



NUMBER 13-17-00506-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE PHILADELPHIA INDEMNITY INSURANCE COMPANY

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Contreras and Hinojosa
Memorandum Opinion by Justice Contreras**

Relator, Philadelphia Indemnity Insurance Co. (Philadelphia), has filed a petition for writ of mandamus contending that the Honorable Fred Garza, presiding judge of the Hidalgo County Court at Law No. 4, abused his discretion, leaving relator without an adequate appellate remedy, by rendering an order on May 12, 2017 granting a motion to set aside an insurance appraisal award. The real parties in interest, Iglesia del Pueblo, Inc. and Radio Imagen 1580 AM (collectively Iglesia), filed a response to the petition pursuant to our request. We will deny mandamus relief.

I. BACKGROUND

This dispute concerns the appraisal of property damage under an insurance policy. After its property was allegedly damaged by wind and hail, Iglesia made a claim on its commercial property policy issued by Philadelphia. Philadelphia retained an independent adjusting firm, which determined that the damage amount was \$9,470.82, far below the policy's deductible of \$26,189.30. Therefore, Philadelphia informed Iglesia that it would not issue any payment for the claimed loss.

Nearly two years later, Iglesia's counsel sent Philadelphia a letter demanding another appraisal, citing the following appraisal clause contained in the policy:

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. Each appraiser will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding as to the amount of loss.

In the letter, Iglesia's counsel identified Sergio De La Canal as its selected appraiser. Philadelphia replied with a letter agreeing to submit to the appraisal process and identifying Darrell Edwards as its selected appraiser. Iglesia objected to the selection of Edwards on grounds that he was found in 2012 to be engaging in the unauthorized practice of law, and also was a defendant in an unrelated case involving Iglesia's counsel.

According to Iglesia, because the two selected appraisers were unable to agree upon an umpire within fifteen days, it asked the Honorable Israel Ramon, presiding judge of the 430th District Court, to select an umpire pursuant to the above policy term. Judge Ramon selected Andy Almaguer in a "Declaration for Umpire Appointment" dated May

13, 2014. However, on May 19, 2014, De La Canal and Edwards executed a “Declaration of Appraisers” document selecting Tom Powell as umpire.

Iglesia filed the instant suit in the Hidalgo County Court at Law No. 4 on November 5, 2014, alleging that Philadelphia and Edwards have “refused to proceed with the appraisal process” until the appointment of Almaguer is vacated. By its suit, Iglesia sought a declaration that Almaguer—not Powell—is the properly selected umpire under the policy.

On July 26, 2015, Edwards and Powell signed a “Declaration of Appraisers Appraisal Award” finding the total amount of loss to be \$29,596 in actual replacement value, or \$27,047.20 in actual cash value. On August 24, 2015, Philadelphia issued a check to Iglesia for \$3,406.70, representing the difference between the actual replacement value as determined by Edwards and Powell and the deductible amount.

In February of 2017, Iglesia filed a motion to set aside the appraisal award, arguing that: (1) Powell was improperly designated as umpire; (2) Edwards was not competent or impartial; (3) the award improperly decided issues of coverage and liability; and (4) the award was not an “honest assessment” of the necessary repairs to its property. After considering the motion and Philadelphia’s response, the trial court granted the motion to set aside the award without specifying grounds.¹ This original proceeding followed.²

¹ Philadelphia perfected an interlocutory appeal from this order, but we granted its motion to dismiss the appeal without prejudice. *Phila. Indem. Ins. v. Iglesia Del Pueblo*, No. 13-17-00303-CV, 2017 WL 3769166, at *1 (Tex. App.—Corpus Christi Aug. 31, 2017, no pet. h.) (mem. op.).

² We grant Iglesia’s motion to extend time to file a response to the petition for writ of mandamus.

II. DISCUSSION

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 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, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co.*, 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.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). A trial court does not abuse its discretion if it reaches the right result for the wrong reason; therefore, we will uphold the ruling on any grounds supported by the record before the trial court. *In re Travelers Prop. Cas. Co. of Am.*, 485 S.W.3d 921, 925 (Tex. App.—Dallas 2016, orig. proceeding).

