Affirmed and Opinion Filed April 7, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00035-CV

SIDNEY DAVIS AND SHATIKA DAVIS, Appellants
V.
HOMEOWNERS OF AMERICA INSURANCE COMPANY, Appellee

On Appeal from the 160th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-10727

MEMORANDUM OPINION

Before Justices Garcia, Miskel, and Lee
Opinion by Justice Garcia

This case involves a contractual statute of limitations in an insurance policy. Sidney and Shatika Davis (together, "Davis") argue the trial court erroneously granted summary judgment in favor of Homeowners of America Insurance Company ("HAIC") because: (i) the contractual limitations period was invalid and therefore the four year limitations period applied and did not expire before the suit was filed, (ii) limitations was tolled because a condition precedent to filing suit was not met and because of HAIC's supplemental payment, (iii) HAIC breached the contract by failing to pay the amounts due, and (iv) HAIC failed to address the fraud

claim in its summary judgment motion.[1] Concluding Davis's arguments lack merit, we affirm the trial court's judgment.

I. BACKGROUND

HAIC issued an insurance policy for the Davis property (the "Property") with effective dates of March 1, 2017, to March 1, 2018 (the "Policy"). The Policy includes a contractual limitations period that requires suit to be filed by the earlier of two years and one day from the date the claim is accepted or rejected by HAIC or three years and one day from the date of the loss. To this end, the Policy states:

> Suit Against Us.
>
> No suit or action can be brought unless the policy provisions have been complied with. Suit or action brought against us must be started by the earlier of
>
> a. two years and one day from the date the claim is accepted or rejected by us or
>
> b. three years and one day from the date of the loss that is the subject of the claim.

The Policy also list several conditions precedent to suit. Specifically, the Policy provides:

> Before you file or proceed with a suit or action against us concerning the amount of a loss payment
>
> a. You must provide us with written notice of your dispute and a copy of all existing repair bids estimates invoices receipts expense records inventories and photos that relate to the dispute

[1] Davis's statement of issues presented differs from the issues raised in his brief. Therefore, we have organized his arguments into four issues and address the issues according to this structure.

> b. You must make a written demand to use for appraisal of the amount of loss under Section I - Conditions part 7 and
>
> c. The appraisal must be completed as required by Section I - Conditions part 7
>
> These conditions precedent to suit or action may be waived only by a written agreement signed by you and us. If suit is filed prior to compliance with these conditions precedent the parties agree to abatement of the lawsuit until these conditions precedent are fulfilled . . . .

On November 6, 2017, Sidney Davis, a property and casualty adjuster licensed by the Texas Department of Insurance, reported a claim for hail damage occurring approximately six months earlier with a loss date of May 30, 2017 (the "Claim"). HAIC acknowledged receipt of the Claim, assigned a claim number, and requested access to the Property for inspection.

On November 15, 2017, HAIC's independent adjuster (the "IA") met with the Davis contractor to inspect the Property. The inspection revealed hail damage to the roof, gutters/downspouts, and a storage shed. No interior damage was claimed or found. Additionally, inspection of the attic revealed foam insulation in the attic on the underside of the roof decking and framing. The foam insulation was intact, fully adhered, and undamaged and Davis did not claim that the foam insulation was damaged by the storm. The Davis contractor, however, expressed concern that a roof replacement could affect the foam insulation.

HAIC accepted the Claim on November 20, 2017. HAIC based its coverage decision on the IA's findings which estimated $19,662.75 for storm damage repairs

to the roof, gutters/downspouts, and shed. After subtracting the Policy's $4,700.00 deductible and $8,350.00 in recoverable depreciation (available for payment following completion of repairs in accordance with the Policy's replacement cost provisions), HAIC issued payment on the Claim in the amount of $6,612.75. The IA's estimate was included with the November 20, 2017 claim decision letter.

The IA's estimate and the claim payment reflected that HAIC was not providing coverage for the foam insulation. The November 20, 2017 correspondence asked Davis to share the estimate with his contractor and to contact HAIC if any additional damages were found or if their contractor's estimate was higher.

