Affirm and Opinion Filed July 30, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00730-CV

ZALE CORPORATION, Appellant
V.
BERKLEY INSURANCE COMPANY AND STARR INDEMNITY & LIABILITY COMPANY, Appellees

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-09200

MEMORANDUM OPINION

Before Justices Bridges, Pedersen, III, and Evans
Opinion by Justice Pedersen, III

Appellant Zale Corporation ("Zale") appeals from two summary judgment orders in favor of Berkley Insurance Company ("Berkley") and Starr Indemnity and Liability Company ("Starr") (collectively referred as "appellees"), in a contract dispute involving excess insurance policy coverage. In five issues, Zale asserts that the trial court erred by granting appellees' no-evidence and traditional motions for summary judgment. We affirm the trial court's judgment.

I. BACKGROUND

A. Liberty Policy Insurance and Excess Insurance

Zale is a retailer of jewelry in North America. From July 31, 2013 to July 31, 2014, Zale had directors' and officers' liability insurance through Liberty Insurance Underwriters Inc. ("Liberty Policy"), which had a policy limit of liability of $10,000,000.00. The Liberty Policy's insuring agreement states the following regarding coverage:

> The Insurer shall pay on behalf of the Insured Persons: all **Loss** which they shall become legally obligated to pay as a result of a **Claim** (including any **Insured Person Investigation**) first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Insured Persons** for a **Wrongful Act** which takes place before or during the **Policy Period**.

The Liberty Policy's definition for "Loss" includes "sums which . . . the Insured Organization are legally obligated to pay solely as a result of any Claim insured by the Policy." However, "Loss" excludes "matters uninsurable pursuant to any applicable law, including … settlements which are in the nature of restitution…." "Loss" further excludes changes to or portions of any judgment or settlement relating to the amount by which price or consideration was changed or modified as a result of a claim alleging that the price or consideration paid or proposed to be paid for the acquisition of any securities issued by or assets owned by any natural person or entity is inadequate, excessive, or improper.

The Liberty Policy defined "Wrongful Act" as "any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted" by Zale.

Beyond the Liberty Policy, Zale had excess insurance through Berkley, which was immediately excess of the Liberty Policy and had a policy limit of liability of $5,000,000.00 ("Berkley Policy"). The Berkley Policy's insuring agreement states the following regarding coverage:

> This Policy provides excess coverage over the **Underlying Insurance** during the **Policy Period**. Coverage hereunder shall apply in conformance with the provisions of the **Followed Policy** [the Liberty Policy] at its inception, except for premium, limit of liability and as otherwise specifically set forth in this Policy and any attached endorsements. In no event shall this Policy grant coverage other than that which is provided by the **Underlying Insurance**.

Zale had further excess insurance through Starr, which was immediately excess of the Berkley policy and had a policy limit of liability of $5,000,000.00 ("Starr Policy"). The Starr Policy's insuring agreement states the following regarding coverage:

> The Insurer shall pay the individuals and entities insured under the Followed Policy [the Liberty Policy] (also referred to herein as the "Insured") for loss after exhaustion by payments of all applicable underlying limits solely as a result of payment of losses covered thereunder, jointly or severally by: (i) the Underlying Insurers, as specified in Item 4 of the Declarations, and/or (ii) in place or on behalf of the Underlying Insurers, the Insureds and/or any other source, in accordance with the terms, conditions, limitations and other provisions of the Followed Policy; subject to:
> A. the Limit of Liability as stated in Item 3 of the Declarations; and

> B. all other terms and conditions of, and the endorsements attached to, this Policy.
>
> Notwithstanding the above, this Policy shall not provide coverage broader than that provided by the Followed Policy listed in Item 4 of the Declarations.

In summary, Liberty provided the primary layer of insurance coverage for Zale, and Berkley and Starr respectively provided the excess layers of insurance coverage for Zale. The Berkley and Starr insurance policies follow the Liberty Policy.

