IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Petitioner,
v.

COLLISION CONCEPTS, INC., A/A/O JOHN BROWER,
Respondent.
_____/

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Petitioner,
v.

COLLISION CONCEPTS, INC., A/A/O TRACY PARSONS,
Respondent.
_____/

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502014CA007531XXXXMB
502014CA007600XXXXMB
L.T. NO.: 502012SC009988XXXXMB
502012SC009995XXXXMB

Opinion filed: JAN - 6 2015

Appeal from the County Court in and for Palm Beach County,
Judge Frank S. Castor

1/6/15

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PER CURIAM.

This appeal consists of two consolidated petitions for writs of certiorari. In both cases, Petitioner/Defendant State Farm Mutual Automobile Insurance Company seeks to quash a trial court order compelling Petitioner to produce a competitive pricing survey ("the Survey").

According to Petitioner, the Survey is proprietary and confidential, and production of an unredacted version would cause irreparable harm. Petitioner argues that the trial court departed from the essential elements of the law by ordering production of the Survey (1) even where not relevant, (2) in the absence of a showing of necessity overcoming Petitioner's confidentiality interest, and (3) without utilizing an alternative to unredacted disclosure. We agree and remand for further proceedings.

Factual Background

John Brower and Tracy Parsons ("the Insured"), both owned vehicles insured by Petitioner. The two vehicles were involved in accidents and were brought to Respondent for repair. Respondent, an automobile body repair shop, created invoices of what it would cost to repair the vehicles. Petitioner approved $5,472.86 and $6,304.70 in estimated costs for the repair work on Mr. Brower's and Ms. Parsons' vehicles, respectively. Petitioner based the payment amounts in part on an internally compiled Survey of prevailing competitive prices among repair shops. Respondent, however, charged $5,667.95 and $6,804.50 for the work, respectively. Respondent subsequently obtained an assignment from the Insured and brought an action against Petitioner for breaching its policy, seeking the difference plus interest, costs, and attorney's fees.[1] Respondent filed complaints alleging that Petitioner violated the policy provision requiring it to pay to return the Insured's vehicles to pre-accident operational safety, function, and appearance. As an affirmative defense, Petitioner asserted that the policy also allows for payment pursuant an estimate based on a Survey of prevailing competitive prices, compiled by Petitioner. Respondent moved to compel production of the Survey to determine whether Petitioner's estimate conformed to the Survey data, claiming that it would be unable to rebut

[1] The two complaints were filed separately but evaluated by the trial court in tandem. Hearings on the motions at issue in the present Petition were held in tandem as well.

Petitioner's affirmative defense without it. The trial court heard argument,[2] denied Petitioner's request for a two-tier confidentiality agreement, and entered an order in each case requiring Petitioner to produce the unredacted Survey within fifteen (15) days. The two orders did not make any findings as to the confidentiality of the Survey.

Discussion

"Certiorari lies to review a trial court order which compels production of trade secrets or other confidential or proprietary information." *Cordis Corp. v. O'Shea*, 988 So. 2d 1163, 1165 (Fla. 4th DCA 2008). To be entitled to issuance of a writ of certiorari, a petitioner must demonstrate both (1) irreparable harm, which is defined as a material injury that cannot be remedied on direct appeal, and (2) a departure from the essential requirements of law. *Int'l House of Pancakes (IHOP) v. Robinson*, 124 So. 3d 1004, 1006 (Fla. 4th DCA 2013); *see also Citigroup, Inc. v. Holtsberg*, 920 So. 2d 25 (Fla. 4th DCA 2005); *Gazerro v. Crane*, 890 So. 2d 446 (Fla. 4th DCA 2004).

1. Irreparable Harm

As to the first prong of the test, we agree with Petitioner that full and unredacted disclosure of the Survey would cause irreparable harm. The disclosure of confidential materials, such as trade secrets, can constitute irreparable harm merely by the fact of their disclosure. *Sea Coast Fire, Inc. v. Triangle Fire, Inc.*, No. 3D14-973, 2014 WL 6679018, at *1 (Fla. 3d DCA Nov. 26, 2014). The Survey falls squarely within the definition of a trade secret. Trade secrets are defined in Florida's Uniform Trade Secrets Act as:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

[2] This hearing was not an evidentiary hearing; the trial court merely heard the attorneys' argument as to several motions at issue, including the Motion to Compel.

