STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0478

Maple Ridge Homeowners Association,
Appellant,

vs.

Hiscox Insurance Company, Inc.,
Respondent.

Filed February 5, 2024
Reversed and remanded
Segal, Chief Judge

St. Louis County District Court
File No. 69DU-CV-21-1378

Alexander M. Jadin, Bradley K. Hammond, Smith Jadin Johnson, PLLC, Bloomington, Minnesota (for appellant)

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Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and Cleary, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this insurance-coverage dispute, appellant homeowners association challenges the district court's (1) imposition of a discovery sanction precluding recovery for certain

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

losses, (2) grant of respondent's motion for summary judgment, and (3) denial of appellant's motion to vacate the appraisal award. Because the imposition of the sanction is not supported by the law, we conclude that the sanction order constituted an abuse of discretion. And because summary judgment was premised on the sanction order, we reverse the grant of summary judgment and remand for further proceedings. Finally, because the denial of the motion to vacate the appraisal award appears to have been premised on the sanction that this opinion reverses, we remand for reconsideration of the district court's denial of that motion.

FACTS

The following is a summary of the undisputed facts. Appellant Maple Ridge Homeowners Association is a nonprofit association of owners of condominium units in a 39-building development in Duluth, Minnesota. The buildings are all insured for property damage under a single policy issued to Maple Ridge by respondent Hiscox Insurance Company, Inc. In August 2020, Maple Ridge demanded appraisal of a loss from an August 31, 2018 hailstorm. A few days later, just before expiration of the policy's suit-limitation period, Maple Ridge served Hiscox with a complaint alleging breach of contract and seeking a declaratory judgment regarding coverage.

Hiscox hired a consultant who inspected the buildings and prepared a report dated November 2020. The consultant concluded that there was only minimal damage attributable to the 2018 storm and that much of the "potential hail impacts" were caused by an earlier storm. The consultant estimated the damage to be in an amount less than

$1,000. In July 2021, Maple Ridge submitted its sworn proof of loss and two repair estimates. Maple Ridge claimed over $2 million in losses.

Hiscox requested, in a July 21, 2021 letter, the following documents for the period of January 2008 through the present: all of Maple Ridge's board-meeting minutes, management reports, meeting packets, or other documents the property manager submitted to the board; any communication or activity logs or other records from the property manager; any contracts, agreements, work orders, estimates, or invoices Maple Ridge received regarding roof repair, or wind and hail damage; documentation of any repairs or replacements of soft metals and siding; and any insurance claims made for property damage to the exterior of any buildings, along with any documents submitted in connection with any appraisals conducted for wind, hail, or other damage involving the exterior of the property.

On August 20, 2021, Hiscox rejected Maple Ridge's proof of loss, estimating the loss at just under $9,000. On August 30, 2021, Maple Ridge filed a motion to compel appraisal and "stay further litigation."

Hiscox sent Maple Ridge another letter in September 2021, reiterating the request for documents in its July 2021 letter, and also requesting photographs taken by Maple Ridge's consultant, materials invoices showing the manufacturers of the shingles and siding installed on each of the 39 buildings, and an explanation of Maple Ridge's reason for including siding in the estimate. Maple Ridge responded that it was "currently working . . . to obtain the additional information that you have requested in your various letters and [to] cooperate with Hiscox's investigation of the loss." On October 1, Maple Ridge

provided documentation of roofing repairs completed on several buildings in 2010, and stated that no "photographs are known excepting those previously produced." Maple Ridge also advised Hiscox that it included siding in its proof of loss because "[r]epairs to the brick flashing requires that some siding be detached and reset as the appropriate means and method of repair." Not satisfied with the response from Maple Ridge, Hiscox reiterated its demands in a letter dated October 4, 2021, and emphasized that it would not schedule an appraisal until it received all information requested.

A hearing on Maple Ridge's motion to compel appraisal and stay further litigation was held on October 14, 2021. The district court issued an order that same day, granting Maple Ridge's motion to compel appraisal and stay discovery on coverage issues. The district court also directed Maple Ridge to produce, by October 28, the information requested in Hiscox's July 21 and October 4, 2021 letters. The order warned Maple Ridge that its failure to make "accurate and complete disclosures" could result in sanctions and that the sanctions "may be monetary or may be in the nature of witness or evidence preclusion." Maple Ridge responded to the order by providing its board-meeting minutes and additional photographs.

