm would not extend the policy's two-year time limit on bringing a legal action. The parties agree that the two-year time limit for Ariel's legal claims expired on May 29, 2022. The parties also agree that Ariel has completed its fire repairs to the property.

On May 26, 2022, Ariel sued State Farm, claiming that State Farm breached the policy when it failed to pay for some costs that Ariel incurred in repairing fire damage to its property. Ariel also sought a declaratory judgment.

About four months later, Ariel sent State Farm a written demand for an appraisal to determine "the amount and scope of loss." Nothing in the record shows whether State Farm responded to Ariel's appraisal demand. In November 2022, Ariel reiterated its demand for an appraisal in its answers to State Farm's first set of interrogatories, stating that "[a]ny dispute regarding the amount and cause of loss should be decided in appraisal, not litigation, and without discovery."

In October 2023, State Farm moved for summary judgment, arguing that it was not liable to Ariel for any other payments under the policy because Ariel failed to document additional losses with reasonable certainty and failed to satisfy conditions precedent for loss payment under the policy. Meanwhile, Ariel moved to compel appraisal, which State Farm opposed as untimely and failing required conditions.

On February 14, 2024, the district court filed an order denying Ariel's motion to compel appraisal and granting State Farm's summary-judgment motion. As to Ariel's motion, the district court first determined that Ariel's demand for an appraisal was untimely because it was made four months after the two-year time limit had expired. Second, the district court determined that Ariel failed to satisfy the relevant policy provisions for making an appraisal demand because there was "no evidence of disagreement" between the parties over the amount of Ariel's loss. The district court also granted State Farm's summary-judgment motion, concluding that Ariel provided "no proof of damages" to a

reasonable degree of certainty and that, therefore, no genuine issue of material fact remained for trial.

Ariel appeals.

ISSUES

I. Did the district court err by denying Ariel's motion to compel appraisal of its loss?

II. Did the district court err by granting State Farm's motion for summary judgment on Ariel's claims under the policy?

ANALYSIS

I. The district court erred by denying Ariel's motion to compel appraisal.

Ariel makes two arguments in support of its position that the district court erred by denying its motion to compel appraisal. First, Ariel contends that the district court erred in concluding that its demand for an appraisal was untimely. Second, Ariel contends that the district court erred in concluding that disagreement between the parties on the amount of loss is a condition precedent to either party's demand for an appraisal. In the alternative, Ariel asserts that, if disagreement between the parties is a condition precedent to a demand for an appraisal, undisputed facts in the record establish that Ariel and State Farm disagreed on the amount of loss. Ariel contends that, therefore, State Farm must comply with Ariel's demand for an appraisal. We address each argument in turn.

A. Ariel's demand for an appraisal was timely.

The district court determined that Ariel's demand for an appraisal was untimely after examining both the policy's two-year time limit on legal actions and the two-year time limit in Minnesota's Standard Fire Insurance Policy (standard fire policy), Minn. Stat.

§ 65A.01 (2022). Ariel argues that the district court's interpretation of the policy and the standard fire policy is incorrect, while State Farm urges us to affirm the district court.

Appellate courts review interpretations of an insurance policy and statutory language de novo. *Nathe Bros. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 344 (Minn. 2000). Appellate courts interpret an insurance policy as they do a contract. *Midwest Fam. Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013); *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002). When the insurance-policy language is unambiguous, it must be given its usual and accepted meaning. *Wanzek Constr., Inc., v. Emps. Ins. of Wausau*, 679 N.W.2d 322, 324 (Minn. 2004). Similarly, "[w]hen a statute's language is unambiguous, our role is to give effect to the statute's plain meaning." *Auto-Owners Ins. Co. v. Second Chance Invs., LLC*, 827 N.W.2d 766, 771 (Minn. 2013). Here, neither party contends that the relevant language in the policy or the standard fire policy, both of which set out a two-year time limit, is ambiguous.

We begin by examining the relevant provision in the policy, which includes a two-year time limit on legal actions against State Farm and states that "[n]o one may bring a legal action against [State Farm] under this insurance" unless there has been "full compliance with all of the terms" of the policy and "the action is brought within 2 years after the date on which the accidental direct physical loss occurred" (policy's two-year time limit).

