United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
Clerk

No. 25-20231

Randy Randel; Debra Randel,

Plaintiffs—Appellants,

versus

Travelers Lloyds of Texas Insurance Company,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-2883

Before King, Smith, and Ramirez, *Circuit Judges*.

Per Curiam:*

This insurance dispute visits our court for the second time. After some of their insurance claims were denied for a fire in their home, Randy and Debra Randel invoked the appraisal clause of their insurance policy. The appraisal ended in their favor, and the insurer paid the appraisal award in full. Even so, the Randels pursued breach-of-contract, bad-faith, and prompt-payment claims in court. Following an appeal to this court, only the prompt-

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

payment claim remained, and the district court granted summary judgment on that claim in favor of the insurer. The Randels appeal, seeking reversal and certification of a question to the Supreme Court of Texas. For the following reasons, we AFFIRM the district court's judgment and DENY the certification request.

I

A

When a Fourth of July fire damaged their home, Randy and Debra Randel filed claims with their insurer, Travelers Lloyds of Texas ("Travelers"). *Randel v. Travelers Lloyds of Tex. Ins. Co.*, 9 F.4th 264, 266 (5th Cir. 2021). Their policy covered damages to the dwelling, other structures, personal property, and loss of use caused by the fire, lightning, and sudden and accidental damage from smoke. *Id.*

Travelers responded the same day, acknowledging receipt of the claim, issuing the Randels a $10,000 advance for damage to their personal property, and inspecting the property with the Randels and their restoration contractor. *Id.* The Randels authorized their contractors to secure and repair the property, but a few weeks later, after a disagreement about how to undertake certain repairs, the Randels told the contractors to stop all repair work. *Id.*

A month later, Travelers provided its dwelling-damage estimate of $179,232.16. *Id.* After subtracting the deductible and depreciation costs, it paid the Randels $126,720.86. *Id.* A few months later, it completed the personal-property estimate of $53,270,49. *Id.* And over the next several months, it made three loss-of-use payments totaling $24,446.33. *Id.*

Over the following two months, Travelers sent the Randels' public adjuster three requests for additional documentation regarding the building damage. On January 31 of the following year, the public adjuster submitted a much higher dwelling-damage estimate of $499,448.69 than Travelers's. Travelers then requested a re-inspection of the property.

After the reinspection, Travelers declined coverage for additional damage to the property because "the Randels fired the contractors, repairs ceased, and thus any additional damage resulted from the Randels' failure to mitigate." *Id.* It pointed to the "Duties After Loss" provision of the policy, under which the Randels had a duty to "protect the property from further damage" and "make reasonable and necessary repairs to protect the property."

In response, the Randels invoked the policy's appraisal provision. After initially litigating in state court the propriety of the appraisal, the parties ultimately submitted for appraisal the dwelling and personal-property claims (but not the loss-of-use claim). *Id.*

The appraisal award granted $317,030.70 actual cash value in dwelling damages and $100,331.02 actual cash value in personal-property damages. *Id.* Travelers paid in five business days. *Id.* After deducting prior payments and the policy deductible, Travelers satisfied the appraisal award by issuing an additional payout of $164,435.23 for the dwelling and $21,098.22 for personal property. *Id.* But in doing so, Travelers disputed that "all the damages included in the appraisal award was covered by the policy." And, to reduce its exposure, Travelers also "issued payment to Plaintiffs and their attorneys for $45,656.52 for all the statutory interest that *might* be owed under Tex. Ins. Code § 541.060(a)." All told, Travelers paid the Randels $533,529.88. *Id*.

But while the appraisal was pending, the Randels initiated this suit in Texas state court. *Id.* They asserted the following causes of action: (1) breach of the insurance contract; (2) breach of duty of good faith and fair dealing under Chapter 541 of the Texas Insurance Code; (3) breach of common law duty of good faith and fair dealing; and (4) violation of the Texas Prompt Payment of Claims Act (the "Prompt Payment Act"). Even after the full payment, they continued to press their suit. *Id.* at 267.