B. Signet Merger Announcement and Pre-Merger Shareholder Litigation

From November 2013 to early February 2014, Signet Jewelers Limited ("Signet") made merger offers to Zale's board. On February 19, 2014, Zale and Signet jointly announced a merger wherein (a) Signet would purchase Zale's outstanding common stock at a rate of $21 per share, and (b) Zale would merge with a subsidiary of Signet. Signet further agreed to pay an amount as required by a Delaware appraisal action, should dissenting Zale shareholders perfect and raise an appraisal action pursuant to Title 8 of the Delaware Code (governing corporations).[1]

On May 1, 2014, Zale gave notice that the merger vote would occur on May 29, 2014. Before the merger vote, several dissenting Zale shareholders filed stockholder litigation complaints in the Delaware Court of Chancery. The dissenting

[1] *See* DEL. CODE tit. 8, § 262.

Zale shareholders alleged breaches of fiduciary duties and moved to enjoin the merger. The dissenting Zale shareholders alleged that Zale's directors and officers failed to maximize stockholder value, agreed to an inadequate merger price, agreed to deal terms that deterred higher bids, and issued misleading and incomplete proxy statements regarding the merger. On May 23, 2014, Vice Chancellor Parsons of the Delaware Court of Chancery denied the dissenting Zale shareholders' motion to enjoin the merger. Also on May 23, 2014, dissenting Zale shareholders announced that they—should the shareholders approve the merger—intended to pursue appraisal litigation to obtain a fair price for their shares.

C. Effective Merger and Insurance Policy Extensions

On May 29, 2014, a majority of Zale's shareholders voted to approve the merger with Signet, thereby executing the merger in which Signet became a parent company to Zale.[2]

In accordance with the merger, on May 29, 2014, Zale amended its insurance policies. Zale extended the term of the Liberty Policy to May 29, 2020. However, the Liberty Policy was also partially amended by a Run-off Endorsement as follows:

> "I. Sections 1.1., 1.2, 1.3 (Insuring Agreements), and any other Insuring Agreements added by endorsement to this Policy, shall be amended such that the phrase, "which takes place during or prior to the Policy Period," is deleted and replaced with "which takes place prior to May 29, 2014." …

[2] Zale merged into a subsidiary business entity of Signet, which was created for this merger ("merger subsidiary").

> "III. Section 5. (Exclusions) shall be amended to include the following:
>
> 5.11 based upon, arising from or in any way related to any Wrongful Act committed or allegedly committed on or after May 29, 2014.

This amendment likewise modified the Berkley and Starr policies, which follow the same definitions as those mentioned above for the terms regarding the "Policy Period," "Loss," and "Wrongful Act." However, Berkley's amending Run-off Coverage Endorsement further clarifies that:

> There shall be an extension of the coverage granted by this Policy with respect to any Claim first made during the period of 72 months, which period shall commence at 12:01 a.m. on May 29. 2014 and expire at 12:01 a.m. on May 29. 2020, but only with respect to any actual or alleged Wrongful Act fully occurring prior to May 29, 2014 and is otherwise covered by this Policy.

Reviewed together with the amended language of the Liberty Policy, the Berkley Policy and Starr Policy no longer covered claims for a wrongful act that occurred on or after May 29, 2014.

D. Dissenting Shareholders' Appraisal Action and Settlement

After the merger was consummated on May 29, 2014, three groups of dissenting shareholders ("Appraisal Action Petitioners") brought separate appraisal action petitions against Zale pursuant to Title 8 of the Delaware Code. *See* DEL. CODE tit. 8, § 262. On October 8, 2014, the Delaware Court of Chancery consolidated the three appraisal actions into *In re Zale Corporation Appraisal Litigation*, C.A. No. 9731-VCP (the "Appraisal Action"). In their appraisal petitions,

the Appraisal Action Petitioners summarized the merger (including the right to receive $21.00 in cash for each share); described their respective ownership share in Zale; sought fair value for their shares; and otherwise complied with Title 8, Section 262 of the Delaware Code. *See generally* DEL. CODE tit. 8, § 262.