On March 1, 2018, HAIC issued a supplemental payment of $11,591.53 on the Claim. With this supplemental payment, the total amount that HAIC paid on the Claim was $18,204.28. In issuing the supplemental payment, HAIC made clear that the payment was based on the contractor's higher estimate and its position on coverage for foam insulation remained unchanged.

It appears that Davis attempted to invoke appraisal sometime between March 14, 2018, and April 27, 2018. On April 27, 2018, HAIC objected to the appraiser designated by Davis and rejected any deviation from the Policy conditions for appraisal. On May 9, 2018, HAIC received another demand and invocation of appraisal from Davis's counsel. That letter designated a different appraiser. There is no evidence that either party followed through or attempted to timely pursue, engage in, or complete the appraisal process in 2018 or 2019.

On July 21, 2020, HAIC received a demand letter from Davis's counsel, again invoking appraisal and designating a new appraiser. The "Demand Letter and Invocation of Appraisal" sought damages of $217,864.20, including $10,000.00 in attorney's fees. In response, HAIC noted that it had previously accepted the Claim in part and rejected the Claim for foam insulation, as explained to Davis in previous correspondence. HAIC further advised that its position on the Claim was unchanged, and the Policy required that any loss adjustment claim be brought within the period provided by the Policy. In an August 5, 2020 e-mail to Davis's counsel, HAIC declined to reopen the Claim for further action because the appraisal request was made outside the two-years-and-one-day period required by the Policy for filing suit.

Davis filed this suit against HAIC on August 5, 2020, asserting claims for breach of contract, anticipatory breach, violations of the Insurance Code and Deceptive Trade Practices Act ("DTPA"), breach of the duty of good faith and fair dealing, fraud, and conspiracy. HAIC answered and moved to dismiss under Rule 91a. The trial court granted HAIC's 91a motion.

On appeal, this court reversed the trial court's order, holding that HAIC did not plead limitations and resolving the limitations issue required the trial court's evaluation of evidence extrinsic to the Davis pleadings. *See Davis v. Homeowners of Am. Ins. Co.*, No. 05-21-00092-CV, 2023 WL 3735115 (Tex. App.—Dallas, May 31, 2023, no pet.) (mem. op.). In so concluding, we stated that the opinion "should

not be construed as a comment on how HAIC's limitations defense is to be decided after remand." *Id*. at *7.

On remand, HAIC amended its answer to assert limitations and moved for traditional summary judgment seeking dismissal of all Davis's claims for failure to file this lawsuit within the Policy's contractual-limitations periods. Davis responded, and HAIC replied to the response.

The Court conducted a hearing on the summary judgment, but Davis's counsel failed to appear.[2] After argument from HAIC's counsel, the court noted that there was a response on file and took the motion under advisement. The court subsequently entered an order granting HAIC's summary judgment motion on limitations in its entirety and dismissing the case with prejudice. Davis appeals from that judgment.

II. ANALYSIS

A. Standard of Review

A defendant moving for summary judgment on the affirmative defense of limitations has the burden to conclusively establish that defense. *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 593 (Tex. 2017). We review a trial court's order granting summary judgment de novo. *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 181 (Tex. 2019); *Valence Operating Co. v. Dorsett*, 164 S.W.3d

[2] The trial judge confirmed the hearing date and that, pursuant to the court's request, both counsel had agreed to begin an hour earlier than the time originally scheduled.

656, 661 (Tex. 2005). When we review a traditional summary judgment, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *KMS Retail*, 593 S.W.3d at 181; *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). We credit evidence favorable to the nonmovant if reasonable jurors could do so, and we disregard contrary evidence unless reasonable jurors could not. *Samson Exploration, LLC v. T.S. Reed Props., Inc*., 521 S.W.3d 766, 774 (Tex. 2017); *Boerjan v. Rodriguez*, 436 S.W.3d 307, 311–12 (Tex. 2014) (per curiam).

To prevail on a traditional summary judgment motion, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *KMS Retail*, 593 S.W.3d at 181; *Nassar v. Liberty Mut. Fire Ins. Co*., 508 S.W.3d 254, 257 (Tex. 2017). The evidence raises a genuine issue of material fact if "reasonable and fair-minded jurors could differ in their conclusions in light of all of the evidence presented." *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam).

