



## Villareal v. Company

2021 | Cited 0 times | S.D. Texas | September 7, 2021

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

MCALLEN DIVISION Guadalupe Villareal, Plaintiff, VS. United Property and Casualty Insurance Company, Defendant.

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CIVIL ACTION NO. 7:21-cv-00145

OPINION AND ORDER The Court now considers motion to abate, 1

r motion to abate, 2 and motion to compel. 3

Plaintiff has not filed a response to the motion to compel and the time for doing so has passed, rendering Defendant 4

The motions are now ripe for consideration. After considering the motions, record, and relevant authorities, the Court GRANTS Defendant motion to compel 5

and motion to abate. 6 I. BACKGROUND AND PROCE DURAL HISTORY This is an insurance case. 7

In his original petition, Plaintiff Guadalupe Villarreal alleges that on or about July 25, 2020, his home sustained wind and hail damage during a storm in the City of McAllen. 8

Plaintiff alleges that he reported the claim to Defendant. 9

Plaintiff further alleges

1 Dkt. No. 8. 2 Dkt. No. 9. 3 Dkt. No. 10. 4 Failure to respond to a motion will be taken as a representation of no opposition 5 Dkt. No. 10. 6 Dkt. No. 8. 7 Dkt. No. 1. 8 Dkt. No. 2-1 9 Dkt. No. 2-1.

United States District Court Southern District of Texas

ENTERED September 07, 2021 Nathan Ochsner, Clerk D 10 After inspecting the dwelling,



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Defendant alleges that it sent a disposition letter to Plaintiff stating it allowed \$471.11 in damages. 11

On December 11, 2020, Plaintiff sent Defendant a Demand Letter and included an estimate which totaled \$50,751.81. 12

On February 12, 2021, Plaintiff filed suit in the 332 nd

District Court of Hidalgo County, Texas. 13

Plaintiff seeks monetary relief for contractual and extra- contractual causes of action arising out of a claim for home damage. 14

Subsequently, on April 14, 2021, Defendant filed a notice of removal to this Court based on diversity jurisdiction. 15

The Court then issued a scheduling order for this case on May 12, 2021, setting the deadline for discovery on February 1, 2021. 16

On June 23, 2021, Defendant made a written demand for appraisal pursuant to the terms of the the issued to Plaintiff. 17

to the appraisal demand was 20 days after issuance, on Tuesday, July 13, 2021. 18

Defendant alleges 19

The Policy contains an appraisal provision that allows either party to the contract to invoke the appraisal process in the event there unt of loss 20

[i]f you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. 21

In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request

10 Id. 11 Dkt. No. 10. 12 Dkt. No. 2. 13 Id. 14 Dkt. No. 1. 15 Id. 16 Dkt. No. 7. 17 Dkt. No. 10-1. 18 Dkt. No. 10-3. 19 Dkt. No. 10. 20 Dkt. No. 10-2. 21 Id.

from the other. 22

Prior to the end of the twenty days, on June 29, 2021, Defendant filed its motion to abate, and Plaintiff filed his response on July 12, 2021. 23



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After the twenty day deadline, Defendant filed the motion to compel on July 21, 2021. 24

Therein, Defendant requests the Court to compel participation from Plaintiff in the appraisal process. 25

The Court now turns to its analysis.

### II. DISCUSSION

A. Jurisdiction Under 28 U.S.C. §1332, " the matter in controversy must exceed the sum or value of \$75,000," and the parties are "citizens of different states." 26

Here, Plaintiff, Guadalupe Villareal, is domiciled in Hidalgo County, Texas, and was domiciled there at the time this action commenced. 27

Defendant, United Property and Casualty Insurance Company, is a corporation incorporated under the laws of the State of Florida, having its principal place of business in St. Petersburg, Pinellas County, Florida. 28

Furthermore, Plaintiff seeks damages of over \$200,000. Accordingly, because Plaintiff and Defendant are diverse in citizenship and the amount in controversy exceeds \$75,000.00, the Court has subject matter jurisdiction.