Hiscox sent another letter in March 2022, asking Maple Ridge to identify the manufacturer, make, style, and color of the siding and shingles on select buildings. Maple Ridge maintained that it had responded to Hiscox's letters of July 21 and October 4 in compliance with the district court's order, and that it did not have the requested information about siding and shingles because the individual homeowners made their own independent determinations on those materials at the time of installation.

The district court held another informal conference on June 28, 2022. As summarized in a letter from Hiscox's counsel, the district court directed Maple Ridge to "make its best effort to identify the manufacturer, make, style, and color of the shingles and siding on each of the 39 buildings at the Maple Ridge HOA." Hiscox then provided Maple Ridge with a spreadsheet of contractors appearing on permits for each of Maple Ridge's 39 buildings per public-permit records to "assist in [Maple Ridge's] efforts to identify the shingles and siding." On July 7, Maple Ridge provided the district court with a letter stating that it was "in the process of seeking to obtain the requested information from the homeowners," had "reached out to the contractors," but that fulfilling such requests was "not a process that c[ould] occur within a short timeframe or over a holiday weekend."

The district court filed an order on July 8, 2022, directing Maple Ridge to "provide defense counsel with the requested discovery responses" by July 11, 2022, and warning that Maple Ridge "will not be allowed to seek compensation from the appraisers for units within the [association] where pertinent discovery disclosures have not been provided." Maple Ridge provided some additional records along with documentation of all the steps it took to track down the manufacturer information for the shingles and siding.

The appraisal occurred on July 12, 2022. Hiscox's attorney was present and brought the district court's July 8 order to the panel's attention, arguing that because Maple Ridge had failed to provide the ordered information, the appraisal panel needed to exclude certain of the buildings from consideration. Maple Ridge objected, stating that exclusion of the buildings based on the district court order is "a legal question that is outside of this panel,

so you guys should not even consider any of that." The appraisal panel appeared to agree, stating it was "here to seek damages in dollars. We are not here to do a legal question, we are not here to do policy, so I don't see how we can do that." Maple Ridge's public adjuster withdrew buildings 36, 37, and 38, stating it was "nothing to do with your panel but an order from the judge." The panel issued its award in August 2022, valuing the total replacement cost of the loss at $487,236.50, not including any valuation of a loss for buildings 36, 37, and 38. Later, upon Hiscox's request, the appraisal panel amended the award to provide a per building breakdown of the $487,236.50 loss valuation because the insurance policy had a per building deductible of $20,000.[1]

On August 24, 2022, Hiscox filed a motion to enforce the July 8, 2022 order and to impose sanctions against Maple Ridge, claiming that Maple Ridge failed to provide the ordered information by July 11. Hiscox asked the district court to preclude Maple Ridge from seeking indemnity from Hiscox for the amount awarded by the appraisal panel for buildings 14-35 and 39. Neither the motion nor accompanying memorandum identified a legal basis for the requested sanctions, but the reply memorandum referenced Minn. R. Civ. P. 37.02(b)(2), (3), and Maple Ridge's duty of cooperation under the policy. Maple Ridge opposed the motion, arguing that some of the requested information was not available, and asserting that it had complied with the court's orders.

On October 19, 2022, the district court granted the motion, citing Minn. R. Civ. P. 37.02(b) as its authority, stating in its order:

[1] Hiscox's public adjuster attested that there was no other change made in the amended appraisal award other than the per building breakdown instead of a lump-sum award.

> Because [Maple Ridge] has not provided pertinent, timely information as to siding and shingles on Buildings 29, 32, 33, and 35, any award by the appraisers for those items on those buildings is disallowed as a sanction for [Maple Ridge]'s failure to comply with the Court's orders of October 14, 2021 and July 8, 2022.

The district court noted in its order that Maple Ridge had withdrawn buildings 36 through 38 at the appraisal pursuant to the court's July 8 order and that Maple Ridge was thus also precluded from any recovery for those three buildings.