B. Was the Suit Filed Before Limitations Expired?

1. The Contractual Limitations Period

Davis argues the contractual limitations period is invalid because it has the effect of imposing a limitations period of less than two years as proscribed by TEX. CIV. PRAC. & REM. CODE ANN. § 16.070(a). According to Davis, the statute of

limitations defaults to a four-year period when the contractual period is invalid, and therefore his suit was timely filed. We disagree.

Generally, the limitations period for a breach of contract cause of action is "four years after the day the cause of action accrues." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.051; *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2006); *Jett v. Trucker Ins. Exch*., 952 S.W.2d 108, 109 (Tex. App.—Texarkana 1997, no writ). "However, parties to a transaction may agree to the time in which a person must file suit on a given cause of action." *Jett*, 952 S.W.2d at 109 (citations omitted). In the context of insurance policies, "[i]nsurance provisions that limit the time within which to file a suit to two years and a day are valid and binding." *Id.* (citing *Bazile v. Aetna Cas. & Sur. Co*., 784 S.W.2d 73, 74 (Tex. App.—Houston [14th Dist.] 1989, writ dism'd).

The Civil Practice and Remedies Code provides, however, that a contractual limitations period may not be shorter than two years. *See* TEX. CIV. PRAC. & REM. CODE ANN. §16.070(a). Specifically, the statute provides that "a stipulation, contract or agreement that establishes a limitations period that is shorter than two years is void in this state." *Id.*

Davis relies on *Spicewood Summit Office Condos. Ass'n., Inc. v. Am. First Lloyd's Ins. Co*., 287 S.W.3d 461 (Tex. App.—Austin 2009, pet. denied) to argue that the contractual limitations period shortened the time to file suit to less than two

years. This argument is misplaced. *Spicewood* is distinguishable from the present case.

The *Spicewood* court stated that to comply with Section 16.070(a), a contractual limitations period cannot end until after two years after the day the cause of action for breach of the agreement accrues. *Spicewood*, 287 S.W.3d at 465. The policy in *Spicewood* provided its limitations period began on the date of loss. *Id.* at 465–66. The court concluded that a trigger date, such as the date of loss, for a two-year contractual limitations provision that precedes the date the cause of action accrues will result in a "time in which to bring suit" that is shorter than two years in violation of section 16.070(a) of the Texas Civil Practice and Remedies Code. *Id.* (citing TEX. CIV. PRAC. & REM. CODE ANN. § 16.070(a)). Accordingly, the contractual limitations provision was void and the four-year statute of limitations governed Spicewood's breach of contract claim. *Id.*

The *Spicewood* problem—a trigger date that begins the agreed limitations period on the date of loss rather than on the date the claim is denied—is not presented by the policy here. In this case, the Policy's trigger date on which the agreed limitations period begins is the earlier of (1) two years and one day from the date the claim is accepted or rejected or (2) three years and one day from the date of the loss that is the subject of the claim. Davis offers no explanation as to how the trigger date in part (1) somehow provides a limitations period of shorter than two years. To the contrary, the plain language of the Policy reflects that it does not impermissibly

shorten the limitations period. Therefore, the contractual limitations language is not invalid as a violation of section 16.070(a), and the four-year statute of limitations does not apply.

Davis's argument that his suit was timely based on the Policy's three-year limitations provision is similarly unavailing. This argument is premised on Davis's conclusion that the two year limitations provision is void, and therefore the alternate three year provision applies. We have concluded, however, that the two-year provision is not void. Moreover, the Policy provides that limitations begins to run on the **earlier** of (a) two years and one day from the date the claim is accepted or rejected, or (b) three years and one day from the date of loss. The three-year period ran from May 30, 2017 until May 31, 2020. The two-year period ran from November 20, 2017, to November 21, 2019. The two-year period expires before the three-year period, and therefore, the two years and a day provision applies. Moreover, even if the three-year period applied, Davis's August 5, 2020 suit was not timely filed.