In December 2014, Zale began settlement discussions with the Appraisal Action Petitioners. On July 29, 2015, without the insurers' consent(s), Zale and the Appraisal Action Petitioners agreed to settle the Appraisal Action. Signet, Zale, and their respective merger subsidiary agreed to pay the Appraisal Action Petitioners $24.90 per share to settle the Appraisal Action, and this figure included any statutory interest that may have accrued on the Appraisal Action Petitioners' shares pursuant to Title 8 of the Delaware Code (prejudgment interest).[3]

On August 12, 2015, Zale, Signet, and the Appraisal Action Petitioners executed the settlement. Despite settlement of the Appraisal Action, dissenting shareholders—including Appraisal Action Petitioners—continued to pursue stockholder litigation against Zale in the Delaware Court of Chancery. *See generally In re Zale Corp. Stockholders Litig.*, CV 9388-VCP, 2015 WL 6551418, at *1 (Del. Ch. Oct. 29, 2015).

[3] DEL. CODE Ann. tit. 8, § 262(h)(2).

E. Appraisal Action Communication with Insurers

Zale first mentioned the Appraisal Action to Berkley and Starr by email on April 14, 2015, stating that "there is a separate action brought by some institutional investors in a Delaware appraisal proceeding." Although the insurers sought further detailed information, Zale did not provide Berkley and Starr with comprehensive information regarding the Appraisal Action until the evening of August 12, 2015—fourteen days after Zale and the Appraisal Action Petitioners reached an agreement to settle the Appraisal Action.

Zale's August 12, 2015 email to Berkley and Starr states that "[t]he parties in the Appraisal Action are currently engaged in fact discovery" and that "the trial will likely be postponed." This email further attached the Appraisal Action Petitioners' respective June 4, 2014, August 26, 2014, and September 24, 2014 appraisal litigation petitions. Nonetheless, this email to Berkley and Starr made no mention of either settlement or that the settlement agreement between Zale and the Appraisal Action Petitioners was executed on August 12, 2015. Zale provided no further information regarding the Appraisal Action to Berkley or Starr until its demand for payment under the respective excess insurance policies.

On August 12, 2016, Zale demanded payment from Berkley and Starr in connection with the Appraisal Action settlement. The August 12, 2016 demands were the first time Zale communicated to Berkley and Starr that Zale had agreed to

a settlement in the Appraisal Action in which the Appraisal Action Petitioners received $34,246,984.20.

On August 23, 2016, Berkley denied coverage for the Appraisal Action settlement. On September 16, 2016, Starr denied coverage for the Appraisal Action settlement.

F. Zale's Suit Against Insurers and Appeal

On July 31, 2017, Zale filed suit against its insurers, including Berkley and Starr. Zale alleged breach of contract and unfair settlement practices against Berkley and Starr. On April 5, 2019, Berkley and Starr jointly filed a no-evidence motion for summary judgment and a separate traditional motion for summary judgment with respect to Zale's claims.

The trial court held the hearing on the summary judgment motions on May 10, 2019. The trial court granted appellees' no-evidence and traditional motions for summary judgment by separate written orders on May 20, 2019, dismissing all of Zale's claims against Berkley and Starr with prejudice. Neither summary judgment order specified the grounds for granting summary judgment. Zale timely appealed, raising the following issues:

1. Did the trial court err in granting summary judgment on whether the settlement resulted from a securities claim for and/or arising from a wrongful act or interrelated wrongful acts?

2. Did the trial court err in granting summary judgment on whether the Bump-Up Exclusion applied?

3. Did the trial court err in granting summary judgment on whether Texas public policy precludes coverage for prejudgment interest?

