STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF DAKOTA — FIRST JUDICIAL DISTRICT

Anthony Remick,

Plaintiff,

v.

State Farm Fire and Casualty Company,

Defendant.

Court File No.: 19HA-CV-23-3757
The Honorable Iverson Landrum

ORDER AND MEMORANDUM ON CROSS MOTIONS FOR SUMMARY JUDGMENT AND LEAVE TO AMEND

The above-entitled matter came for a hearing before Kathryn Iverson Landrum, Judge of District Court, on February 29, 2024, on cross-motions for summary judgment, and Plaintiff's motions for declaratory judgment and for leave to amend his complaint. Plaintiff Anthony Remick was represented by Jordan T. Vassel. Defendant State Farm Fire and Casualty Company was represented by Scott G. Williams. Based upon the pleadings, file, affidavits, and arguments of counsel, the Court makes the following Order:

1. Defendant's motion for summary judgment is **DENIED**.
2. Plaintiff's motion for summary judgment is **GRANTED**.
3. Plaintiff's motion for declaratory judgment is **GRANTED**. Under the Policy's Similar Construction Clause, Plaintiff is entitled to a reasonable match. This reasonable match is reflected in the Appraisal Award.
4. Plaintiff's motion for leave to amend is **GRANTED**. Plaintiff has two weeks from the date of this Order to file an amended complaint including a count of bad faith.

MEMORANDUM

This litigation arises from an insurance claim for damaged property, the interpretation and scope of the applicable policy language, and the effect of the findings of an independent appraisal panel upon the parties. Before and during this action, both parties repeatedly cite to the same clause providing coverage under a policy titled "Replacement Cost Loss Settlement - Similar Construction" (the "Similar Construction Clause") with differing positions on its terms. Beyond that, the facts are undisputed as outlined below.

I.

On October 25, 2021, Plaintiff Anthony Remick sustained property damage from a burst water line behind his refrigerator. The adjacent kitchen cabinets, carpet, and flooring became damaged (the "Loss"). Plaintiff maintained a policy issued by Defendant State Farm Fire and Casualty Company ("Defendant" or "State Farm"), who determined the Loss was covered.

At its directive, Plaintiff met with State Farm's preferred independent contractor, Legacy Services Corporation ("Legacy"), to create an estimate for repairs. Legacy communicated with its subcontractor cabinetry specialists, Gerhards, to see if the damaged cabinets could be "matched" to the remaining undamaged ones. Citing several reasons, Gerhards opined that it could not and recommended replacement of all the kitchen cabinets to effectuate a "match." Legacy submitted two estimates to State Farm, one reflecting replacement of the water-damaged cabinets, and another for replacement of all the kitchen cabinets.

State Farm issued payment to Plaintiff for the amount reflecting the repair/replacement of just the water-damaged cabinets. State Farm denied Legacy's proposition of replacing of all the cabinets. State Farm then instructed Legacy to work with Gerhards' custom cabinet maker to provide another estimate for repairing/replacing the water-damaged cabinets with customized

cabinets. Under this directive, Legacy stated that the damaged cabinets could be "restored" without indicating to what extent the restoration could be "matched."

Plaintiff sought an independent contractor, Capital City Remediation ("Capital"), for a second opinion. Capital recommended all the cabinets be replaced to effectuate a match. Capital communicated its position to State Farm. In an email exchange with Plaintiff, State Farm acknowledged these communications with Capital. State Farm noted Plaintiff's policy "does not provide coverage for matching." State Farm subsequently stated, "we will hire cabinet maker [sic] to inspect your cabinets to provide an independent opinion regarding repairability along with the price to repair or replace, whichever is determined necessary based on their inspection." Plaintiff made his residence available for further inspections.