Hiscox then moved for summary judgment on the ground that Maple Ridge's claims failed as a matter of law because only buildings 29, 32, 33, and 35 had appraised losses exceeding the $20,000 per building deductible. Maple Ridge cross-moved to vacate the sanction and the appraisal award. Maple Ridge argued that it had complied with its obligations under the insurance policy and provided the required information it had been able to obtain.

The district court granted Hiscox's summary-judgment motion and denied Maple Ridge's motion to vacate the appraisal award.

DECISION

Maple Ridge argues the district court abused its discretion by imposing a discovery sanction because discovery in the litigation was stayed, appraisal is supposed to proceed independent of court processes, and Hiscox's requests for information were informal letter requests, not discovery requests under the Minnesota Rules of Civil Procedure. Maple Ridge thus maintains that the July 8 and October 19 orders must be reversed. Maple Ridge also seeks reversal of the district court's order granting summary judgment and denying its

motion to vacate the appraisal award because they were premised on the July 8 and October 19 orders.

We review district court orders imposing sanctions for abuse of discretion and orders granting summary judgment and denying a motion to vacate an appraisal award de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (reviewing grant of summary judgment); *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010) (reviewing the dismissal of claims as a discovery sanction), *rev. denied* (Minn. Dec. 14, 2010); *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398-99 (Minn. App. 2010) (reviewing de novo the authority of appraisal panel following an order granting summary judgment).

I. The district court abused its discretion in imposing a discovery sanction and erred by granting summary judgment to Hiscox.

Under Minnesota law, insurance "valuation issues are to be decided by appraisers and coverage issues are to be decided by [the] courts." *QBE Ins.*, 778 N.W.2d at 398-99. Minnesota Statutes section 65A.26 (2022) requires that "[e]very policy of insurance against damage by hail" must provide for appraisal, upon written demand, following a "failure of the parties to agree as to the amount of the loss." The panel is to include one appraiser selected by the insured and one selected by the insurer, with the two appraisers "select[ing] a competent and disinterested umpire." *Id.* The panel then appraises the loss, and "[t]he written award of a majority of these referees is final and conclusive upon the parties as to amount of loss." *Id.*

There is a strong public policy in Minnesota supporting appraisal. "[A]ppraisal is a process that is generally intended to take place before suit is filed [and] is generally understood to be a condition precedent to suit." *Quade v. Secura Ins.*, 814 N.W.2d 703, 708 (Minn. 2012). And "[a]ppraisal should occur when the policy conditions for it are satisfied, even if the insurer's investigation has not answered all the insurer's questions or the appraisal panel is faced with difficult factual questions related to the cause and cost of a claimed loss." *White Bear Yacht Club v. Cincinnati Ins. Co.*, 582 F. Supp. 3d 624, 633 (D. Minn. 2022). Consequently, "discovery will not be available to assist an insurer's investigation" during the appraisal phase.[2] *Id.*

As required by Minnesota law, the policy here provides, "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." Hiscox acknowledged in its district court memorandum opposing Maple Ridge's motion to compel appraisal that a dispute over the amount of the loss existed as of August 20, 2021, when Hiscox rejected Maple Ridge's proof of loss. In establishing the amount of loss in the event of loss or damages, the policy requires an insured party to "[c]ooperate with us in the investigation or settlement of [a] claim" and produce "complete inventories of the damaged and undamaged property." When insurance coverage is at

[2] We are cognizant that *White Bear Yacht Club* is a federal, not a state, court opinion, but we deem it to be an accurate reflection of Minnesota law that appraisals should generally proceed without court intervention. In *Quade*, the supreme court cited with approval a Texas Supreme Court opinion for the following proposition: "[U]nless the 'amount of loss' will never be needed (a difficult prediction when litigation has yet to begin), appraisals should generally go forward without preemptive intervention by the courts." 814 N.W.2d at 708 (quoting *State Farm Lloyds v. Johnson,* 290 S.W.3d 886, 895 (Tex. 2009)).

issue, the insured must provide Hiscox with "records and documents reasonably related to the loss." But the policy contains no specific preconditions to appraisal.