The policy's two-year time limit must conform with the requirements of the standard fire policy. The provisions of the standard fire policy "generally may not be omitted, changed, or waived." *Else v. Auto-Owners Ins. Co.*, 980 N.W.2d 319, 324 (Minn.

2022) (quoting *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 690 (Minn. 1997)). A fire insurance policy may include "additional or different terms" if those terms "offer more coverage than the statutory minimum." *Id*. The Minnesota Supreme Court has emphasized that it will uphold a provision in a fire insurance policy "only if it affords the insured all the rights and benefits of the Minnesota standard fire insurance policy or offers additional benefits which provide more coverage to the insured than the statutory minimum." *Watson*, 566 N.W.2d at 691.

The standard fire policy also includes a two-year time limit, which provision states that "[n]o suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity . . . unless commenced within two years after inception of the loss" (statute's two-year time limit). Minn. Stat. § 65A.01, subd. 3. The parties do not contend that there is a material difference between the policy's two-year time limit and the statute's two-year time limit. We conclude that there is no material difference and focus our analysis on the statute's two-year time limit.

Ariel contends that the statute's two-year time limit does not apply to appraisal demands because it expressly applies to a "suit" or "action" and an appraisal is neither. State Farm disagrees and relies on this court's precedent to argue that the statute's two-year time limit applies to a demand for an appraisal.

Relying on *Johnson v. Mutual Service Casualty Insurance Co.*, State Farm contends that this court interpreted the statute's two-year time limit[4] and determined that it barred an insured's demand for an appraisal. 732 N.W.2d at 345. Johnson demanded an appraisal of a fire loss after the statute's two-year time limit had expired and then sued her insurer for breach of contract. *Id.* at 342. When the insurer refused to participate in an appraisal, Johnson moved to compel appraisal. *Id.* The district court granted summary judgment for the insurer. *Id.* at 343.

On appeal, Johnson conceded that the lawsuit she had filed against her insurer was barred by the statute's two-year time limit. *Id.* at 342-43. We affirmed the district court's order granting summary judgment for the insurer and held that Johnson's demand for an appraisal was "governed by the two-year time limitation on suits or actions." *Id.* at 346. We acknowledge that some language in *Johnson* seems to favor a sweeping application of the statute's two-year time limit to all demands for an appraisal. But our reasoning in *Johnson* provides more nuanced guidance for deciding whether the statute's twoyear time limit applies here.

In *Johnson*, we first considered the definitions of "suits" and "actions," both of which are covered by the statute's two-year time limit. *Id.* at 345. We noted that this court previously adopted a definition of "suit" as "any proceeding by a party or parties against another in a court of law" and stated that an "action" is "confined to judicial proceedings."

[4] This court in *Johnson* observed that the applicable insurance policy conformed with the statute's two-year time limit. 732 N.W.2d 340, 344 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007).

Id.; *accord Vaubel Farms, Inc. v. Shelby Farmers Mut.,* 679 N.W.2d. 407, 411-12 (Minn. App. 2004). We also pointed out that an insurer's liability under an insurance policy "depends on a judicial determination" and "[i]t is well settled that appraisal does not determine liability under a policy." *Johnson*, 732 N.W.2d at 346.

We therefore reasoned that, "even if Johnson succeeded in determining the amount of the loss through appraisal, she would have to bring an action to determine [the insurer's] liability, and she concedes that such an action is barred by the limitation on actions contained in the policy." *Id.* In concluding that Johnson's demand for an appraisal was untimely, we emphasized that an insured cannot compel appraisal if the statute's two-year time limit has expired without the insured filing a legal action because the insurer's liability "can only be determined by a court action, which is barred by the two-year limitation on suits or actions." *Id*.

Ariel contends that *Johnson*'s reasoning does not support applying the statute's two-year time limit to the demand for an appraisal made here. Ariel points out that, six years after our decision in *Johnson*, a Minnesota federal district court, in an unpublished opinion, addressed a similar issue on similar facts to those here when it granted a motion to compel appraisal of a fire insurance claim. *Amro v. Liberty Ins. Corp.*, No. 12-2753 (DWF/JSM), 2013 WL 12149250 (D. Minn. Apr. 15, 2013).[5] While federal decisions

[5] During district court proceedings, Ariel first referenced *Johnson* in its motion to compel appraisal to support the general statement that appraisal is a statutorily mandated, nonjudicial method to resolve disputes over the amount of an insured's loss. In its response opposing appraisal, State Farm cited *Johnson* to contend, as it does on appeal, that any demand for an appraisal made after the statute's two-year time limit is barred. In reply, Ariel contended that *Johnson* "[does] not include a deadline to demand appraisal" but sets

involving state law are not binding precedent, they may be persuasive. *Moreno v. Crookston Times Printing Co*., 610 N.W.2d 321, 330 (Minn. 2000).