State Farm contacted Wood-B-Nice Cabinets and sent photographs of Plaintiff's kitchen cabinets. Plaintiff emailed State Farm asking when another contractor would come to his residence to inspect the cabinets. State Farm replied that Wood-B-Nice "indicated that [it] can rebuild the damaged cabinets to provide a consistent appearance with the undamaged cabinets in your kitchen. If the cabinets are still in place with the undamaged doors, [it] can rebuild the boxes, re-use the doors and paint them …. If the doors were not saved, [it] would need to rebuild new doors to match your existing cabinets[.]"

Plaintiff had Wood-B-Nice inspect his kitchen cabinets. Wood-B-Nice represented that it could not get new cabinets to "match" unreplaced ones, citing several specifics such as the placement and kind of obsolete hinges, the grain of the oak wood, and the cabinets' footprint. Wood-B-Nice also represented that it would not do the painting of the cabinets and could not speak to the matching of that.

Plaintiff communicated his interaction with Wood-B-Nice to State Farm. State Farm replied:

> At this time we are maintaining our position that new cabinets can be fabricated that will provide a reasonably consistent appearance with the undamaged cabinets in your kitchen. … [Wood-B-Nice] has indicated [it] can replace the cabinets with similar construction and while [it] does not offer painting services … color matching paint is common…. I regret that we are unable to make any revisions to our repair scope at this time.

Plaintiff offered an interpretation of "matching" and adjacent language under Minnesota Supreme Court jurisprudence, stating: "To this point I have been open that if the custom build would provide a reasonably uniform appearance, it would be an acceptable repair." Plaintiff further encouraged State Farm to discuss with Wood-B-Nice the specific differences in appearance it represented would occur with the proposed repair.

State Farm did so and followed up with Plaintiff, stating "[Wood-B-Nice] said that your amerock hinges can be reused but [it] does not have the machinery to complete this repair." State Farm provided Plaintiff with two more cabinet contractors who may have such equipment, Voyageur Cabinets and Northland Cabinets. State Farm continued: "Considering your hinges can be re-used, I understand there is still a question regarding paint. … I will revise my estimate to include painting all of your cabinets in the kitchen…. This would entail [description of painting process] in order to achieve a reasonably uniform appearance."

Plaintiff contacted Northland Cabinets, who represented that it does not do custom cabinetry work but only full cabinetry replacements. Plaintiff also attempted to contact Voyageur Cabinets to no avail. Plaintiff relayed this to State Farm.

State Farm then contacted contractor Scandia Cabinets and sent it pictures of Plaintiff's cabinets. State Farm relayed to Plaintiff that Scandia opined "new, unfinished cabinet boxes can be made that would look reasonably similar to your undamaged cabinets. … New, similar hinges

can be purchased that do not require any special equipment or skill to install. … [and] the cabinets could then be painted to provide a uniform appearance overall."

Given the dispute, Plaintiff demanded an appraisal pursuant to the Policy, which provides in part: "If [insured] and [insurer] fail to agree on the amount of loss, either party can demand that the amount of loss be set by appraisal." Plaintiff further communicated to State Farm "it is my position that the cabinets and carpet will not match. … the appraisal panel can determine if the proposed repair will create a match or not."[1] Plaintiff's written request for appraisal stated: "Because State Farm has raised the coverage issue of matching, I request the panel identify the costs specifically for cabinet and carpet matching as a separate line item."

Plaintiff represented himself during the appraisal process and had a cabinet building professional and carpet installation professional provide testimony to the panel regarding the extent to which proposed repairs would match. State Farm had its claim specialist, Jeremy Hebert, represent it at the appraisal. Hebert's declaration states: "The appraisal panel could not have ruled on or determined any appearance-related issues at the time of the appraisal, as repairs had not been attempted or performed by Plaintiff at that time."