B

After removing the case to federal court, Travelers successfully moved for summary judgment on all claims. *Id.* The district court concluded that the Randels' acceptance of the appraisal payment ended their breach-of-contract claim; they were not entitled to additional benefits for loss of use; they could not maintain their bad-faith claims without a valid breach-of-contract claim; and Travelers complied with the Prompt Payment Act's statutory deadlines for the loss-of-use claim and avoided liability on the property-damage claims by making "reasonable" preappraisal payments. *Id.*

A panel of this court affirmed in part, reversed in part, and remanded. *Id.* at 269. As to the breach-of-contract claim on the dwelling coverage, it held, aided by on-point Texas caselaw, "[t]he insurer's payment of the [appraisal] award bars the insured's breach of contract claim premised on a failure to pay the amount of the covered loss." *Id.* at 267 (quoting *Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 129 (Tex. 2019)). And "for good reason": "there is nothing left to litigate once a plaintiff has received full damages on a claim[; d]amages are an element of a breach-of-contract claim." *Id.* at 268 (citing *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019)). It thus affirmed the dismissal of that claim. *Id.*

As to the contract claim on the loss-of-use coverage, the court saw "no evidence that Travelers failed to pay any amounts due." *Id.* So because "[t]he Randels failed to explain why the amount paid was insufficient," the court affirmed dismissal of that claim as well.[1] *Id.*

The Randels fared better on their prompt-payment claim. Though the court affirmed the dismissal of the prompt-payment claim for the loss-of-use benefits, it reversed and remanded on the prompt-payment claim for the dwelling and personal-property coverage. *Id.* at 269. It explained that, at the time of the district court's decision, Texas law did not impose liability on an insurer under the Prompt Payment Act "so long as a timely preappraisal payment of the claim was for a 'reasonable' amount." *Id.* at 268. And the district court understandably applied that rule. *Id.* But while the case was on appeal, the Supreme Court of Texas announced a new standard: that the preappraisal payment must "roughly correspond to the amount owed on the claim." *Id.* at 269 (quoting *Hinojos v. State Farm Lloyds*, 619 S.W.3d 651, 658 (Tex. 2021)). The court thus remanded in light of that new rule. *Id.*

Lastly, the Randels' bad-faith claims were dealt with in a footnote. The court wrote:

> It does not appear that the Randels are seeking to revive their bad faith claim[s] on appeal. In any event, [they] rise[] or fall[] with the breach of contract claim. *See, e.g.*, *Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996). Our affirming the dismissal of the contract claim thus also supports the dismissal of the bad faith claim[s].

Id. at 266 n.1. Put another way, the Randels forfeited those claims on appeal, but even if they had not, they are foreclosed under Texas law, which provides

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[1] The court did not address the breach-of-contract claim on the personal-property coverage.

that "an insured may not prevail on a bad faith claim without first showing that the insurer breached the contract."[2] *Liberty*, 927 S.W.2d at 629.

C

On remand, the district court directed the parties to brief "the question of the scope of [the Fifth Circuit's] mandate or, specifically, . . . what issues remain that are to be addressed by the [district c]ourt." After considering the briefs, it noted that "the plaintiff[s] did not appeal" the bad faith claims, and "only two claims"—breach-of-contract and prompt-payment claims—"were presented and addressed to the Circuit Court." Thus, it concluded, "the Circuit Court's mandate forecloses a trial on any issue save the issue concerning the Prompt Pay Act," and "the sole issue(s) that will be tried are those concerning the Prompt Pay Act."

In light of that conclusion, Travelers moved again for summary judgment on the prompt-payment claim. On the eve of the response due date and without opposition, the Randels sought a seven-day extension of time to file their response, with a new requested deadline of August 27, 2024. That deadline came and went, with no proposed response filed by the Randels or order ruling on the request. And on September 25, the district court granted the request, retroactively setting the response deadline of August 27.

Over a week later, on October 3, the Randels yet again asked for an extension of the response deadline in the form of a motion for leave to file, proposing a new deadline of October 7. And while that motion was pending, the Randels filed their proposed response to Travelers's motion for summary

[2] The "only recognized exceptions to this rule," which the parties do not contend apply here, "are if the insurer 'commit[s] some act, so extreme, that would cause injury independent of the policy claim,' or fails 'to timely investigate the insured's claim.'" *Blum's Furniture Co., Inc. v. Certain Underwriters at Lloyds London*, 459 F. App'x 366, 368 (5th Cir. 2012) (quoting *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 341 (Tex. 1995)).

judgment by the proposed deadline of October 7. Travelers subsequently filed an opposition to the motion for leave and moved to strike the response as untimely.

