NUMBER 13-16-00362-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE STATE FARM LLOYDS

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Justices Rodriguez, Benavides, and Perkes
Memorandum Opinion Per Curiam[1]

By petition for writ of mandamus, relator State Farm Lloyds (State Farm) seeks to set aside a discovery order compelling it to produce "re-inspection files" for its adjuster and co-defendant, Sylvia Garza, on "hail losses in Texas for the period of July 17, 2012 through July 17, 2014." We deny relief.

I. BACKGROUND

[1] *See* TEX. R. APP. P. 52.8(d) ("When granting relief, the court must hand down an opinion as in any other case," but when "denying relief, the court may hand down an opinion but is not required to do so."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

Real party in interest Angelica Moreno Gongora's home was damaged in hailstorms occurring in March and April of 2012. She submitted a claim under her homeowner's insurance to State Farm. Garza inspected her property damage and adjusted the claim. Pursuant to Garza's inspection and evaluation, State Farm determined that Gongora's claim did not exceed her deductible and therefore did not pay her claim. Gongora brought suit against State Farm, Garza, and another adjuster employed by State Farm.[2] In Gongora's first amended petition, she alleged that Garza was "improperly trained and failed to perform a thorough investigation" of Gongora's claim. According to Gongora, Garza failed to include all of the storm damages in her estimate, she "grossly undervalued" the damages, and she failed to include adequate funds in her estimate to cover the cost of repairs. Gongora alleged that Garza's investigation was unreasonable, her claim was improperly adjusted, and she was denied sufficient payment to repair her home. She alleged causes of action including breach of contract, breach of the insurer's duty of good faith and fair dealing, insurance code violations, and fraud.

Gongora subsequently invoked the appraisal clause in her homeowner's insurance policy. The ultimate appraisal value for Gongora's damages was more than ten times the amount that Garza had estimated. After invoking appraisal, Gongora propounded discovery to State Farm. Her Request for Production No. 18 to State Farm, which is the request for production at issue in this original proceeding, sought:

> All documents relating to work performance, claims patterns, claims problems, commendations, claims trends, claims recognitions, and/or

[2] This original proceeding arises from trial court cause number 2014-CV-0299-A in the 197th District Court of Willacy County, Texas, and the respondent is the Honorable Migdalia Lopez. Cynthia Cole, the other State Farm employee and adjuster named in Gongora's lawsuit, has not filed pleadings in this original proceeding. *See generally* TEX. R. APP. P. 52.2.

> concerns for any person who handled the claim made the basis of this Lawsuit.

State Farm objected to this request on the grounds of vagueness, irrelevance, overbreadth, confidentiality, and privilege.

After State Farm paid Gongora the appraisal award, Gongora filed a motion to compel which sought, inter alia, a supplemental response to her Request for Production No. 18. In her motion, Gongora limited the scope of the request to Garza, as the adjuster who inspected Plaintiff's house, and argued that the request was proper because, "[w]hether or not State Farm's claims handling procedures and standard met industry standards, as portrayed in part through data reflected in audits and surveys, can help prove State Farm's bad faith." In response, State Farm asserted that additional discovery was unwarranted since its payment of the appraisal award foreclosed Gongora's claims and that the discovery was overbroad, unduly burdensome, and irrelevant. It noted that materials pertaining to other claims were irrelevant because they do "not change the appropriateness, one way or the other, of how Plaintiff's claim was handled."

The trial court heard Gongora's motion to compel on June 22, 2016. During the hearing, Gongora argued that Garza's re-inspection files were sought to show, in part, that Garza was unqualified to adjust claims. In support of her argument, Gongora utilized one of Garza's re-inspection files produced in a separate case. State Farm objected to production and argued that discovery of re-inspection files from other claims was irrelevant.

By order signed on June 24, 2016, the trial court ordered State Farm to respond to Gongora's request as follows:

> Request for Production No. 18: All documents relating to work performance, claims patterns, claims problems, commendations, claims trends, claims recognitions, and/or concerns for any person who handled the claim made the basis of this Lawsuit. This request shall be limited to any re-inspection files for Defendant Sylvia Garza on hail losses in Texas for the period of July 17, 2012 through July 17, 2014.

State Farm describes re-inspections as "internal reviews of claims, conducted to ensure that claims are handled correctly, consistently, and in accordance with State Farm's customer service standards." Gongora similarly describes them as "internal audits that State Farm does of its adjusters from time to time to make sure they are handling claims properly and in line with State Farm policies and procedures." According to Gongora, re-inspection files are "basically performance evaluations of adjusters performed by State Farm which provide evidence not only of the adjuster's competence, but also of State Farm's knowledge of the adjuster's competence."

This original proceeding ensued. By one issue, State Farm contends that the trial court abused its discretion by ordering it to produce re-inspection files for insurance claims handled by Garza that are not at issue in this litigation. This Court requested and received a response to the petition for writ of mandamus from Gongora and also received a reply thereto from State Farm.

II. MANDAMUS

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co., L.P.*,

492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding).

An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, No. 15-0328, 2016 WL 3537206, at *2, __ S.W.3d __, __ (Tex. June 24, 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co*., 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004)) (orig. proceeding).