The district court, nevertheless, ordered Maple Ridge to provide information requested by Hiscox in informal letters before the appraisal. In its July 8 order, the district court required Maple Ridge to "identify the manufacturer, make, and style of shingles and siding on [the] 39 buildings," and provide that information to Hiscox by noon on July 11. The order warned that Maple Ridge would "not be allowed to seek compensation from the appraisers for units within [Maple Ridge] where pertinent discovery disclosures have not been provided." After the conclusion of the appraisal process, the district court granted Hiscox's motion to enforce the July 8 order. The district court determined that Maple Ridge had a duty under the insurance policy to cooperate with Hiscox in the investigation of claims and that it had failed in that duty by not providing all of the ordered information by the July 11 deadline, although the district court noted that Maple Ridge "did supply information afterward." The district court further stated:

> Interestingly, the [requested] information was eventually produced. This was apparently done by . . . the appraiser chosen by [Maple Ridge].[3] The transcript from the discussion after appraisal seems to show that he was able to find the information in a short amount of time and without great difficulty. If he could do it, then presumably [Maple Ridge] could have done it as well sometime in the previous year.

Citing rule 37.02(b) of the Minnesota Rules of Civil Procedure, the district court sanctioned Maple Ridge for failing to comply fully with the court's orders requiring it to provide

[3] It was actually Maple Ridge's *adjuster* who produced the relevant information—not its appraiser.

information to Hiscox. It precluded Maple Ridge from recovering any of its losses for hail damage to buildings 29, 32, 33, and 35 through 38. Because these buildings were the only buildings that had appraised losses in excess of the $20,000 per building deductible, the sanctions effectively prevented Maple Ridge from recovering any losses and led to the entry of summary judgment, dismissing Maple Ridge's suit.

Maple Ridge argues that discovery sanctions under Minn. R. Civ. P. 37.02 are not available because no formal discovery had been served. Maple Ridge emphasizes that its duty to provide information to Hiscox arose out of the insurance policy as part of the duty to cooperate; any failure by Maple Ridge to satisfy that duty relates to the issue of *coverage*, not *appraisal*. *See Krueger v. State Farm Fire & Cas. Co.*, 510 N.W.2d 204, 209 (Minn. App. 1993). For its part, Hiscox relies on caselaw addressing factors courts apply before dismissing an action as a discovery sanction under rule 37.02, arguing that the district court did not abuse its discretion in view of these factors. But Hiscox does not address the threshold question of whether discovery sanctions under rule 37.02 are available under the circumstances presented here.

While the district court acted out of the proper intention of resolving disputes and moving the case along, the district court nevertheless imposed what it characterized as a rule 37.02 discovery sanction outside of the discovery process. We question the applicability of rule 37.02 for failure to provide information requested in informal letters relating to claims processing and preparation for an appraisal process.

Although the parties dispute the extent to which discovery was stayed by the district court's order compelling appraisal, it appears to be undisputed that Hiscox's requests for

information were not formal discovery requests under the rules of civil procedure. Rule 37.02(b) identifies sanctions available for failure to comply with, in relevant part, an "order to provide or permit discovery" or an order granting a motion to compel discovery under rule 37.01. The district court here did not file an "order to provide or permit discovery" as the term "discovery" is used in rule 26.02. Minn. R. Civ. P. 37.02(b), 26.02. Nor did the district court grant a motion to compel discovery, for example, "as requested under rule 34." Minn. R. Civ. P. 37.01(b)(2)(D). The rules relating to discovery sanctions do not appear to be applicable.[4] But even if we assume that the district court had authority to order responses to Hiscox's informal letter requests, we nevertheless conclude that the sanction order was improper because Hiscox failed to demonstrate prejudice.

In assessing the propriety of dismissal as a discovery sanction, we look to the following factors:

> (1) if the court set a date certain by which compliance was required, (2) if the court gave a warning of potential sanctions for non-compliance, (3) if the failure to cooperate with discovery was an isolated event or part of a pattern, (4) if the failure to comply was willful or without justification, and (5) if the moving party has demonstrated prejudice.