We consider the facts and reasoning of the federal decision cited by Ariel. Amro, the insured, commenced litigation within the statute's two-year time limit and then demanded an appraisal after the two-year time limit expired. *Amro*, 2013 WL 12149250, at *2. After analyzing *Johnson*, the federal district court concluded that the statute's two-year time limit[6] did not bar Amro's demand for an appraisal. *Id.* at *7-8.

In reaching this conclusion, the federal district court explained that *Johnson* "stands for the proposition" that "the insured cannot side-step" the statute's two-year time limit by bringing an untimely legal action and then pursuing appraisal. *Id* at *7. The federal district court reasoned that, when an insurer's liability must be determined by a district court and the insured does not *either* commence suit *or* demand an appraisal within the statute's two-year time limit, a subsequent demand for an appraisal is untimely. *Id*. On the other hand, when the insured timely commences suit *within* this two-year time limit and demands an appraisal *after* the two years has expired, the subsequent demand for an appraisal is timely. *Id.* Thus, the federal district court granted the insured's motion to compel appraisal. *Id*. at *8.

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a deadline for liability determinations such as filing suit. The district court's summary-judgment decision did not discuss *Johnson*, *Amro*, or the parties' arguments about how to interpret either the policy's or the statute's two-year time limit.

[6] The federal district court in *Amro* determined that the insurance policy conformed with the statute's two-year time limit. *Id*. at *5.

Ariel argues that the facts here are more akin to those in *Amro* than to those in *Johnson*. We agree. Like Amro, Ariel did not side-step the statute's two-year time limit by demanding an appraisal after it filed suit because Ariel filed suit within the two-year time limit. *See id.* at *7. In contrast, Johnson sued her insurer after the statute's two-year time limit had expired and, as noted in the opinion, if appraisal had been compelled, Johnson could not have sought a judicial determination of her insurer's liability. *Johnson*, 732 N.W.2d at 345-46.

Ariel's demand for an appraisal is like the demand for an appraisal in *Amro* and unlike the demand for an appraisal in *Johnson*. It is undisputed that Ariel timely sued State Farm within the statute's two-year time limit; in fact, Ariel commenced this action within two days of learning that State Farm would not toll the time limit. If Ariel's motion to compel appraisal is granted and the amount of fire loss covered by State Farm's policy is determined in an appraisal, Ariel then may seek a judicial determination of State Farm's liability.

In sum, we rely on the plain meaning of "suit" and "action" to conclude that the statute's two-year time limit applies to judicial proceedings. We also hold that the statute's two-year time limit does not apply to a demand for an appraisal so long as the insured may timely commence an action on the policy against the insurer. We therefore conclude that Ariel's demand for an appraisal is not barred by the statute's two-year time limit. Ariel sued State Farm within the two-year time limit provided in Minn. Stat. § 65A.01, subd. 3, and as stated in the policy. The district court thus erred in determining that Ariel's motion to compel appraisal was untimely.

B. Ariel's demand for an appraisal satisfied the prerequisite that the parties failed to agree on the amount of loss.

Ariel argues that the district court erred in determining that an actual disagreement over the amount of loss is a condition precedent to demanding an appraisal. In the alternative, Ariel contends that the district court erred in concluding that the record included no evidence of disagreement between the parties over the amount of loss.

Once again, we consider the relevant provisions in the policy and in the standard fire policy. The policy describes the appraisal process and provides that either party may demand an appraisal under certain circumstances, specifically, "*If we and you disagree on the value of the property or the amount of loss*, either may make written demand for an appraisal of the loss." (Emphasis added.) The policy also states that, if there is an appraisal, State Farm "will still retain [its] right to deny the claim."

