

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 7, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00544-CV

IN RE CYPRESS TEXAS LLOYDS, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
11th District Court
Harris County, Texas
Trial Court Cause No. 2010-02132**

MEMORANDUM OPINION

This proceeding arises from a dispute over the amount of the covered loss under a homeowner's insurance policy. On June 24, 2011, relator Cypress Texas Lloyds, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. In its petition, Cypress Texas Lloyds asks this court to compel the respondent, the Honorable Mike Miller, presiding judge of the 11th District Court of Harris County, to abate the underlying proceedings until an appraisal to determine the amount of the covered loss has been completed. We deny the requested relief.

Less than a month after Hurricane Ike damaged their home, Gustavo and Monica Martinez, the real parties in interest, filed a homeowners' insurance claim with Cypress

Texas Lloyds. On November 28, 2008, Cypress Texas paid the Martinezes for the covered damages. On January 13, 2010, the Martinezes filed suit, but failed to serve Cypress Texas until September 7, 2010. Upon being served, Cypress Texas invoked appraisal and requested abatement of the case until appraisal was completed. On June 17, 2011, the trial court signed an order granting the motion to compel appraisal, but denying the motion to abate the litigation pending appraisal.

Mandamus relief is available if the trial court abuses its discretion, either in resolving factual issues or in determining legal principles, when there is no other adequate remedy by law. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or if it clearly fails to analyze or apply the law correctly. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005).

Recently, the Supreme Court of Texas confirmed that mandamus will not lie regarding the grant or denial of a motion to abate under these circumstances. Specifically addressing a motion to abate for an insurance appraisal, the court held that “[t]he trial court’s failure to grant the motion to abate is not subject to mandamus, and the proceedings need not be abated while the appraisal goes forward.” *In re Universal Underwriters of Texas Ins. Co.*, No. 10-0238, 2011 WL 1713278, *7 n. 5 (Tex. May 6, 2011); *see also See In re Liberty Mutual Group, Inc.*, No. 14-11-00310-CV; 2011 WL 2149482 (Tex. App.—Houston [14th Dist.] May 26, 2011, orig. proceeding) (memo. op.).

Accordingly, we deny Cypress Texas Lloyds’ petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Frost and McCally.