4. Did the trial court err in granting summary judgment on Zale's alleged breach of policy conditions?

5. Was there evidence that insurers violated the Texas Insurance Code?

II. STANDARD OF REVIEW

Because summary judgment is a question of law, a trial court's summary judgment decision is reviewed de novo. *Flood v. Katz*, 294 S.W.3d 756, 761 (Tex. App.—Dallas 2009, pet. denied) (citing *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005)). "Our de novo standard of review extends to both traditional and no evidence summary judgments." *Id*. (citing *Shaun T. Mian Corp. v. Hewlett–Packard Co.*, 237 S.W.3d 851, 855 (Tex. App.—Dallas 2007, pet. denied). "When a trial court's order does not specify the grounds for its summary judgment, an appellate court must affirm the summary judgment if any of the theories presented to the trial court and preserved for appellate review are meritorious." *Fitness Evolution, L.P. v. Headhunter Fitness, L.L.C.*, No. 05-13-00506-CV, 2015 WL 6750047, at *22 (Tex. App.—Dallas Nov. 4, 2015, no pet.) (mem. op. on reh'g). When a party files both a no-evidence and a traditional motion for summary judgment, we first consider the no-evidence motion. *Coleman v.*

Prospere, 510 S.W.3d 516, 519 (Tex. App.—Dallas 2014, no pet.) (citing *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004)).

No-Evidence Motion for Summary Judgment

We review a no-evidence summary judgment under the same legal sufficiency standard that we use to review a directed verdict. *Flood v. Katz*, 294 S.W.3d at 762 (citing TEX. R. CIV. P. 166a(i)). Therefore, "we must determine whether the nonmovant produced more than a scintilla of probative evidence to raise a fact issue on the material questions presented." *Id.* In our review of a no-evidence summary judgment, "we examine the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006) (quoting *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005)).

A no-evidence summary judgment is improperly granted if the non-movant showed more than a scintilla of probative evidence to raise a genuine issue of material fact. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (citing TEX. R. CIV. P. 166a(i)). "More than a scintilla of evidence exists when the evidence rises to a level that would enable reasonable, fair-minded persons to differ in their conclusions." *Id.* (quoting *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)). "Less than a scintilla of evidence exists when the evidence is 'so weak as to do no more than create a mere surmise or suspicion' of a fact." *Id.* (quoting *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983)).

Here, appellees moved for no-evidence summary judgment against Zale alleging (1) there is no evidence that Zale is entitled to coverage under the Berkley and Starr excess insurance policies; (2) there is no evidence that Zale has suffered damages related to its breach of contract claim; and (3) there is no evidence that either Berkley or Starr violated the Texas Insurance Code.

i. Zale's Insurance Policy Period Precludes Coverage

"Initially, the insured has the burden of establishing coverage under the terms of the policy." *JAW The Pointe, L.L.C. v. Lexington Ins. Co.*, 460 S.W.3d 597, 603 (Tex. 2015) (citing *Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 124 (Tex. 2010)).

Here, Zale seeks insurance coverage for the appraisal litigation—chiefly the $34,246,984.20 amount that the Appraisal Action Petitioners received in settlement. Zale contends that the $34,246,984.20 paid to settle the Appraisal Action was a "loss" that stemmed from a "wrongful act" that occurred during the "policy period." As Zale's claim is based upon an appraisal action brought before the Delaware Court of Chancery, we must examine Delaware appraisal actions to address the claimed "wrongful act."

For shareholders that disagree with a merger based on a stock purchase, Title 8 of the Delaware Code provides shareholders with appraisal rights under Section 262. DEL. CODE tit. 8, § 262. Through an appraisal action, dissenting shareholders can petition the Delaware Court of Chancery to "determine the 'fair value' of the

dissenting stockholders' shares." *Cavalier Oil Corp. v. Harnett*, 564 A.2d 1137, 1144 (Del. 1989). "An action seeking appraisal is intended to provide shareholders who dissent from a merger, on the basis of the inadequacy of the offering price, with a judicial determination of the fair value of their shares." *Id.* at 1142 (citing *Cede & Co. v. Technicolor, Inc*., 542 A.2d 1182, 1186 (Del. 1988)). "The scope of the appraisal action is limited, with the only litigable issue being the determination of the value of petitioner's shares on the date of the merger." *Id.* (citing *Cede*, 542 A.2d at 1187). Claims for unfair dealing cannot be litigated in the context of a statutory appraisal. *Alabama By-Products Corp. v. Neal*, 588 A.2d 255, 257 (Del. 1991) (citing *Cede*, 542 A.2d at 1187).