This policy language conforms with the provision on appraisals found in the standard fire policy, which states in relevant part:

> *In case the insured and this company*, except in case of total loss on buildings, *shall fail to agree as to* the actual cash value or *the amount of loss*, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

Minn. Stat. § 65A.01, subd. 3 (emphasis added). The parties do not contend that there is a material difference between the policy's appraisal provision and the statute's appraisal provision. We conclude that there is no material difference and focus our analysis on the statute's appraisal provision. With the statute's appraisal provision in mind, we consider

Ariel's challenges to the second reason for which the district court refused to compel appraisal.

1. The insurer and insured must fail to agree on the amount of loss, and this disagreement is a prerequisite to a demand for an appraisal.

The district court relied on the statutory appraisal provision and ruled that appraisal is appropriate only when the "insured and the insurer fail to agree as to the actual cash value or the amount of loss and make a written demand for appraisal." The district court reviewed relevant caselaw and concluded that "the function of appraisal is to determine the amount it will cost to repair a loss when the parties disagree on this value."

Ariel appears to contend that the district court erred by conditioning Ariel's right to demand an appraisal on disagreement over the amount of loss, but this argument conflicts with the plain language of the statute's appraisal provision. Minn. Stat. § 65A.01, subd. 3 ("*In case* the insured and this company . . . *shall fail to agree* as to the actual cash value or the amount of loss . . . ." (emphasis added)). The language in the policy similarly provides: "*If* [Ariel] and [State Farm] *disagree on* the value of the property or *the amount of loss*, either may make a written demand for an appraisal of the loss." (Emphasis added).

The phrase "in case" and the word "if," when used in this context, both indicate that the right to demand an appraisal is conditional and disagreement between the parties is a prerequisite to making a demand for an appraisal. *See Second Chance*, 827 N.W.2d at 771 (interpreting the standard fire policy's appraisal provision as including as "a prerequisite to the application of the appraisal provision . . . that a dispute must exist between the parties"). For these reasons, we conclude that the district court did not err in determining

that Ariel and State Farm must fail to agree on the amount of loss before either party may demand an appraisal.

2. Ariel's demand for an appraisal satisfied the prerequisite that the parties failed to agree on the amount of loss.

The district court determined that Ariel was not entitled to an appraisal because the record provided "no evidence of a disagreement over the amount of loss." The district court reasoned that an appraisal

> would be futile because the building repair is finished and there is no disagreement over the amount of loss. The evidence shows that the dispute arises out of Ariel's claim that it is owed more money by State Farm, but it does not support this contention with invoices or amounts "actually spent" on repairs. It supports its claim with estimates that differ from estimates created by State Farm.

Relying on the policy's loss-payment provisions,[7] the district court determined that Ariel "must show that there is a specific amount expended for necessary repairs, that Ariel actually spent money on such repairs, and that the repairs are complete. Once it meets this requirement, if State Farm disagrees with the amounts, that is when appraisal would be proper."

[7] The policy includes several provisions under the title "property loss conditions," one of which is the loss-payment provision, which states that, when paying replacement costs, State Farm is obligated to pay "not more than the least of the following amounts": the policy limit, the cost to replace the lost or damaged property with "other property of comparable material, quality and used for the same purpose," *or* "the amount [the insured] actually spend[s] that is necessary to repair or replace the lost or damaged property." The loss-payment provision also states that State Farm "will not pay on a replacement cost basis for any loss: (1) until the lost or damaged property is actually repaired or replaced; and (2) unless the repairs or replacement are made as soon as reasonably possible after the loss."

Ariel argues that the district court erred by determining that the record contains "no evidence" of Ariel and State Farm's disagreement on the amount of loss. State Farm contends that the evidence provided by Ariel is insufficient because the policy implicitly requires that the insured provide invoices or proof of payment for any repairs. State Farm appears to rely on the policy's loss-payment provisions, which state in relevant part that it is obligated to pay for only the amount an insured "actually spend[s] that is necessary to repair or replace the lost or damaged property." Neither State Farm nor the district court cites legal authority to support its claims that the loss-payment provision is incorporated into the statute's appraisal provision.