The purpose of an appraisal clause in an insurance contract is to provide a “binding, extra-judicial remedy for any disagreement regarding the amount of the loss.” *Breshears v. State Farm Lloyds*, 155 S.W.3d 340, 344 (Tex. App.—Corpus Christi 2004, pet. denied) (noting that the effect of such a clause is to estop one party from contesting the value of damages in a suit on the insurance contract, leaving only the question of liability for the court); see *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 894 (Tex. 2009) (noting that appraisal awards are limited to determining the amount of damages and may not determine issues of coverage or liability). An appraiser “acts in a quasi-judicial

capacity” and is “bound to exercise the highest degree of judicial impartiality.” *Int’l Serv. Ins. v. Brodie*, 337 S.W.2d 414, 417 (Tex. Civ. App.—Fort Worth 1960, writ ref’d n.r.e.).

Awards made pursuant to contractual appraisal provisions are binding and enforceable, and a court will indulge every reasonable presumption to sustain an appraisal award. See *In re Allstate Cty Mut. Ins.*, 85 S.W.3d 193, 195 (Tex. 2002); *Breshears*, 155 S.W.3d at 344. If a party seeks to avoid an appraisal award, the burden of proof is theirs to raise an issue of material fact as to why the resolution they contractually agreed to should be set aside. *Nat’l Sec. Fire & Cas. Co. v. Hurst*, 523 S.W.3d 840, 844 (Tex. App.—Houston [14th Dist.] 2017, no pet. h.); *Lundstrom v. United Servs. Auto Ass’n-CIC*, 192 S.W.3d 78, 87 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).

An otherwise binding appraisal award may be set aside if: (1) it was made without authority; (2) it was the result of fraud, accident or mistake; or (3) it failed to comply with the requirements of the insurance policy. *Hurst*, 523 S.W.3d at 844; *Lundstrom*, 192 S.W.3d at 87. Moreover, an appraisal award may be set aside if it does not represent an “honest assessment” of necessary repairs. *Johnson*, 290 S.W.3d at 895 (citing *Gulf Ins. v. Pappas*, 73 S.W.2d 145, 146–47 (Tex. Civ. App.—San Antonio 1934, writ ref’d)). In its motion to set aside, Iglesia claimed that the award issued by Edwards and Powell should be set aside for all of the aforementioned reasons.

We find that the trial court’s ruling is not a clear abuse of discretion. Among other things, Iglesia argued in its motion to set aside that Edwards was not authorized to act as an appraiser because he was not “competent and impartial” as required by the policy. Iglesia noted that Edwards had voluntarily relinquished his adjuster’s license and, in an

unrelated appraisal case, was found to have been engaging in the unauthorized practice of law on behalf of an insurance company. Philadelphia does not dispute these allegations. Iglesia further argued that Edwards was not impartial because he was, at the time of the appraisal, a defendant in an unrelated lawsuit in which Iglesia's counsel was the plaintiffs' attorney. In its response to Iglesia's motion, Philadelphia asserted that the plaintiffs in the unrelated case had dismissed their claims against Edwards, but it does not dispute that the claims were pending at the time of the appraisal.

Iglesia further argued that Edwards's bias was evidenced by the appraisal award itself. It contends that Edwards and Powell had offered no reason for why they disregarded evidence that Iglesia had spent over \$70,000 in making temporary repairs to its property. "[A] finding of disparity, even gross disparity, between an appraisal award and the cost of repair, cannot support a finding of bias or partiality without additional evidence." *Hennessey v. Vanguard Ins.*, 895 S.W.2d 794, 799 (Tex. App.—Amarillo 1995, writ denied). Here, however, the trial court had additional evidence, as outlined above, from which it could have inferred that Edwards was not impartial.

Considering the high standard for appraiser impartiality, *see Brodie*, 337 S.W.2d at 417, we cannot say that the trial court clearly abused its discretion in determining that Edwards was not impartial. Accordingly, we cannot conclude it was a clear abuse of discretion to set aside the appraisal award on the basis that Edwards's appointment as appraiser failed to comply with the insurance policy. *See Hurst*, 523 S.W.3d at 844; *Lundstrom*, 192 S.W.3d at 87. We do not address whether the trial court's ruling was justified on any other grounds raised by Iglesia in its motion. *See TEX. R. APP. P. 47.1; In re Travelers Prop. Cas. Co. of Am.*, 485 S.W.3d at 925.

III. CONCLUSION

Having fully considered Philadelphia's petition for writ of mandamus, Iglesia's response, and record documents provided by the parties, we conclude that Philadelphia has not established that it is entitled to the relief sought. Accordingly, the petition for writ of mandamus is DENIED.

DORI CONTRERAS
Justice

Delivered and filed the
20th day of November, 2017.