Title 8 of the Delaware Code Section 262 provides the process for perfecting and asserting appraisal rights:

> Within 120 days *after the effective date of the merger* or consolidation, *the* surviving or resulting corporation or any *stockholder* who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, *may commence an appraisal proceeding* by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders.

DEL. CODE tit. 8, § 262(e) (emphasis added). Thus, for a dissenting shareholder to have standing in an appraisal litigation, the merger must first be consummated. *See* DEL. CODE tit. 8, § 262 (permitting any "stockholder of a corporation of this State ... who continuously holds such shares through the effective date of the merger of

consolidation," . . . "to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock).

Here, it is undisputed that the merger occurred on May 29, 2014. Therefore, the earliest date in which the Appraisal Action Petitioners could commence an appraisal action was May 29, 2014. It is further undisputed that the Appraisal Action Petitioners did not file their respective appraisal action suits until after May 29, 2014.

The May 29, 2014, Liberty Policy Run-off Endorsement effectively ended Zale's insurance coverage policy period on May 28, 2014, and explicitly excluded claims "based upon, arising from or in any way related to any Wrongful Act committed or allegedly committed on or after May 29, 2014." Furthermore, the Berkley Policy Run-off Endorsement explicitly covers a "[w]rongful Act *fully* occurring prior to May 29, 2014." (emphasis added). As cited above, Berkley and Starr do not cover Zale's claims that arise from wrongful acts that occur on or after May 29, 2014.

In its argument that the Berkley and Starr policies cover the Appraisal Action, Zale contends that the "wrongful act" that triggered the Appraisal Action was the entire merger process, stemming as far back as February 2014. Zale argues that the Appraisal Action Petitioners raised several allegations of wrongful acts that occurred prior to May 29, 2014, including claims that: (1) Zale issued misleading and incomplete pre-merger proxy statements; (2) Zale retained Bank of America Merrill Lynch to underwrite the merger despite a potential conflict of interest since Bank of

America Merrill Lynch previously engaged with Golden Gate Capital (a significant Zale stockholder) with a presentation about selling its stock in Zale; and (3) Zale used an inappropriate share price benchmark in determining the $21.00 per share in cash merger consideration. To reach coverage under the insurers' policy period, Zale treats the Appraisal Action as tied to the alleged wrongful acts that were adjudicated in the separate stockholder litigation.[4]

We do not agree. "The right to an appraisal in a merger proceeding is entirely a creature of statute." *Kaye v. Pantone, Inc.*, 395 A.2d 369, 374 (Del. Ch. 1978) (citing *Loeb v. Schenley Indus., Inc.*, 285 A.2d 829, 831 (Del. Ch. 1971)). The appraisal action statute does not require a "wrongful act" or fiduciary breach. *See generally* DEL. CODE tit. 8, § 262.[5] For dissenting shareholders that have otherwise perfected their appraisal rights, the instrumental act that confers appraisal litigation rights is not the merger process but the execution of the merger, which did not occur in this case until after Zale's excess insurance coverage policy period ended. *See*

[4] *See generally In re Zale Corp. Stockholders Litig.*, CV 9388-VCP, 2015 WL 6551418, at *1 (Del. Ch. Oct. 29, 2015).

[5] *See also Kaye v. Pantone, Inc.*, 395 A.2d 369, 375 (Del. Ch. 1978). "The injection of issues foreign to the narrow issue of value would serve only to complicate the value issue and should be avoided, if possible. The design of the statute 'requires the avoidance of complexities in proceedings under it' … , and it is clear that a dissenting stockholder has an absolute right to an appraisal." *Id.* (quoting *Lichtman v. Recognition Equipment, Inc.*, 295 A.2d 771, 772 (Del. Ch. 1972) and citing *Felder v. Anderson, Clayton & Co.*, 159 A.2d 278, 286 (Del. Ch. 1960)).