22 Dkt. No. 10-2. 23 Dkt. No. 8 & 9. 24 Dkt. No. 10. 25 Id. 26 28 U.S.C. §1332. 27 Dkt. No. 1. 28 Id.

#### B. Legal Standard

I. Motion to Compel the appraisal process pursuant to the Policy issued to Plaintiff. 29

In support, Defendant argues that appraisal demand within the allotted 20 days. 30

Appraisal clauses in Texas insurance policies have long provided a mechanism to resolve disputes between policy holders and insurers about the amount of loss for a covered claim. 31 Because federal jurisdiction in this case is invoked on the basis of diversity of citizenship, 32

this Court, Erie-bound,

applies the substantive law of the state of Texas. 33

t] is convinced



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The Texas Supreme Court has held that appraisal clauses in insurance contracts are enforceable, and that a trial court abuses its discretion if it fails to enforce an appraisal provision. 35

While courts have some discretion as to the timing of the appraisal, they have no discretion to ignore a valid appraisal clause entirely. 36

Furthermore, a binds the parties to have the extent or amount

29 Dkt. No. 10. 30 Id. 31 In re Universal Underwriters of Texas Ins. Co., 345 S.W.3d 404, 406-07 (Tex. 2011). 32 Dkt. No. 1. 33 See Homoki v. Conversion Servs., Inc., 717 F.3d 388, 396 (5th Cir. 2013); Exxon Co. U.S.A, Div. of Exxon Corp. v. Banque De Paris Et Des Pays-Bas, 889 F.2d 674, 675 (5th Cir. 1989); Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). 34 Exxon Co. U.S.A, Div. of Exxon Corp., 889 F.2d at 675 (quoting West v. AT&T, 311 U.S. 223, 237 (1940)). 35 In re Allstate County Mutual Insurance Company, 85 S.W.3d 193, 195 (Tex. 2002). 36 Id.

of the loss determined in a particular wa 37

38

Here, the Policy issued to Plaintiff states that: [I]f you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. 39 Since both parties have continuously disagreed on the amount of loss incurred by the storm, Defendant argues the appraisal process is needed. 40

On June 23, 2021, Defendant sent Plaintiff a letter invoking the appraisal process and requesting that Plaintiff establish an appraiser. 41

Plaintiff failed to respond within the 20 days allotted by the appraisal provision in the Policy issued to Plaintiff. 42

On this basis requests that Plaintiff be compelled to participate in the appraisal process. Plaintiff has not responded to this motion, rendering it unopposed. 43

For the d.

Accordingly, the Court GRANTS Defen motion to compel 44

appraisal and ORDERS Plaintiff to choose a competent and impartial appraiser by Monday,



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September 27, 2021.

37 State Farm Lloyds v. Johnson, 290 S.W. 3d 886, 888-89 (quoting In re Allstate County Mut. Ins. Co., 85 S.W. 3d 193, 195 (Tex. 2002)); see also Lundstrum v. United Servs. Auto. Ass'n-CIC, 192 S.W.3d 78, 87 (Tex. App. to estop one party from contesting 38 Id. at 895. 39 Id. 40 ( disagree to the amount of loss). 41 Dkt. No. 10-1. 42 Dkt. No. 10. 43 Failure to respond to a motion will be taken as a representation of no opposition 44 Dkt. No. 10.

II. Motion to Abate Defendant also filed a motion to abate. 45

Therein, Defendant requests that the Court enter an order abating discovery until further order of the Court pending completion of appraisal. 46

In support, Defendant argues that the appraisal process will establish the amount of loss and that the completion of the appraisal process will likely resolve or at least narrow the breach of contract and extra-contractual claim. 47

In , he denied. 48 In support, Plaintiff argues that abatement would prevent Plaintiff from pursuing factual support through discover award does not, by itself, entitle insured or insurer to judgement in its favor. 49

However, abatement will not prevent Plaintiff from pursuing discovery following the completion of the appraisal process. he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. 50

In light of the foregoing and the Court to compel, the Court finds abatement warranted.

Accordingly, the Court GRANTS motion to abate 51

and STAYS all discovery in this case until completion of the appraisal process.

45 Dkt. No. 8. 46 Dkt. No. 8. 47 Id. 48 Dkt. No. 9. 49 Id. 50 Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). 51 Dkt. No. 8.

### III. CONCLUSION AND HOLDING

For the foregoing reasons, the Court GRANTS unopposed motion to compel 52 and ORDERS Plaintiff to choose a competent and impartial appraiser by Monday, September 27, 2021. Furthermore, the Court GRANTS motion to abate 53



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and STAYS all discovery in this case until completion of the appraisal process. A status conference is set for Monday, January 24, 2022 at 9 a.m. The parties shall file a status report by January 18, 2022. IT IS SO ORDERED. DONE at McAllen, Texas, this 7th day of September 2021.

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Micaela Alvarez United States District Judge

52 Dkt. No. 10. 53 Dkt. No. 8.