State Farm cites a nonprecedential opinion from this court, *Zulfe Enterprises v. State Farm Fire & Casualty Co.*, in support of its argument that "more than a disagreement as to the amount of loss" is required "to invoke appraisal."[8] No. A20-0063, 2020 WL 7491266 (Minn. App. Dec. 21, 2020). In *Zulfe Enterprises*, this court relied on supreme court precedent interpreting policy language that required a failure to agree on the amount

[8] State Farm does not support its position by citing the standard fire policy, and *Zulfe Enterprises* did not consider the standard fire policy. State Farm instead cites unpublished opinions from federal district courts that denied an insured's motion to compel appraisal because there was a genuine issue of material fact as to whether the insured had provided the insurer with adequate evidence of the amount of loss. *See, e.g.*, *Darmer v. State Farm Fire & Cas. Co*., No. 17-4309 (JRT/KMM), 2018 WL 3325908, at *5-6 (D. Minn. July 6, 2018) ("A genuine issue of material [fact] exists with respect to whether Darmer has reasonably complied with his 'duties after loss' and whether he has satisfied all reasonable requests made by State Farm."); *St. Panteleimon Russian Orthodox Church v. Church Mut. Ins. Co*., No. 13-1977 (SRN/JJK), 2013 WL 6190400, at *6-7 (D. Minn. Nov. 27, 2013) ("[W]e cannot determine whether the Church provided sufficient information about the claim to create the conditions where a disagreement on the amount of loss could even occur.").

of loss before making a demand for appraisal of windstorm damage. *Id.* at *5 (citing *Boston Ins. Co. v. A. H. Jacobson Co*., 33 N.W.2d 602, 604 (Minn. 1948)).[9] This court concluded that, while an insured need not follow a "proof-of-loss process" as provided in the applicable policy, the parties "must each assert a position as to the amount of loss that provides sufficient information for comparison and a determination whether they agree." *Zulfe Enters.*, 2020 WL 7491266, at *5.

We need not decide whether the standard set out in *Zulfe Enterprises* applies to the statute's appraisal provision. Even if a party is obligated to assert a position on the amount of loss along with sufficient information for comparison with the other party's position before it may demand an appraisal, Ariel did so. It is undisputed that, before Ariel demanded an appraisal, it submitted to State Farm a "scope of work" from the public adjuster detailing repair work for which State Farm had not yet paid; an unpaid invoice from the general contractor to Ariel totaling $1,534,331.57 for the "remaining balance for fire damage repairs"; and claims notes from State Farm's claim specialist stating that Ariel performed repairs beyond the agreed-upon scope of repairs. Later, Ariel also submitted deposition transcripts in which Ariel's owner and the general contractor testified that State Farm owes between one and two million dollars for repairs and an affidavit from the general contractor stating that Ariel owes the general contractor $1,534,331.57 for building-related fire repairs.

[9] While nonprecedential opinions of this court are not binding, they may be persuasive. Minn. R. Civ. App. P. 136.01, subd. 1(c).

The district court appears to have determined that Ariel provided insufficient evidence of loss after examining Ariel's submissions in response to State Farm's motion for summary judgment and concluding that Ariel provided only "estimates that differ from estimates created by State Farm." The public adjuster's affidavit, according to the district court, "does not create a disagreement necessitating appraisal because it fails to provide a real amount with which State Farm can disagree." In contrast, the district court pointed out that State Farm offered testimony from the claims adjuster stating that "State Farm did not receive the requisite documentation to continue to pay for repairs." The district court also noted that "State Farm paid $3.3 million . . . on this claim [which] shows that both parties agreed on the amount of loss when provided the correct invoicing and documentation of expenditures."

The district court's reasoning overlooked the general contractor's affidavit, which specifically discussed the public adjuster's scope of work and attested that this scope of work "show[s] the total amount actually and necessarily spent for repairs to the property." The general contractor averred that this scope of work is reflected in "an invoice that shows the amounts owed for finishing the project" and that $1,534,331.57 is "the balance owed."

If we compare the information Ariel submitted to State Farm using the standard set out in *Zulfe Enterprises*, Ariel "assert[ed] a position as to the amount of loss" and "provide[ed] sufficient information for comparison" with State Farm's position that it had fully paid the fire losses. *Id.* Even if we also assume that Ariel needed to provide information or evidence of "amount[s] actually and necessarily spent for repairs to the property," as the district court assumed and as stated in the policy's loss-payment

provision, we easily conclude based on the record already discussed that the parties "fail[ed] to agree as to" the amount of loss.

State Farm and Ariel's failure to agree on the amount of loss is also shown by State Farm's denial of liability in response to Ariel's lawsuit. In State Farm's answer to Ariel's complaint, State Farm generally denied liability for any additional costs that Ariel incurred in making repairs. While Ariel's complaint asserts its position that State Farm is obligated under the policy to pay additional costs for fire repairs, State Farm's answer contends it has already fully paid the loss. Thus, either party may demand an appraisal.