In a single order, the district court addressed the motion for leave, the motion to strike, and the motion for summary judgment. It rejected the Randels' proffered reasons for the forty-one-day late filing of the summary-judgment response, denied them leave, and struck the response.[3]

Turning to the motion for summary judgment, the district court found that "[t]he uncontroverted evidence shows that Travelers['s] repeated requests for additional information regarding the plaintiffs' dwelling and personal property damage claims were not responded to." And because a violation of the Prompt Payment Act requires a failure to pay a claim "within 60 days of receiving 'all items, statements, and forms reasonably requested and required under Section 542.055,'" and without receipt of those documents, the clock did not start running, it found no violation of the Prompt Payment Act and granted summary judgment.

The Randels timely appealed.

II

The Randels raise three issues on appeal: (1) Whether the district court erred in granting Travelers's motion for summary judgment; (2) whether the district court erred in concluding that this court's mandate precluded consideration of the bad-faith claims; and (3) whether this court should certify a question to the Supreme Court of Texas. These are taken in turn.

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[3] The Randels do not appeal that decision to strike.

A

This court reviews a grant of summary judgment *de novo*. *Guzman v. Allstate Assurance Co.*, 18 F.4th 157, 160 (5th Cir. 2021). In doing so, we view the evidence in the light most favorable to the nonmovants and construe all reasonable inferences in their favor. *Id.*

Under the Prompt Payment Act, an insurer must "pay the policyholder's claim within 60 days of receiving all documentation needed to resolve the claim." *Mainali Corp. v. Covington Specialty Ins. Co.*, 872 F.3d 255, 258 (5th Cir. 2017) (citing Tex. Ins. Code § 542.058). "If the insurer does not do so, it is liable for an 18% penalty on the amount that was not timely paid, plus attorney's fees." *Id.* (citing Tex. Ins. Code § 542.060). Because Travelers has already paid out the full sum of the appraisal award and any potential interest, the Randels take issue only with Travelers's failure to pay attorney's fees under the Prompt Payment Act.

The district court disposed of the Randels' prompt-payment claim on the threshold element: whether Travelers received all documentation needed to resolve the claim. In the court's view, Travelers did not, so the clock never started running, resulting in no violation.

The Randels have forfeited any challenges to the district court's conclusion twice over. *First*, the Randels forfeited them below, where they failed to timely file a response to Travelers's motion for summary judgment. With the response stricken from the record (which the Randels do not appeal), the Randels effectively presented no factual or legal arguments against the summary-judgment motion for the district court's consideration. "[I]t is well settled in this Circuit that the scope of appellate review on a summary judgment order is limited to matters presented to the district court." *Ervin v. Sprint Commc'ns Co. LP*, 364 F. App'x 114, 117 (quoting *Keelan v. Majesco Software, Inc.*, 407 F.3d 332, 339 (5th Cir. 2005)). "If a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived and cannot be considered or raised on appeal." *Id.* (quoting *Vaughner v. Pulito*, 804 F.2d 873, 877 n.2 (5th Cir. 1986)); *see also id.* ("Mr. Ervin's arguments on appeal seeking reversal of the district court's grant of summary judgment are waived because he failed to oppose Sprint's motion in the district court.").

Second, the Randels forfeited them on appeal because their opening brief never even attempts to rebut the district court's conclusion that the clock did not start running. Instead, the Randels argue that Travelers did not establish it was not liable for the Randels' insurance claims, it did not establish that the Randels' claims fell within an exclusion or exception to coverage under the policy, it did not establish that the Randels breached their duty to mitigate damages, and it waived any argument that the appraisal award was not binding due to the Randels' failure to mitigate damages. Only in their reply do they argue that "Travelers had all the information reasonably required to determine the amount of the loss for purposes of [the Prompt Payment Act] when it reinspected the property for the first time on February 20, 2018."