Frontier Ins., 788 N.W.2d at 923. Of the five factors, prejudice is the "primary factor" to be considered in a case such as this where the sanction order effectively resulted in dismissal of Maple Ridge's case. *Sudheimer v. Sudheimer*, 372 N.W.2d 792, 794 (Minn.

[4] The district court's summary-judgment order also includes an isolated reference to *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995), as authority for the sanctions imposed. In *Patton*, the supreme court addressed the court's inherent authority to impose sanctions for spoliation of evidence, which is not at issue here. 538 N.W.2d at 118-19.

App. 1985); *see Jadwin v. City of Dayton*, 379 N.W.2d 194, 197 (Minn. App. 1985) (reversing sanction when, among other reasons, there had "been no showing that the failure to provide [the ordered] information would substantially prejudice the [moving party's] claim").

The district court's orders here satisfied factors 1 and 2, and we will assume, without deciding, that factors 3 and 4 are established. What is missing, however, is any showing on factor 5—that Hiscox demonstrated that it was prejudiced in the appraisal process as a result of Maple Ridge's failure to comply with the July 11 deadline in the district court's July 8 order. And the burden of establishing prejudice was on Hiscox as the moving party. *See Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967).

Here, the only reference to prejudice in the district court's sanction order is the following: "The Court finds [Maple Ridge's] failure to comply with Court orders is intentional, and designed to prejudice [Hiscox's] claims." But a design to cause prejudice and actually causing prejudice are two different things. The district court itself noted in the sanction order that the appraisal panel *had* the information required in the July 8 order and that it was provided by Maple Ridge's appraiser.[5] The district court seems to have concluded—incorrectly—that this information was provided after the initial appraisal report and that is why an amended report was issued. But Hiscox's public adjuster attested that there was no change in the amended appraisal award other than to provide a per building breakdown of the loss at Hiscox's request because of the per building deductible

[5] As noted previously, the information was actually provided by Maple Ridge's adjuster.

in the insurance policy. The summary-judgment record also shows that Hiscox presented to the appraisal panel a full investigative report and estimate of the damages with approximately 300 photos.[6]

The sanction order was thus apparently premised on Maple Ridge's failure to provide the information directly to Hiscox instead of to the appraisal panel. But this falls short of establishing actual prejudice. Hiscox's whole argument for needing the information is that it was relevant to the appraisal process. This purpose was apparently satisfied. The record does not support a conclusion that Hiscox otherwise suffered prejudice—let alone the substantial prejudice required to justify the imposition of a sanction that effectively terminated Maple Ridge's suit. *See Jadwin*, 379 N.W.2d at 197.

We are sympathetic to the district court's reasons for issuing the July 8 and October 19 orders and acknowledge the frustration of dealing with a party that appears to have been less than fully responsive to the court's orders, but we conclude that the sanction imposed constituted an abuse of discretion. We consequently reverse the two orders. We also reverse the order granting summary judgment because it was premised on the October 19 sanction order that precluded the possibility of any recovery by Maple Ridge.[7]

[6] We also note that back in 2020, long before this suit was initiated, Hiscox hired a consultant who was allowed to inspect the buildings and prepared a report, dated November 2020, estimating the damage to be slightly less than $1,000.

[7] While we reverse the grant of summary judgment, this opinion should not be read as expressing conclusions concerning any issues related to coverage under the policy, which issues are yet to be presented to and decided at the district court.

II. On remand, in view of the reversal of sanctions, the district court should reconsider the motion to vacate the appraisal award.

Maple Ridge also argues that the district court erred in denying its motion to vacate the appraisal award. It is not entirely clear in the record what caused Maple Ridge to withdraw buildings 36, 37, and 38 from the appraisal process. Maple Ridge's adjuster stated at the appraisal that the withdrawal had "nothing to do with your panel but an order from the judge." The district court's October 19 sanction order similarly stated, "Pursuant to the July 8, 2022 Order, the appraisers previously removed Buildings 36, 37, and 38 from any appraisal." Under these circumstances, it is appropriate for the district court to assess the reason for the removal of the three buildings from the appraisal process and whether reconsideration of its denial of the motion to vacate the appraisal award is appropriate in view of this opinion.

Reversed and remanded.