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 688.002(4), Fla. Stat. (2013). Here, Petitioner independently collects information from repair shops regarding pricing for certain services, then compiles it. Petitioner uses the Survey to determine competitive pricing rates, which in turn dictates the payments Petitioner makes to repair shops. Petitioner actively seeks to protect the Survey from dissemination to repair shops. Disclosure to repair shops would allow them to manipulate their pricing and harm Petitioner's ability to ascertain competitive rates. Thus the Survey qualifies as a trade secret. Accordingly, production of the unredacted Survey would result in dissemination of trade secret materials, resulting in irreparable harm to Petitioner.[3]

2. Departure from the Essential Requirements of the Law

Under the second prong of the test, we find that the trial court departed from the essential elements of the law in compelling production of the unredacted Survey. Trade secrets are privileged under Section 90.506, Florida Statutes (2013).[4] This privilege, however, is not absolute, and trade secrets can be obtained via discovery under certain circumstances. To determine if such circumstances exist, a trial court generally must (1) determine whether the

[3] Respondent argues that disclosure of the unredacted Survey would not cause irreparable harm because Petitioner failed to demonstrate such harm before the trial court. However, the record reveals that while Petitioner repeatedly explained before the trial court that the Survey was confidential and proprietary, Respondent never contested these assertions. Respondent is essentially attempting to use its own failure to contest the confidentiality of the Survey against Petitioner.

[4] Section 90.506, Florida Statutes (2013) states:

> A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice. When the court directs disclosure, it shall take the protective measures that the interests of the holder of the privilege, the interests of the parties, and the furtherance of justice require.

requested production constitutes a trade secret, (2) if it is a trade secret, determine whether there is a reasonable necessity for production; and (3) if production is ordered, the trial court must set forth its findings. *Sea Coast Fire, Inc. v. Triangle Fire, Inc.*, No. 3D14-973, 2014 WL 6679018, at *2-3 (Fla. 3d DCA Nov. 26, 2014) (citing *Gen. Caulking Coating Co., Inc. v. J.D. Waterproofing, Inc.*, 958 So. 2d 507, 508 (Fla. 3d DCA 2007)). Failure to follow these steps generally constitutes a departure from the essential requirements of the law. *Id.* Here, it is unclear whether the trial court made any of the determinations required by this three-part test because it made no relevant findings. It certainly did not make any findings as to the confidential nature of the Survey or the weight of the parties' interests; rather, the trial court simply granted Respondent's Motion to Compel, stating that Petitioner had to produce the Survey because one of the affirmative defenses relied on it. The written orders provided no further elaboration. Therefore the trial court departed from the essential requirements of the law by failing to make the findings required to order production of the Survey.

Even if the trial court had made the required findings, it also departed from the essential requirements of the law by ordering unredacted production of the Survey despite Respondent's failure to demonstrate a reasonable necessity for it. "Once a party has demonstrated that the information sought is a trade secret, the burden shifts to the party seeking discovery to demonstrate reasonable necessity for production." *Sea Coast Fire*, 2014 WL 6679018, at *2 (citing *Scientific Games, Inc. v. Dittler Bros., Inc.*, 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991). The party seeking the confidential information must show a need for that information which outweighs the opposing party's need to keep the information confidential. *Cordis Corp. v. O'Shea*, 988 So. 2d 1163, 1166 (Fla. 4th DCA 2008). The trial court must then weigh the two interests. *See Gen. Caulking Coating Co., Inc. v. J.D. Waterproofing, Inc.*, 958 So. 2d 507, 509

(Fla. 3d DCA 2007). However, where it is undisputed that the material requested constitutes a trade secret, as is the case here, the burden is simply on the party resisting discovery to show that the information sought is a trade secret. *Am. Exp. Travel Related Servs., Inc. v. Cruz*, 761 So. 2d 1206, 1209 (Fla. 4th DCA 2000); *see also Columbia Hosp. (Palm Beaches) v. Hasson*, 33 So. 3d 148, 150 (Fla. 4th DCA 2010) (noting that an inspection by or a hearing before the court may not be required to determine that a trade secret exists in such cases). Here, Petitioner demonstrated to the trial court that the Survey constituted a trade secret,[5] and thereby shifted the burden to Respondent to demonstrate reasonable necessity. Accordingly, the burden shifted to Respondent to demonstrate reasonable necessity.