In sum, we conclude that the district court erred by denying Ariel's motion to compel appraisal. First, the statute's two-year time limit applies to the commencement of an action on the policy but does not apply to a demand for an appraisal so long as the insured may timely commence an action against the insurer. Second, the record shows, even when viewed favorably to State Farm as the nonmoving party, that there is no genuine issue of material fact related to whether Ariel timely sued State Farm within the statute's two-year time limit, Ariel's complaint sought to recover additional payments for fire repairs under the policy, State Farm denied liability for more payments under the policy, and Ariel demanded an appraisal after stating its position on the amount of the loss along with information in support of its position. Thus, we conclude that the parties failed to agree on the amount of loss. Ariel has therefore satisfied the prerequisite for appraisal under the policy, and we reverse and remand for the district court to compel an appraisal.

II. The district court erred in granting summary judgment to State Farm.

Appellate courts "review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Appellate courts view the evidence in the light most favorable to the nonmoving party. *Henry v. Indep. Sch. Dist. #625*, 988 N.W.2d 868, 880 (Minn. 2023). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008).

Because we reverse and remand for the district court to compel an appraisal, we need not address the second issue raised by the parties in any detail. As discussed above, we conclude that Ariel submitted sufficient evidence of the parties' dispute about the amount of loss not paid by State Farm and sufficient information of its position in the dispute. Based on the same record viewed favorably to Ariel as the nonmoving party, we also conclude that Ariel has shown that a genuine issue of material fact exists on its claims for declaratory judgment and breach of contract.[10]

[10] The district court's discussion of the record for State Farm's summary-judgment motion included the same evidence it considered for Ariel's motion to compel appraisal with one addition. In deciding whether Ariel submitted sufficient evidence of damages on the breach-of-contract claim to survive summary judgment, the district court noted that, in the depositions of Ariel's owner, general contractor, and public adjuster, each witness testified that they "did not know" when asked "how much State Farm owed Ariel for completed work." While this testimony may or may not affect the credibility of each witness, it does not alter our legal conclusion that a genuine issue of material fact exists in Ariel's suit

But perhaps more importantly, because an appraisal is compelled, the appraisal will determine "the amount of loss," which "necessarily includes the determination" of, among other things, "the amount it would cost to repair that loss." *Quade v. Secura Ins.*, 814 N.W.2d 703, 706 (Minn. 2012). To the extent that any questions about State Farm's liability also arise, "the decision of the appraiser will be subject to review by the district court." *Id.* at 707-08.[11] For these reasons, we reverse summary judgment for State Farm.

DECISION

We conclude that the district court erred in denying Ariel's motion to compel appraisal. First, the two-year time limit set out in Minn. Stat. § 65A.01, subd. 3, does not apply to a demand for an appraisal so long as the insured may commence a timely suit against the insurer. Because Ariel timely commenced litigation against State Farm within the statute's two-year time limit, Ariel's demand for an appraisal is timely, even though it was made four months after this two-year time limit expired. Second, Ariel's demand for an appraisal is proper because the parties failed to agree on the amount of loss and Ariel submitted its position on the amount of loss along with sufficient information. Because the

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against State Farm. *See Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228-34 (Minn. 2020) (reversing a district court's decision to grant summary judgment for a defendant and noting that a court, on summary judgment, does "not weigh facts or make credibility determinations").

[11] We also note that Minnesota has a "strong public policy . . . favoring appraisals." *Id.* at 707. Appraisals, like other methods of alternative dispute resolution, provide for "a plain, speedy, inexpensive and just determination of the extent of the loss." *Kavli v. Eagle Star Ins. Co.*, 288 N.W. 723, 725 (Minn. 1939). While appraisals are "generally intended to take place before suit is filed," the supreme court has noted that, even after an insured has commenced litigation, an "appraisal at this stage of the process must go forward" but may receive judicial review. *Quade*, 814 N.W.2d at 708.

district court erred in denying Ariel's motion to compel appraisal, we conclude that it also erred in granting State Farm's motion for summary judgment. Thus, we reverse and remand for the district court to compel an appraisal and for further proceedings consistent with this opinion.

Reversed and remanded.