2. Did the Supplemental Payment or the Appraisal Process Toll Limitations?

Davis also argues that the cause of action for breach of contract did not accrue because the Policy requires completion of the appraisal process before filing suit and the appraisal process is still ongoing. Although he did not specifically plead tolling and does not expressly reference the term, Davis argues that the appraisal process

tolls the accrual of the statute of limitations until the process is complete. He also appears to argue that the supplemental payment tolled limitations.

Appraisal under an insurance policy involves a contractual process by which the insurer and the insured select third parties to determine the amount of a claimed loss when the insurer and the insured cannot agree what the amount of loss. *Barbara Techs. Corp. v. State Farm Lloyds*, 589 S.W.3d 806, 814 (Tex. 2019) (Hecht, C.J., dissenting) *superseded by statute on other grounds as stated in Rodriguez v. Safeco Ins. Co. of Ind*., 684 S.W.3d 789,794 (Tex. 2024); *see also State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 888–889 (Tex. 2009) (appraisal clauses are a means of determining the amount of loss and resolving disputes about the amount of loss for a covered claim.). Appraisers have no authority to determine questions of causation, coverage, or liability. *Wells v. Amer. States Preferred Ins. Co*., 919 S.W.2d 679, 684–85 (Tex. App.—Dallas 1996, writ denied). The scope of an appraisal is damages, not liability. *Johnson*, 290 S.W.3d at 890; *see also In re Allstate Ins. Co*., 85 S.W.3d 193, 195 (Tex. 2002) (orig. proceeding).

Determination of the time to file suit turns on when the cause of action accrues. A cause of action generally accrues when facts come into existence which authorize a claimant to seek a judicial remedy. *Murray v. San Jacinto Agency, Inc*., 800 S.W.2d 826, 828 (Tex. 1990). Generally, the limitations period on a first-party insurance claim begins to run at the time the insurer denies the claim under the

policy. *See Mangine v. State Farm Lloyds*, 73 S.W.3d 467, 470 (Tex. App.—Dallas 2002, pet. denied) (citing *Murray,* 800 S.W.2d at 829).

In determining whether and when coverage has been denied, the court must focus first on whether an unambiguous denial has been communicated, and then must ask whether there is evidence that the decision had been subsequently withdrawn or changed either by making payment or by taking other action inconsistent with the decision to deny coverage. *Pace v. Travelers Lloyds of Tex. Ins. Co*., 162 S.W.3d 632, 633–34 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

In the present case, the November 20, 2017 letter is an unambiguous denial of coverage for foam insulation. The letter enclosed an initial payment of $6,612.75 and a copy of the IA's estimate and made recoverable depreciation available for payment upon completion of repairs. The letter also asked that Davis notify HAIC if additional damages were found, or his contractor's estimate was higher.

HAIC subsequently received a revised estimate from Davis's adjuster and made a supplemental payment. When HAIC issued the $11,591.53 supplemental payment, it did not include payment for foam insulation, and HAIC made clear that its coverage position regarding that item had not changed.[3] In March 16, 2018

[3] The supplemental estimate was for $48,475.73. HAIC explained that it had excluded $12,826.00 for foam insulation from that amount, leaving a $36,649.13 replacement cost. The supplemental payment of $11,591.53 was calculated by subtracting the $4,700 deductible, the %6,612.75 prior payment, and $12,744.85 in recoverable depreciation from the $36,649.13 replacement cost estimate.

correspondence to Davis's counsel, HAIC again reiterated that HAIC "disagrees that foam replacement is a reasonable and necessary cost of repair on your claim."

There is no evidence that any action taken by HAIC after the November 20, 2017 denial of coverage for foam insulation rendered its final decision ambiguous.[4] An insurer's consideration of additional information from the insured after denying coverage does not alter the finality of an otherwise unambiguous decision to deny coverage. *See Pace*, 162 S.W.3d at 633–35. As the court explained in *Pace*, if engaging with the insured after a decision to deny coverage would operate to restart the limitations period, "an insurer faced with a request for reconsideration of a denial of coverage would be put to the choice between refusing it outright, thereby risking a bad faith claim, or considering the request and restarting the limitations period." *Pace*, 162 S.W.3d at 634–35. The court concluded that no authority or rationale existed to support such an approach. *Id*. at 635.