DEL. CODE tit. 8, § 262(e).[6] The merger execution triggered the appraisal litigation. *See generally id.* There is no evidence that the merger execution, which gave rise to the appraisal litigation, occurred during the insurance policy period. Since the triggering merger execution occurred on May 29, 2014—the day after coverage ended under the insurance policy period—there is no evidence that Zale is entitled to coverage for the Appraisal Action under the Berkley and Starr excess insurance policies. Accordingly, the no-evidence summary judgment was properly granted as to this ground.

ii. Zale's Damages and Loss are Not Covered

Zale seeks insurance coverage and recovery for the $34,246,984.20 amount that the Appraisal Action Petitioners received as a part of the Appraisal Action settlement. Because we conclude there is no evidence of coverage—and therefore no coverage of any loss—under the Berkley and Starr excess insurance policies, we do not reach the second ground of the no-evidence motion for summary judgment.

iii. Allegations of Insurance Code Violations

"The Insurance Code provides for an action against an insurer that commits 'an unfair or deceptive act or practice in the business of insurance.'" *Barbara Techs.*

[6] *See also* DEL. CODE tit. 8, § 251(c). "At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation, provided that such certification on the agreement shall not be required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective, in accordance with § 103 of this title." *Id.*

Corp. v. State Farm Lloyds, 589 S.W.3d 806, 825 (Tex. 2019) (citing TEX. INS. CODE § 541.151). "An insured may have a claim for an insurer's failure to conduct a reasonable investigation, wrongful denial of a claim, or failure to resolve a claim in good faith." *Id.* (citing TEX. INS. CODE § 541.060(a)).

Zale alleges that Berkley and Starr (1) misrepresented policy provisions relating to the coverage at issue; (2) failed within a reasonable time (a) to affirm or deny coverage of a claim to a policyholder, or (b) to submit a reservation of rights to a policyholder; (3) refused to pay a claim without conducting a reasonable investigation with respect to the claim; and (4) failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear. Zale argues that it has incurred "actual damages" in the form of lost policy benefits. Of the four allegations of insurance code violations, Zale primarily focuses on the insurers' denial of coverage without conducting a reasonable investigation.

The record reflects communications between Zale and the insurers in which the insurers request information regarding the Appraisal Action. Although Zale assured the insurers that it would provide further information, it failed to provide information until August 12, 2015. Zale's August 12, 2015 communication to the insurers included the Appraisal Action Petitioners' respective petitions but completely failed to mention the Appraisal Action settlement reached on July 29, 2015, and the corresponding execution of the Appraisal Action settlement on August

12, 2015. The record shows that both Berkley and Starr reviewed the Appraisal Action petitions in arriving at their respective denial of coverage positions.

"[A]n insured who establishes a right to receive benefits under the insurance policy can recover those benefits as actual damages under the Insurance Code if the insurer's statutory violation causes the loss of the benefits." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 495 (Tex. 2018). Because we conclude there is no evidence of coverage under the Berkley and Starr excess insurance policies, we must conclude that Zale has not established a right to receive benefits under the Berkley and Starr insurance policies and therefore cannot recover benefits as "actual damages."

Having examined the record, we conclude that Zale failed to produce more than a scintilla of evidence to raise a fact issue as to their claim that appellees violated the Texas Insurance Code. Accordingly, the no-evidence summary judgment was properly granted as to this ground.

III. CONCLUSION

We conclude that the trial court properly granted appellees' no-evidence motion for summary judgment. Because of our resolution of this issue, we need not reach Zale's remaining issues or appellees' other grounds for summary judgment. We affirm the trial court's judgment.

/Bill Pedersen, III//
BILL PEDERSEN, III
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ZALE CORPORATION, Appellant No. 05-19-00730-CV V. BERKLEY INSURANCE COMPANY AND STARR INDEMNITY & LIABILITY COMPANY, Appellee	On Appeal from the 14th Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-17-09200. Opinion delivered by Justice Pedersen, III. Justices Bridges and Evans participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee BERKLEY INSURANCE COMPANY AND STARR INDEMNITY & LIABILITY COMPANY recover their costs of this appeal from appellant ZALE CORPORATION.

Judgment entered this 30th day of July, 2020.