The appraisal panel reached its determination on March 30, 2023, as memorialized in two hand-written pages (the "Appraisal Award"). It concluded the replacement cost value for the Loss is $29,807—and therein "Cabinets Damaged" as $7,403 and "Carpet" as $1,009. It also gave an actual cash value of 60% for these sums. Thereafter, it wrote "Clarifications: cabinet matching additional $9,042. Carpet matching additional $4,738. *IF countertop breaks during detach/reset

[1] Carpet matching has also been in dispute throughout, though the cabinetry was the focal point of matching discussions.

process; an additional $5,398 should be awarded." The Appraisal Award is signed and dated by both parties' appraisers, and the panel's umpire.

On April 4, 2023, State Farm sent Plaintiff a letter and payment reflecting the $29,807 replacement cost value amount (subtracted by prior payouts and deductible). The letter stated:

> As you are aware issues of coverage are not appraisable. … You raised an issue as to whether the new cabinetry when installed and painted would provide a reasonably similar appearance to the existing cabinetry. … It is our understanding the appraisal panel agreed it was not their role to resolve coverage issues. As previously discussed, your homeowner's policy pays … to repair or replace with similar construction. …
>
> The panel, in their award, provided an amount to replace the undamaged items in question if it were to be determined at a later date an amount is owed due to an appearance issue. They did not rule on the appearance issue itself. It is our opinion the new cabinetry and carpeting, once installed and finished, will be reasonably similar in appearance to existing undamaged materials.
>
> It is our position that the damaged cabinets and carpet can be repaired with similar construction. Additionally, we have paid to paint all the cabinets in your kitchen. By painting the cabinetry, once the damaged cabinets have been repaired, we believe a reasonably uniform appearance can be achieved.
>
> If you complete repairs based on the appraisal award and still have concerns about the appearance of your cabinets and carpet, we would be happy to inspect and discuss your concerns further at that time.

Thereafter, Plaintiff initiated this action.

II.

A motion for summary judgment shall be granted, "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.01. "The district court's function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). The moving party has the burden of proof, and the Court is required

to view the facts in the light most favorable to the non-moving party. *Vieths v. Thorp Finance Co.*, 232 N.W.2d 776, 778 (Minn. 1975).

Any party to a contract may seek declaratory relief. Minn. Stat § 555.02 (providing that a party to a contract may "obtain a declaration of rights, status, or other legal relations thereunder"). Minnesota Statute section 555.01 provides as follows:

> Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. … The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

"The interpretation of insurance contracts is a question of law" and requires the "general principles of the law of contracts." *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012). "[T]he policy must be construed as a whole, beginning with the plain and ordinary meaning of the policy's terms, as well as 'what a reasonable person in the position of the insured would have understood the words to mean.'" *Cedar Bluff Townhome Condominium Ass'n. v. Am. Family Mut. Ins.*, 857 N.W.2d 290, 294 (Minn. 2014) (citing *Midwest Family Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013)). Ambiguities are generally resolved "in favor of the insured." *QBE Ins. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 397 (Minn. Ct. App. 2010). When an insurer refuses to pay or unreasonably delays payment, it breaches the contract. *Pillsbury Co. v. National Union Fire Ins. Co.*, 425 N.W.2d 244, 248 (Minn. Ct. App. 1988).

III.

Both parties seek summary judgment in this case, based on the undisputed material facts described above. Plaintiff also seeks a declaratory judgment and leave to amend the complaint. These arguments overlap significantly and will be addressed below without repetition. In sum, the

Court finds Defendant's legal arguments to be unavailing, both in support of its own motion and in opposition to Plaintiff's motions.

To begin, and importantly, Defendant does not really dispute that the Policy at issue in this case covers losses necessary for what is colloquially referred to as "matching." Instead, Defendant argues that the question of matching is unripe. Defendant then presents further arguments regarding what the Similar Construction Clause means and requires as a matter of law. Stated succinctly, Defendant attempts to distance itself from the concept of "matching" but nevertheless agrees that the Policy requires a "reasonably consistent appearance." Finally, Defendant argues that the Appraisal Panel Award required an "exact match," which is a legal coverage error.