Similarly, in *Knox Mediterranean Foods, Inc. v. Amtrust Fin. Servs*. No. 05-21-00296-CV, 2022 WL 2980705, at *3 (Tex. App.—Dallas 2022, no pet.) (mem. op.), our court concluded that the consideration of additional information after denying the claim did not toll limitations. In *Knox*, a restaurant owner filed a claim with its insurer for damages resulting from a burglary. *Id*. at *1. The insurer issued payment for the portion of the claim that was verified and requested additional

[4] In fact, Davis does not argue or endeavor to establish that HAIC left any doubt that coverage for foam insulation was denied.

documentation for the portion of the claim that was not. *Id.* Some months later, the insurer followed up by letter indicating that it was closing the claim because the sought-after documentation had not been provided. *Id.* Nearly three years later, the restaurant filed suit, despite a contractual limitations period of two years and one day. *Id.* The restaurant unsuccessfully sought to evade the limitation period by submitting an affidavit from an employee stating that he had continued to discuss the claim long after the date of the closure letter. *Id.* at *1–2. We concluded that continued communication about the claim following its denial could not affect the limitations period and "to hold otherwise would denude the statute of limitations of its meaning, giving full control of when a claim accrues over to the plaintiff's discretion." *Id*. at *4.

Although Davis adduced no evidence to controvert HAIC's denial of his claim for foam insulation on November 20, 2017, he suggests that limitations began to run when HAIC made the supplemental payment on March 1, 2018. The supplemental payment, however, did not include payment for the foam insulation and HAIC made clear that its position on that aspect of the Claim remained unchanged. Accordingly, the supplemental payment did not restart the limitations period. *See Pace*, 162 S.W.3d at 633–35; *Abedinia v. Lighthouse Prop. Ins. Co*., No. 12-20-00183-CV, 2021 WL 4898456, at *4–5 (Tex. App.—Tyler 2021, pet. denied). And even if the limitations period began to run on March 1, 2018, Davis would have been required to file suit by March 2, 2020, and his August 5, 2020 petition is still untimely.

Our sister court's decision in *Abedinia*, 2021 WL 4898456, at *1, further informs our analysis. In that case, the plaintiff sought coverage for hurricane damage to a dwelling. *Id*. The insurer promptly rendered an adjustment, issued payment, and did not hear anything from the plaintiff for over a year, until contacted by counsel. *Id*. The parties then corresponded and participated in an umpire-led appraisal process before the instigation of a lawsuit. *Id*. At no point did the insurer amend its original adjustment or make any changes to its initial finding. *Id.* at *1–2. The court concluded that the suit accrued two years and a day from the date the claim was accepted and allegedly underpaid. *Id*. at *5. In so concluding, the court stated, "we are unaware of any authority . . . that the parties' decision to participate in the nonjudicial, contractual appraisal process tolled limitations or restarted limitations under these facts." *Id.* at *4.

Having concluded that the supplemental payment did not toll limitations, we next consider whether limitations was tolled by Davis's demands for appraisal. HAIC cites *Barbara Tech* to assert that, "in general, 'use of the appraisal process to resolve a dispute has no bearing on any deadlines or enforcing any missed deadlines.'" *Barbara Tech*, 589 S.W.3d at 818–818. *Barbara Tech*, however, is not as expansive as HAIC suggests.

In that case, the court considered an appraisal award in the context of the Texas Prompt Payment of Claims Act ("TPPCA").[5] State Farm argued that its initiation of the appraisal process constituted an additional request for information that extended its TPPCA deadline to accept or reject a claim. *Id*. 816. The court rejected this argument, holding that "**Under the TPPCA**, use of the appraisal process to resolve a dispute has no bearing on any deadlines . . . ." *Id*. at 817–818(emphasis added). This holding does not resolve the tolling issue here.

Likewise, *Abedinia* does not resolve application of the Policy language in this case. There is no indication of whether the *Abedinia* policy made completion of the appraisal process a condition precedent to filing suit. Instead, the court analyzed invocation the appraisal process in the context of whether appraisal was a reinvestigation or request for additional information that tolled limitations and concluded that it did not. *Id*. at *4–5. Moreover, the parties in *Abedinia* actually participated in the appraisal process, whereas nothing beyond a demand for appraisal occurred here.