An order that compels overly broad discovery is an abuse of discretion for which mandamus is the proper remedy. *In re Nat'l Lloyds Ins. Co*., 449 S.W.3d 486, 488 (Tex. 2014) (orig. proceeding) (per curiam); *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding).

III. DISCOVERY

The scope of discovery is generally within the trial court's discretion. *In re Graco Children's Prods., Inc.*, 210 S.W.3d 598, 600 (Tex. 2006) (orig. proceeding) (per curiam); *In re CSX Corp*., 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding). "Parties are 'entitled to full, fair discovery' and to have their cases decided on the merits." *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009) (quoting *Able Supply Co. v. Moye*, 898 S.W.2d 766, 773 (Tex. 1995) (orig. proceeding)). Parties may seek discovery "regarding any matter that is not privileged and is relevant to the subject matter of the pending action . . . ." TEX. R. CIV. P. 192.3(a); *see In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d at 488.

Information is relevant if it tends to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the information. *See* TEX. R. EVID. 401. We broadly construe the phrase "relevant to the subject matter" to afford litigants "the fullest knowledge of the facts and issues prior to trial." *Castillo*, 279 S.W.3d at 664; *see In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d at 488.

While the scope of discovery is broad, permissible discovery requests "must show a reasonable expectation of obtaining information that will aid the dispute's resolution." *In re CSX Corp*., 124 S.W.3d at 152 (citing *In re Am. Optical Corp*., 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding). However, a request is not overbroad merely because it may call for some information of doubtful relevance. *In re Nat'l Lloyds Ins. Co*., 449 S.W.3d at 488; *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (per curiam); *see In re Graco Children's Prods., Inc.*, 210 S.W.3d at 600.

IV. ANALYSIS

By one issue, State Farm contends that the trial court abused its discretion by ordering it to produce "re-inspection files" for insurance claims handled by Garza that are not at issue in this litigation. State Farm contends that the "handling of other claims is generally irrelevant to a suit based on alleged undervaluing of an insurance claim." State Farm bases its argument principally on the Texas Supreme Court's recent decision in *In re National Lloyds Insurance Company*. *See generally* 449 S.W.3d at 487–490. In that case, the insured, Mary Erving, claimed that National Lloyds breached its insurance contract by underpaying her property damage claims after storms damaged her home in Cedar Hill, Texas. *Id.* at 488. Erving sought the production of all claim files for three individual adjusters for the preceding six years and all claim files for two adjusting firms

for the past year. *Id.* "Erving . . . proposed to compare National Lloyds' evaluation of the damage to her home with National Lloyds' evaluation of the damage to other homes to support her contention that her claims were undervalued." *Id.* at 489. The trial court ordered production of the files for claims handled by the two adjusting firms who handled Erving's claims, but limited the scope of the claims to those involving properties in Cedar Hill that were damaged by the storms. *Id.* at 488.

The Texas Supreme Court granted mandamus relief, noting that it "fail[ed] to see how National Lloyds' overpayment, underpayment, or proper payment of the claims of unrelated third parties is probative of its conduct with respect to Erving's undervaluation claims at issue in this case." *Id.* at 489. The supreme court continued, "this is especially so given the many variables associated with a particular claim, such as when the claim was filed, the condition of the property at the time of filing (including the presence of any preexisting damage), and the type and extent of damage inflicted by the covered event." *Id.* In other words, "[s]couring claim files in hopes of finding similarly situated claimants whose claims were evaluated differently from Erving's" in order to prove that National Lloyds breached the contract by underpaying her "[was] at best an 'impermissible fishing expedition.'" *Id.* (quoting *Texaco, Inc.*, 898 S.W.2d at 815). Thus, the Texas Supreme Court held that the trial court abused its discretion in ordering the insurer "to produce evidence related to insurance claims other than the plaintiff's." *Id.* at 487.

We disagree with State Farm's contention that *National Lloyds* controls the disposition of this original proceeding. The *National Lloyds* case is distinguishable from this case in several fundamental ways. In *National Lloyds*, the claimant sought the discovery of third party claim files in order to compare her insurance company's

evaluation of the damage to her home with its evaluation of the damage to other homes to support her contention that it undervalued her claims. *Id.* at 488–89. In this case, Gongora seeks Garza's re-inspection files to determine whether State Farm was reasonable in relying on Garza's investigation and evaluation of Gongora's claims where Gongora has alleged that State Farm failed to properly train Garza, Garza was incompetent, and State Farm knew that Garza was incompetent. Garza is an employee of State Farm and is a named defendant in this lawsuit. The trial court had the opportunity to review a re-inspection file for Garza and hear argument about its contents and potential relevance to this case. We conclude that the trial court acted within its discretion in determining that internal evaluations of Garza's performance in the form of re-inspection files are relevant to the issues raised in this lawsuit. According, we overrule State Farm's issue to the contrary.

V. CONCLUSION

The Court, having examined and fully considered the petition for writ of mandamus, the response, the reply, and the applicable law, is of the opinion that relator has not shown itself entitled to the relief sought. Accordingly, we LIFT the stay previously imposed in this case. *See* TEX. R. APP. P. 52.10(b) ("Unless vacated or modified, an order granting temporary relief is effective until the case is finally decided."). We DENY the petition for writ of mandamus.

PER CURIAM

Delivered and filed the
19th day of September, 2016.