"A party forfeits an argument by failing to adequately brief the argument in its opening brief on appeal." *Vernon Smith v. Sch. Bd. of Concordia Par.*, 88 F.4th 588, 594 (5th Cir. 2023) (citation modified). "To be adequate, a brief must address the district court's analysis and explain how it erred." *Id.* But parties "forfeit[] arguments by not attempting to rebut the district court's conclusions or by failing to cite the provisions at issue in the opening brief and explain why the district court was wrong about what those provisions permit." *Id.* (citation modified). So by not raising any arguments in their opening brief on the dispositive—and only—issue addressed by the district court on the prompt-payment claim, the Randels have forfeited them.

That forfeiture is fatal to their appeal because we are left with no preserved arguments justifying a reversal.

B

Next, the Randels appeal the district court's order construing the scope of this court's remand and mandate as precluding reconsideration of the Randels' bad-faith claims. They argue that *Randel* "did not explicitly decide the issue of whether" their bad-faith claims "could not be established following payment of an appraisal award," and so "the law of the case doctrine did not bar the district court['s] exercising its jurisdiction over those claims." Travelers, on the other hand, argues that the mandate rule, a corollary of the law of the case doctrine, means the district court was correct.

Travelers is correct. The mandate rule constrained the district court's actions on remand. And independently, the waiver rule[4] prohibited the Randels from relitigating their forfeited causes of action below.

Start with the mandate rule. "We review *de novo* a district court's interpretation of our remand order, including whether the law-of-the-case doctrine or mandate rule forecloses any of the district court's actions on remand." *Gen. Universal Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007). "The mandate rule requires a district court on remand to effect our mandate and to do nothing else." *Pool v. City of Houston*, 163 F.4th 284, 291 (5th Cir. 2026). On remand, "the district court must implement both the letter and the spirit of the appellate court's mandate and may not disregard

[4] Waiver and forfeiture are distinct concepts, and here, forfeiture would be the correct term. *See Indigenous Peoples of Coastal Bend v. U.S. Army Corps of Eng'rs*, 132 F.4th 872, 882 (5th Cir. 2025) ("Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right."). But as explained below, this doctrine has been called "the waiver doctrine," even as applied to forfeitures. *See Lindquist v. City of Pasadena*, 669 F.3d 225, 239 (5th Cir. 2012).

the explicit directives of that court." *Id.* "Because the mandate rule is a corollary of the law of the case doctrine, it compels compliance on remand with the dictates of a superior court and forecloses relitigation of issues expressly or impliedly decided by the appellate court." *Franklin v. Regions Bank*, 125 F.4th 613, 630 (5th Cir. 2025).

On remand, the district court could resolve only the Randels' prompt-payment claim—and "nothing else." *See Pool*, 163 F.4th at 291. This court's directive in *Randel* was clear and limited: "The prompt-payment claim relating to dwelling and personal property coverage is REMANDED." 9 F.4th at 269. Nowhere in that directive is an instruction to the district court to reconsider its ruling on the bad-faith claims. And that makes sense. As the *Randel* panel pointed out, the bad-faith claims rise or fall with the breach-of-contract claim. *Id.* at 266 n.1 (citing *Liberty*, 927 S.W.2d at 629). Having found no viable breach-of-contract claim, the panel implicitly, but necessarily, concluded that the bad-faith claims were also not viable. And it would make no sense for this court to have remanded for reconsideration of non-viable claims. So with only the "prompt-payment claim relating to dwelling and personal property coverage" sent below, the district court could only adjudicate that claim and "nothing else."

The same results from the waiver doctrine. "The waiver doctrine 'holds that an issue that could have been but was *not* raised on appeal is forfeited and may not be revisited by the district court on remand.'" *Linquist*, 669 F.3d at 239 (quoting *Med. Ctr. Pharm. v. Holder*, 634 F.3d 830, 834 (5th Cir. 2011)). "The doctrine also prevents us from considering such an issue during a second appeal." *Id.* "The doctrine promotes procedural efficiency and 'prevents the bizarre result that a party who has chosen not to argue a point on a first appeal should stand better as regards the law of the case than one who had argued and lost.'" *Id.* at 239–40 (quoting *Nw. Ind. Tel. Co. v. FCC*, 872 F.2d 465, 470 (D.C. Cir. 1989)).