This case turns on whether a demand for appraisal tolls limitations based on the language of the Policy itself. This involves construction of the Policy.

[5] The TPPCA establishes a number of deadlines for insurance companies to process claims and penalizes a failure to meet its deadlines by assessing interest on the claim and awarding the insured attorney's fees. *See* TEX. INS. CODE ANN. art. §§ 542.051–.061.

An insurance policy is a contract, generally governed by the same rules of construction as all other contracts. *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010). When construing a contract, our primary concern is to ascertain the intentions of the parties as expressed in the document. *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 514 (Tex. 2014). We begin our analysis with the language of the contract because it is the best representation of what the parties mutually intended. *Gilbert Tex. Constr.*, 327 S.W.3d at 126; *see also Anglo–Dutch Petroleum Int'l, Inc. v. Greenberg Peden, P.C.*, 352 S.W.3d 445, 451 (Tex. 2011). Unless the policy dictates otherwise, we give words and phrases their ordinary and generally accepted meaning, reading them in context and in light of the rules of grammar and common usage. *See Gilbert Tex. Constr.*, 327 S.W.3d at 126; *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994). We strive to give effect to all of the words and provisions so that none is rendered meaningless. *See Gilbert Tex. Constr.*, 327 S.W.3d at 126; *Forbau*, 876 S.W.2d at 133. "No one phrase, sentence, or section [of a contract] should be isolated from its setting and considered apart from the other provisions." *Forbau*, 876 S.W.2d at 134.

Here, neither party argues the Policy is ambiguous, but they offer conflicting constructions. In such a case, if only one party's construction is reasonable, the policy is unambiguous, and we will adopt that party's construction. *See Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 459 (Tex.1997). But if both

constructions present reasonable interpretations of the policy's language, we must conclude that the policy is ambiguous. *See id*. at 458; *Balandran v. Safeco Ins. Co. of Am*., 972 S.W.2d 738, 741 (Tex.1998).

Having reviewed the Policy language and applied the common ordinary meaning of the terms used, we conclude that HAIC's construction of the Policy offers one reasonable construction. HAIC's construction is reasonable because Davis's proposed construction conflates two distinct concepts—the denial or underpayment of a claim (which ordinarily triggers accrual) with contractual resolution of the amount of loss (appraisal). The nature of the appraisal process is such that it would typically not come into play until a claim is denied; otherwise, there would be no disputed amount to appraise. Requiring that appraisal be complete before a case is filed is consistent with the purpose of appraisal— "a less expensive, more efficient alternative to litigation." *See In re Universal Underwriters of Texas Ins. Co*., 345 S.W.3d 404, 407 (Tex. 2011) (orig. proceeding). Davis does not identify anything about the appraisal process itself that would prevent his cause(s) of action from accruing after an unambiguous denial of the Claim. Further, the Policy provides for abatement of a suit if it is filed before appraisal is complete, which suggests that the appraisal condition is not intended to delay accrual.

Conversely, Davis's construction is also reasonable. There is no dispute that completion of the appraisal process is a condition precedent to filing suit. Specifically, in the "Suit Against Us" section describing when a claim accrues, the

Policy states "No suit or action can be brought unless the policy conditions have been complied with." Then, in the section listing conditions, the Policy states:

> Before you file or proceed with a suit or action against us concerning the amount of a loss payment . . . The appraisal must be completed as required by Section I-conditions part 7.

The Policy is silent as to what effect the failure of this condition will have on the accrual of a cause of action.

"A condition precedent in a contract is an event which must occur or an act that must be performed before a right can accrue to enforce an obligation." *Centex Corp. v. Dalton*, 840 S.W.2d 952, 956 (Tex. 1992). A cause of action for breach of contract does not accrue until all conditions precedent to the parties' right to file suit have been satisfied. *Cummins &Walker Oil Co. v. Smith*, 814 S.W.2d 884, 886–87 (Tex. App.—San Antonio 1991, no writ). Therefore, Davis's interpretation of the Policy to require performance of the condition precedent before a cause of action accrues is not unreasonable.