First, Defendant argues that Plaintiff's action is unripe because before repairs are actually made, the question of match (or "reasonably consistent appearance") is "purely hypothetical." Stated differently, Defendant asserts that its proposed repairs must be completed and only then are appearance-related determinations even justiciable. The Court disagrees.

Defendant is correct that a claim for relief must be based on a concrete justiciable controversy. *Seiz v. Citizens Pure Ice Co.*, 290 N.W. 802, 804 (Minn. 1940). A claim presents a justiciable controversy if it "(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617–18 (Minn. 2007).

In this case, the Loss occurred in October of 2021 and Plaintiff's action pertains to the compensation he is owed for it under the Policy. This question is concrete and presents a genuine dispute between the parties regarding coverage. Importantly, Defendant cites to no authority

holding that an insurance coverage dispute regarding matching/appearance is not ripe until repairs are complete. Further, Defendant's agents made numerous appearance related determinations based on contractor inspections and recommendations. Plaintiff did the same. The factual dispute regarding what would provide a match/reasonably consistent appearance was presented to the Appraisal Panel, which sided with Plaintiff when it provided "additional" loss amounts for "matching." *Quade*, 814 N.W.2d at 707 (holding "there is a strong public policy in Minnesota favoring appraisals[.]"); *see generally* Minn. Stat. §§ 65A.01 subd. 3, 65A.26. Based on the above, the Court holds that this matter is ripe. *State ex rel. Friends of Riverfront v. Minneapolis*, 751 N.W.2d 586, 592 (Minn. Ct. App. 2008).

Defendant next argues that the Policy requires that repairs be completed before replacement cost benefits are released. In general terms, replacement cost value (or "RCV") is the price to fully replace damaged/insured property with new materials. RCV is normally a greater amount than actual cost value (or "ACV"). ACV is equal to RCV and subtracted by depreciation, a percentage reflecting the loss of value from age and general wear-and-tear of the insured property. Some insurance policies only provide for ACV benefits; while others (such as this one) provide ACV amounts until repairs are actually complete, at which point RCV benefits are released. In the Appraisal Award, depreciation here was established to be 40%. Thereby, ACV here is 60% of the of the full RCV. The "Clarifications" portions of the award for "matching" appear in sums of ACV.

Assuming that Defendant's argument here is correct, it does not impact Plaintiff's claims here. Plaintiff's action is not based on the alleged denial of RCV benefits, but on the benefits related to matching/reasonably consistent appearance.[2] Even so, State Farm has already been

[2] Defendant seems to allude to an argument that any covered "matching" is tethered to the RCV benefits, not the ACV. If this is the argument, it is a distinction without a difference—both payment installations are under the Similar Construction Clause.

paying out the claim on an RCV basis (including the RCV of the appraisal award).[3] For these reasons, the Court finds that the plain language of the Policy does not require repairs be completed before awarding matching/appearance-based losses.

Defendant's motion does not offer an interpretation of the Similar Construction Clause beyond its plain language. None of Defendant's legal arguments prevail in refuting Plaintiff's action. Thereby, Defendant's motion for summary judgment is denied.

IV.

Next the Court must address the parties' competing arguments regarding the plain meaning of the Similar Construction Clause. This clause provides as follows:

> **COVERAGE A – DWELLING**
>
> 1. **A1 – Replacement Cost Loss Settlement – Similar Construction.**
>
> a. [State Farm] will pay the cost to repair or replace with similar construction and for the same use on the premises … the damaged part of the property covered… subject to the following:
>
> (1) until actual repair or replacement is completed, [State Farm] will pay only the actual cash value of the damaged part of the property, …
>
> (2) when the repair or replacement is actually completed, [State Farm] will pay the covered additional amount [Plaintiff] actually and necessarily spend …

Plaintiff argues that this language provides unambiguous coverage for what is commonly referred to as "matching." *See generally Cedar Bluff*, 857 N.W.2d 290. Though State Farm has avoided the term "matching," it has continually indicated that some extent of matching is provided, preferring articulations such as "reasonably consistent appearance." The question is *to what extent*

[3] Def.'s Ex. 11 ("Replacement cost benefits are being paid at this time[.]").

does there need to be a match along the "spectrum of resemblance." *Id.* at 294. Plaintiff asserts that the Clause requires "a reasonable match."