In the previous appeal, the district court granted summary judgment on all of the Randels' claims, including their bad-faith claims. And yet, the Randels chose not to raise any issues on those claims on appeal, arguing only that the district court erred as to the breach-of-contract claim and the prompt-payment claims. Hence, to the *Randel* panel, "[i]t d[id] not appear that the Randels [we]re seeking to revive their bad faith claim[s] on appeal." *Randel*, 9 F.4th at 266 n.1. Consequently, the Randels' bad-faith claims were "forfeited and [could] not be revisited by the district court on remand." *See Linquist*, 669 F.3d at 239.

Therefore, whether under the mandate rule or the waiver rule, the district court did not err in limiting the scope of issues on remand to just the prompt-payment claims.

C

Lastly, the Randels urge this court to certify the following question, related to their bad-faith claims, to the Supreme Court of Texas:

> [W]hether payment of an appraisal award bars an insured from recovering actual damages under the entitled-to-benefits theory of causation upon pleading and proving that the insurer's improper delay or denial of an insured's covered claim constituted or resulted from its violation of Chapter 541 or breach of the common law duty of good faith and fair dealing.

"The decision of whether to certify a question lies within this court's sound discretion." *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 668 F.3d 281, 290 (5th Cir. 2012). "The court should exercise that discretion sparingly, certifying only in exceptional cases." *Id.* (citation modified).

This case is not one of such exceptional cases. *First*, as explained above, the Randels' bad-faith claims are no longer alive. Certifying a question that applies only to those dead claims would waste the judicial resources of both this court and the state supreme court and be akin to issuing advisory opinions, which Article III forbids. *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

Second, the law is very much clear on this point. "The [state supreme] court held, quite explicitly, that if the only 'actual damages' that a plaintiff seeks are policy benefits that have already been paid pursuant to an appraisal provision in that policy, an insured cannot recover for bad faith either under Chapter 541 of the Texas Insurance Code or in common law tort." *Mirelez v. State Farm Lloyds*, 127 F.4th 949, 951 (5th Cir. 2025) (citing *Ortiz*, 589 S.W.3d at 135). "The Texas Supreme Court has since repeated, and applied, this holding: '[W]e held in *Ortiz v. State Farm Lloyds* that payment of an appraisal award forecloses an insurer's liability for breach of contract and common-law and statutory bad faith unless the insured suffered an independent injury.'" *Id.* (quoting *Biasatti v. GuideOne Nat'l Ins. Co.*, 601 S.W.3d 792, 794 (Tex. 2020)).

And this circuit has also repeated and applied that holding several times over. *See, e.g.*, *Navarra v. State Farm Lloyds*, No. 23-20582, 2024 WL 3174505, at *2 (5th Cir. June 25, 2024) (unpublished) (per curiam) ("[B]ecause State Farm has already paid the appraisal award and any interest, the Navarras' extra-contractual claims related to State Farm's alleged bad faith are foreclosed by *Ortiz*."); *Mirelez*, 127 F.4th at 952 ("Consistent with *Ortiz*, and the reasoning in *Navarra*, the district court appropriately granted summary judgment on Mirelez's extracontractual claims."); *Wilhite v. Ark Royal Ins. Co.*, No. 24-20401, 2025 WL 2588992, at *4 (5th Cir. Sept. 8, 2025) (unpublished) (per curiam) (collecting cases that have reaffirmed and reapplied *Mirelez*). The Randels concede as much.

Third, the Supreme Court of Texas has declined to review this issue. In support of certification, the Randels point to a case then pending before the Supreme Court of Texas that presents a similar issue as this case. *See Knopp v. State Farm Lloyds*, No. 05-22-00749-CV, 2024 WL 3579432 (Tex. App.—Dallas July 30, 2024, pet. denied). But while this appeal was pending, the court has denied review. That the state's high court has denied review counsels against certification. *See Guerrera v. United Financial Cas. Co.*, 161 F.4th 913, 921 (5th Cir. 2025).

We thus decline to certify a question to the Supreme Court of Texas.

III

For the foregoing reasons, we AFFIRM the judgment of the district court and DENY the request for certification.