

the trial court gave. Because the trial court abused its discretion and relators have no adequate remedy on appeal, we conditionally grant the writ of mandamus.

I

Plaintiff Terri Shields's car was stolen, and plaintiffs Renita Washington's and Lucilia Hernandez's vehicles were involved in accidents. Their insurance companies, Allstate, Farmers, and Progressive, respectively, determined that the vehicles were total losses and engaged CCC Information Services, Inc., to determine the values of the totaled cars. Plaintiffs allege that the insurance companies directed CCC to fraudulently generate low values for the totaled vehicles, that CCC intentionally undervalued their vehicles, and that the insurance companies thereby offered plaintiffs less than the full values for their vehicles. Washington and Hernandez accepted the insurance companies' offers. Shields has not yet received any compensation under her policy.

The plaintiffs allege that the insurance companies misrepresented their coverage by representing that actual cash value would be paid under the policies, when in fact CCC's and the insurance companies' conduct resulted in inaccurate, unreliable, and biased valuations, and payment of less than full value. Under the plaintiffs' theory, the insurance companies systematically undervalue vehicles, knowing that because of the costly appraisal process the insureds are unlikely to challenge the valuations. Based on these allegations, they pleaded fraud and fraudulent concealment, Texas Deceptive Trade Practices Act and Texas Insurance Code violations, breach of the duty of good faith and fair dealing, breach of contract, and civil conspiracy.

The plaintiffs' insurance policies contain an appraisal clause, which may be invoked by either party,

for determining a vehicle's value if the insurer and the insured disagree. Each party hires its own appraiser. If the two appraisers cannot agree on the value, they select an additional appraiser as an umpire, or a district judge will appoint one if the appraisers cannot agree on an umpire. A decision signed by two of the appraisers is binding as to the vehicle's value.

After plaintiffs filed suit, the insurance companies answered and then filed a plea in abatement and motion to invoke appraisal. The trial court denied the motion, finding that the appraisal provision, when considered as an arbitration agreement, was unenforceable. The defendants unsuccessfully sought mandamus relief from the court of appeals. They then petitioned this Court for mandamus relief.

II

The trial court's conclusion that the appraisal provision was an arbitration agreement and unenforceable was error. This Court distinguished between appraisal and arbitration clauses over a hundred years ago. In *Scottish Union & National Insurance Co. v. Clancy*, we concluded that while arbitration determines the rights and liabilities of the parties, appraisal merely "binds the parties to have the extent or amount of the loss determined in a particular way."¹ We held that appraisal clauses are enforceable.² Texas courts have continued to recognize this distinction,³ as has the United States Court

¹ 8 S.W. 630, 631 (Tex. 1888).

² *See id.* at 631-32.

³ *See, e.g., Standard Fire Ins. Co. v. Fraiman*, 514 S.W.2d 343, 344 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ); *Huntington Corp. v. Inwood Constr. Co.*, 348 S.W.2d 442, 444 (Tex. Civ. App.—Dallas 1961, writ ref'd n.r.e.).

of Appeals for the Fifth Circuit.⁴ And Texas courts have enforced appraisal clauses since that decision.⁵

III

“[A] clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion” subject to correction by writ of mandamus when the relator has no adequate remedy by appeal.⁶ We hold that the trial court abused its discretion by determining that the appraisal clause in the plaintiffs’ policies was an arbitration clause and unenforceable. But before issuing mandamus, we must determine whether relator has an adequate appellate remedy.

In an analogous situation, we have held that denial of discovery “going to the heart of a party’s case may render the appellate remedy inadequate.”⁷ As to the plaintiffs’ breach of contract claim, the parties have agreed in the contracts’ appraisal clause to the method by which to determine whether a breach has occurred. That is, if the appraisal determines that the vehicle’s full value is what the insurance company offered, there would be no breach of contract. Accordingly, at a minimum, denying the appraisals will vitiate the defendants’ ability to defend the breach of contract claim. Because the appraisals go to the heart

⁴ *Hartford Lloyd’s Ins. Co. v. Teachworth*, 898 F.2d 1058, 1061-62 (5th Cir. 1990).

⁵ *See, e.g., Glens Falls Ins. Co. v. Peters*, 386 S.W.2d 529, 532 (Tex. 1965); *Vanguard Underwriters Ins. Co. v. Smith*, 999 S.W.2d 448, 451 (Tex. App.—Amarillo 1999, no pet.); *In re Terra Nova Ins. Co.*, 992 S.W.2d 741, 742 (Tex. App.—Texarkana 1999, no pet.); *Standard Fire*, 514 S.W.2d at 345; *see also Hartford Lloyd’s*, 898 F.2d at 1063.

⁶ *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992).

⁷ *Id.* at 843.

of the plaintiffs' breach of contract claim, we need not decide here the significance of the appraisals to each of the remaining claims.

In *Walker v. Packer*, this Court reaffirmed the principle that “an appeal will not be an adequate remedy where the party’s ability to present a viable claim or defense at trial is vitiated or severely compromised by the trial court’s discovery error.”⁸ A refusal to enforce the appraisal process here will prevent the defendants from obtaining the independent valuations that could counter at least the plaintiffs’ breach of contract claim. We conclude that the failure to order the appraisals will vitiate or severely compromise the defendants’ defenses to those claims.⁹

IV

The parties in this case contracted for an appraisal if they disagreed about the damaged property’s value. Texas courts have distinguished between appraisal and arbitration for over a hundred years. And they have enforced appraisal provisions over that same length of time. Under Texas law, the trial court’s conclusion that the appraisal clause was one for arbitration and unenforceable was an error of law, constituting an abuse of discretion. That abuse of discretion denies the development of proof going to the heart of a party’s case and cannot be remedied by appeal. Accordingly, we conditionally grant mandamus relief.

⁸ *Id.*

⁹ *See, e.g., id.; Able Supply Co. v. Moye*, 898 S.W.2d 766, 772 (Tex. 1995).

While the trial court's denial of the motion to invoke appraisal was error, the failure to grant the motion to abate is not subject to mandamus.¹⁰ In any event, the proceedings need not be abated while the appraisal goes forward. While the trial court has no discretion to deny the appraisal, the court does have some discretion as to the timing of the appraisal.¹¹ We trust that the trial court will comply with this opinion; the writ will issue only if it fails to do so.

Opinion delivered: August 29, 2002

Craig T. Enoch
Justice

¹⁰ See *Abor v. Black*, 695 S.W.2d 564, 567 (Tex. 1985).

¹¹ See, e.g., *In re Terra Nova*, 992 S.W.2d at 742.