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: FEB 12 2015

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

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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. We agree and remand for further proceedings.

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 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 more than the estimate. 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 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

[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.

[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.

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.

Trade secrets are privileged under Section 90.506, Florida Statutes (2013).[3] 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 requested production constitutes a trade secret,[4] (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 required determinations 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

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[3] 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.

[4] Generally, to determine whether the requested information constitutes a trade secret, the trial court may perform an in camera inspection or other document examination. *Summitbridge Nat'l Invs. LLC v. 1221 Palm Harbor, LLC,* 67 So. 3d 448, 450 (Fla. 2d DCA 2011). The trial court may also hold an evidentiary hearing, which may include expert testimony. *Bright House Networks, LLC v. Cassidy*, 129 So. 3d 501, 506 (Fla. 2d DCA 2014); *Revello Med. Mgmt., Inc. v. Med–Data Infotech USA, Inc.*, 50 So. 3d 678, 680 (Fla. 2d DCA 2010).

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.

Accordingly, the trial court, in ordering production of the unredacted Survey, 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. 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, BURTON, and BARKDULL, JJ., concur.