Respondent failed to demonstrate reasonable necessity, however, because much of the Survey is irrelevant to the cases at hand. Irrelevant discovery is generally a basis for granting certiorari where disclosure of materials may reasonably cause material injury of an irreparable nature. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). As discussed above, full production of the Survey would cause irreparable harm. Additionally, the Survey is irrelevant here in two respects. First, the identification of repair shops that participated in the Survey is irrelevant. Respondent claims that this information should not be redacted because it is necessary to rebut Petitioner's affirmative defense. Essentially, Respondent would like to test the survey by asking each repair shop to re-report its data, allowing Respondent to check Petitioner's compliance with unspecified internal procedures. However, the methodology and procedure involved in creating the Survey are not relevant to the issue at hand. "[C]laim files, manuals, guidelines and documents concerning . . . claim handling procedures [a]re irrelevant to

[5] During argument on the motions to compel, Petitioner repeatedly described the Survey as "confidential" and "proprietary." Petitioner explained the nature of the Survey process, and noted that it kept results confidential even from Survey participants to avoid price-fixing accusations. Even Respondent admitted that other jurisdictions have also found the Survey to be a trade secret.

[a] first party dispute." *State Farm Fire & Cas. Co. v. Valido*, 662 So. 2d 1012, 1013 (Fla. 3d DCA 1995). In order to address Petitioner's affirmative defense, Respondent need only dispute the amounts paid by Petitioner as compared to the relevant Survey values. Regardless of whether the Survey values were correct, Petitioner was only required to comply with those values in making payments. Therefore Respondent need only know the Survey values, not the identifying information of each contributing repair shop. Thus the identifying information of each repair shop is irrelevant to Respondent's claim.

Second, the Survey is fully irrelevant to the contested payments in Ms. Parsons' case, and only relevant to a single category of payment in Mr. Brower's case. Specifically, In Ms. Parsons' case, Respondent alleged that the following remained unpaid: (1) $55.20 for paint and materials, (2) $102.40 for refinishing labor hours, (3) $100.70 for wiring and a test drive, and (4) $241.57 for mechanical labor hours. In Mr. Brower's case, the following remained due: (1) $196.15 for paint materials, and (2) $181.26 for mechanical labor hours for the A/C Evacuation and Recharge Operation. The parties agreed before the trial court that only the paint materials payment in Mr. Bower's case was relevant to the survey. Nevertheless, the trial court ordered the wholesale production of the Survey. Accordingly, at least in Ms. Parsons' case, the trial court departed from the essential requirements of the law by ordering production of the Survey. In Mr. Brower's case, the trial court erred in ordering production of the full Survey, including data irrelevant to the paint materials payment. Accordingly, the trial court departed from the essential elements of the law by ordering production of irrelevant confidential information.

Moreover, Respondent here has failed to demonstrate that the trial court's errors were harmless. The Florida Supreme Court recently clarified the test for determining harmless error in civil appeals: "To test for harmless error, the beneficiary of the error has the burden to prove

that the error complained of did not contribute to the verdict. Alternatively stated, the beneficiary of the error must prove that there is no reasonable possibility that the error contributed to the verdict." *Special v. W. Boca Med. Ctr.*, No. SC11-2511, 2014 WL 5856384, at *4 (Fla. Nov. 13, 2014). Respondent was the beneficiary of the errors in the present case. However, it has failed to demonstrate that the errors did not contribute to the trial court's order. Thus the above-stated errors were not harmless.

Accordingly, Petitioner has demonstrated that production of the unredacted Survey would cause irreparable harm. Petitioner has further demonstrated that in ordering such production, the trial court departed from the essential requirements of the law by failing to conduct the necessary inquiry and determine whether the information requested constituted a trade secret meriting limitations on discovery. Petitioner has further demonstrated that the trial court departed from the essential requirements of the law by ordering production of trade secret materials even where irrelevant. As such, the Petition for Writ of Certiorari is GRANTED, the orders compelling production in both cases are QUASHED, and the case is remanded for further proceedings consistent with the foregoing.

G. KEYSER, FINE, and BARKDULL, JJ., concur.