

Third District Court of Appeal

State of Florida

Opinion filed October 7, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-1050
Lower Tribunal No. 18-7116

Safepoint Insurance Company,
Petitioner,

vs.

Luis Gonzalez, et al.,
Respondents.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Butler Weihmuller Katz Craig LLP, Carol M. Rooney and Adam Topel (Tampa), for petitioner.

Cornish Hernandez Gonzalez, PLLC, and Albert Campbell "Cam" Cornish, IV, for respondents.

Before FERNANDEZ, SCALES and GORDO, JJ.

GORDO, J.

Safepoint Insurance Company seeks certiorari review of the trial court’s order requiring it to produce materials in discovery over which it asserted work product privilege and attorney–client privilege. It argues the trial court departed from the essential requirements of law by compelling disclosure of privileged claims file materials in the underlying breach of contract suit prior to having made a coverage determination. We agree, grant the petition and quash the order under review.

Luis and Elisa Gonzalez (collectively, the “Gonzalezes”) filed the underlying suit against Safepoint, alleging that Safepoint breached their homeowner’s insurance policy by failing to provide coverage for damage to their home. Prior to any determination of coverage for the alleged loss, the Gonzalezes filed a motion to compel certain discovery from Safepoint. Safepoint objected to producing the requested claims file materials based on, inter alia, work product privilege and attorney–client privilege. After a non-evidentiary hearing on the Gonzalezes’ motion, the trial court entered an order directing Safepoint to turn over the requested materials. Safepoint petitioned this Court for review.

“To invoke the certiorari jurisdiction of this court, a petitioner must demonstrate a departure from the essential requirements of the law which results in a material injury for which there is no adequate remedy on appeal.” State v. Hernandez, 278 So. 3d 845, 848 (Fla. 3d DCA 2019) (quoting State v. Styles, 962 So. 2d 1031, 1032 (Fla. 3d DCA 2007)). “The requirements of material harm and

the lack of a remedy on appeal are jurisdictional.” Id. (quoting State v. Welch, 94 So. 3d 631, 634 (Fla. 2d DCA 2012)). We have jurisdiction. “A writ of certiorari is the proper method to review trial court orders compelling production of privileged discovery that is otherwise protected as work product; compelling such production presents the potential of a departure from the essential requirements of law, which would cause material harm for which there is no adequate remedy on final appeal.” Seaboard Marine Ltd. v. Clark, 174 So. 3d 626, 628 (Fla. 3d DCA 2015) (citing Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995)).

“Generally, an insurer’s claim file constitutes work product and is protected from discovery prior to a determination of coverage” in a breach of contract case. State Farm Fla. Ins. Co. v. Aloni, 101 So. 3d 412, 414 (Fla. 4th DCA 2012) (citing Superior Ins. Co. v. Holden, 642 So. 2d 1139, 1140 (Fla. 4th DCA 1994)); see also Castle Key Ins. Co. v. Benitez, 124 So. 3d 379, 380 (Fla. 3d DCA 2013) (“Under established Florida law, ‘discovery which concerns only potential issues of bad faith or other purported improprieties in defending [a] claim are wholly impermissible unless and until it is determined that the policy indeed provides coverage.’” (quoting Granada Ins. Co. v. Ricks, 12 So. 3d 276, 277 (Fla. 3d DCA 2009))). “In considering objections to discovery requests for claims file materials, the ‘determinative issue’ is ‘what type of action’ the insured has brought.” Benitez, 124 So. 3d at 380 (quoting Nationwide Ins. Co. Fla. v. Demmo, 57 So. 3d 982, 984 (Fla. 2d DCA 2011)). As

this Court has previously held, where the insured “seeks relief for breach of contract[,] [a] trial court departs from the essential requirements of the law in compelling disclosure of the contents of an insurer’s claim file when the issue of coverage is in dispute and has not been resolved.” Id. (alteration in original) (quoting Denmo, 57 So. 3d at 984).

Petition granted and order quashed.