The concept of matching was addressed in detail in *Cedar Bluff*. There, twenty of Cedar Bluff's townhomes sustained hail damage to their siding in varying extents. *Id.* at 291. The yellow siding of the buildings was old and its color had faded. *Id.* Replacement siding was available from the same manufacturer and to the identical specifications, but not to the same shade of yellow because of the originals' sun-fade. *Id.* The applicable insurance policy provided for repair/replacement with "comparable material and quality." *Id.* at 292. The insurer argued that they had to replace only the damaged panels—with either slightly lighter or darker yellow panels than the others. *Id.* Cedar Bluff demanded an appraisal, which found that individual panel-replacement could be matched in every way but "could not be matched in terms of color." *Id.* The appraisal concluded "there was not a reasonable match available for the existing siding materials" and thereby issued its award for "a total replacement of the siding." *Id.*

The Minnesota Supreme Court concluded that "on the spectrum of resemblance, 'comparable material and quality' requires something less than an identical color match, but a reasonable color match nonetheless." *Id.* at 294. "Because of the color mismatch resulting from the inability to replace the hail-damaged siding panels with siding of 'comparable material and quality,' [all the siding] has sustained a 'distinct, demonstrable, and physical altercation.'" *Id.* at 295 (quoting language from the insurance policy). In sum, with a detailed analysis, the Supreme Court held that the phrase "comparable material and quality" required a "reasonable match." *Id*.

The Court finds *Cedar Bluff* to be directly on point here. While the language may be slightly different, the phrase "similar construction," like "comparable material and quality," requires some degree of matching. The parties do not dispute this. Defendant conceded this at oral

argument, and its briefing acknowledges the "reasonable match" standard asserted by Plaintiff and employed in *Cedar Bluff*. The word "similar" means "comparable," and "comparable" is defined as "suitable for matching, coordinating, or contrasting: equivalent, similar." *Cedar Bluff*, 857 N.W.2d at 294. An objective reasonable person in the position of the insured would understand the Similar Construction Clause to provide coverage for a reasonable match absent an express exclusion. For these reasons, the Court holds that the Similar Construction Clause provides coverage for a reasonable match.[4] Plaintiff's motion for a declaratory judgment is therefore granted.

Having held that Plaintiff is entitled to a reasonable match, the next question is the effect of the Appraisal Panel Award. Again, there is no factual dispute here. The parties agree on the panel's role—it makes factual determinations as to cost of necessary repairs/replacements, thereby appraising the Loss. It is undisputed that the Appraisal Panel cannot make coverage determinations.

Defendant cites the following language in the Policy in an attempt to limit the authority of the Panel regarding appearance: "Appraisal is only available to determine the amount of the loss of each item in dispute. The appraisers and the umpire have no authority to decide: (1) any other questions of fact[.]" However, *if* an insurance policy covers reasonable matching (as it does here), the cost to create a reasonable match *is* a part of the Loss. *See Cedar Bluff*, 857 N.W.2d at 295. And incidental facts must be addressed by an appraisal panel in order to appraise the factual Loss. *Quade*, 814 N.W.2d at 707 (holding "questions of [] fact, which are involved as mere incident to

[4] This interpretation is consistent with the opinion in *Hayes v. State Farm*, which also interprets a Similar Construction Clause. No. 19HA-CV-21-1773, 2022 WL 874024 (Minn. Dist. Ct. Jan. 19, 2022) (holding "State Farm is required to replace the damaged property with a reasonable match. In the event that no reasonable match exists, replacement of all windows is required.").

a determination of the amount of loss or damage are appropriate to resolve in an appraisal in order to ascertain the 'amount of loss'").