In general, we construe ambiguities in an insurance policy against the insurer. *RSUI Ins. Co. v. The Lynd Co.*, 466 S.W.3d 113, 118–119 (Tex. 2015). Significantly, however, neither party raises the more salient ambiguity here. Even if the Policy requires the completion of appraisal before a cause of action accrues, neither the parties nor the Policy language afford any guidance as to what "completion" means. Since the Policy lists a demand for appraisal as a separate condition, it is reasonable to conclude that the separate condition requiring "completion" means something

more than a demand. And regardless of the definition used, common sense dictates that the ordinary use of the term "completion" presupposes that something has actually commenced.

To construe the Policy otherwise yields an absurd result. Applying Davis's argument to its logical extreme, a plaintiff could simply demand appraisal (which is a separate condition under the Policy) without attempting any meaningful engagement in the process and claim that limitations has been tolled into perpetuity because a process that never progressed beyond demand is not complete. This would "denude the statute of limitations of its meaning, giving full control of when a claim accrues over to the plaintiff's discretion." *Knox*, 2022 WL 2980705, at *4.[6]

While we do not foreclose the possibility that, under this Policy language, an ongoing appraisal that has not been completed might, under certain circumstances, toll the limitations period, those circumstances are not present here. The evidence shows that the Policy condition requiring demand for appraisal was met. But there is no summary judgment evidence to establish, as Davis suggests, that "the appraisal process is still ongoing." To the contrary, the undisputed evidence establishes that, at best, the process was demanded, but never commenced. Accordingly, Davis cannot rely on the condition requiring completion to argue that the contractual limitations period was tolled.

[6] Neither party argues that failure of or unreasonable delay in complying with the Policy's conditions caused prejudice.

HAIC's denial of the disputed amount was clearly and unequivocally communicated to Davis on November 20, 2017, and remained consistent and unchanged. Davis's summary judgment response did not raise a fact issue about this unequivocal coverage denial. Therefore, HAIC's denial of the claim for foam insulation on November 20, 2017, triggered the contractual two years and a day limitations period, and Davis was required to file suit by November 21, 2019. On these facts, the trial court did not err in concluding that Davis's August 5, 2020 suit is time barred.

Davis's second issue is overruled, and our determination of this issue obviates the need to consider whether HAIC breached the contract (which we have identified as Davis's third issue). *See* TEX. R. APP. P. 47.1.

C. The Fraud Claim.

Davis's fourth issue argues HAIC's summary judgment motion did not address his fraud claim. He further contends that because his breach of contract claim should remain viable, all of his extra-contractual claims should remain viable.

Davis's arguments lack merit. HAIC specifically identified fraud as one of Davis's claims, and throughout the motion argued that the Policy's limitations period applied to all of Davis's claims.

Further, we have concluded that the breach of contract claim is time barred by the Policy's two years and a day limitations period. Therefore, the extra-contractual claims are also time barred. *See Knox v. Mediterranean Foods, Inc*., No. 05-21-

00296-CV, 2022 WL 2980705, at *4–5 (Tex. App.—Dallas July 28, 2022, no pet.) (mem. op.); *Quinn v. State Farm Lloyds*, No. 02-22-00191-CV, 2023 WL 3749932, at *5–6 (Tex. App.—Fort Worth, June 1, 2023, no pet.) (mem. op.). We overrule Davis's fourth issue.

III. CONCLUSION

Having resolved all of Davis's issues against him, we affirm the trial court's judgment.

/Dennise Garcia/
DENNISE GARCIA
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SIDNEY DAVIS AND SHATIKA DAVIS, Appellants

No. 05-24-00035-CV V.

HOMEOWNERS OF AMERICA INSURANCE COMPANY, Appellee

On Appeal from the 160th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-20-10727.
Opinion delivered by Justice Garcia.
Justices Miskel and Lee participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee HOMEOWNERS OF AMERICA INSURANCE COMPANY recover its costs of this appeal from appellants SIDNEY DAVIS AND SHATIKA DAVIS.

Judgment entered this 7th day of April 2025.