There is no indication in the record that the Appraisal Panel went outside its authority to make a coverage determination. Indeed, as requested,[5] the "matching" portion of the Loss was separately listed because matching coverage was disputed at that time. While Defendant argues that the Appraisal Award's use of the term "matching" conveys "an exact match", this argument is not supported by the plain language of the Award. Moreover, an almost identical argument was raised—and rejected—in *Cedar Bluff*. *See* 857 N.W.2d at 294–95. The Court holds that the Appraisal Award correctly included a factual determination of Loss, which included costs for reasonable matching. *Pillsbury Co.* 425 N.W.2d at 248; *see also Quade*, 814 N.W.2d at 707 ("[T]here is a strong public policy in Minnesota favoring appraisals[.]").

The final issue here is the countertop. Defendant argues that the Court cannot rule on this issue because it is unripe. The Court disagrees. The Appraisal Award here is unambiguous and contingent only upon a disjunctive binary—"if." There are merely two possibilities; if the countertop breaks during the removal/reattachment process, then Plaintiff is entitled to the amount for its replacement, and if not, then Plaintiff is not. To this end, Plaintiff's request for a declaratory judgment is granted.

Based on the above analysis, Plaintiff's motion for summary judgment on his breach of contract claim must also be granted. Defendant denied payment of the undisputed amount awarded by the Appraisal Panel for a reasonable match. Moreover, Defendant does not dispute that if

[5] Pl.'s Ex. 9 ("1. Determine the price for the repairs that both parties agree are necessary. … 4. List separately the amount of the award is necessary solely due to matching. … Because State Farm has raised the coverage issue of matching, I request the panel identify the costs specifically for cabinet and carpet matching as a separate line item.").

summary judgment is appropriate on the declaratory judgment claim, that summary judgment would also be appropriate on the breach of contract claim. For these reasons, Plaintiff's motion for summary judgment is granted in full.

V.

"A party may amend a pleading by leave of court, and amendments should be freely granted, except where to do so would result in prejudice to the other party. … The trial court has wide discretion to grant or deny an amendment[.]" *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 15.01). A claim of bad faith against an insurer cannot be in the initial complaint but must be added later on. Minn. Stat. § 604.18 subd. 4(a). To support a claim of bad faith, the insured must show: "(1) the absence of a reasonable basis for denying benefits of the insurance policy; and (2) that the insurer knew the lack of a reasonable basis for denying the benefits of the insurance policy or acted in reckless disregard of the lack of a reasonable basis for denying the benefits of the insurance policy." Minn. Stat. 604.18 subd. 2(a). "[I]f the court finds prima facie evidence in support of the motion, the court may grant the moving party permission to amend[.]" Minn. Stat. § 604.18 subd. 4(a).

Plaintiff argues that a bad faith claim may be added because State Farm has been inconsistent with its position regarding why reasonable matching coverage was denied and then refused to comply with the findings of the Appraisal Panel. Additionally, Plaintiff notes that Defendant now concedes that a "reasonable match" is required. Defendant's arguments against Plaintiff's motion for leave to amend consist of those already addressed and rejected above. Based on the record, the Court finds that Plaintiff has provided a prima facie basis to amend and add a bad faith claim. The Court therefore grants Plaintiff's motion to amend.

ORDER

1. Defendant's motion for summary judgment is **DENIED**.
2. Plaintiff's motion for summary judgment is **GRANTED**.
3. Plaintiff's motion for declaratory judgment is **GRANTED**. Under the Policy's Similar Construction Clause, Plaintiff is entitled to a reasonable match. On this Appraisal Award, Plaintiff is further entitled to the provided actual cash value sums for "matching."
4. Plaintiff's motion for leave to amend is **GRANTED**. Plaintiff has two weeks from the date of this Order to file an amended complaint including a count of bad faith.

BY ORDER OF THE COURT:

Iverson Landrum, Kathryn
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Dated: April 12, 2024

Kathryn Iverson Landrum
Judge of District Court