

IN THE SUPREME COURT OF TEXAS

No. 18-0977

WILLIAM MARCHBANKS, PETITIONER,

v.

LIBERTY INSURANCE CORPORATION, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

PER CURIAM

At issue in this insurance dispute is whether an insurer's payment of an appraisal award bars an insured's claims under the Texas Prompt Payment of Claims Act (TPPCA), codified as Chapter 542 of the Insurance Code. The court of appeals concluded it did. Because the court of appeals' opinion is inconsistent with our recent decisions on this issue, we now reverse.

William Marchbanks's residential property sustained hail and wind damage. After its first inspection, Liberty Insurance Corp.—Marchbanks's insurance provider—determined that there was no property damage attributable to a storm and therefore denied coverage. Fifteen months later, Marchbanks sought another inspection of his property. In response, Liberty requested information from Marchbanks to reopen his case, and it sent another adjuster to the property. After the second inspection, Liberty valued the damage at \$387, which was below the insurance policy's

deductible. Liberty did not notify Marchbanks of this denial until almost three months after its decision.

Believing the property damage was still undervalued, Marchbanks sued Liberty, alleging breach of contract and several extra-contractual claims. Six months after Marchbanks filed suit, Liberty successfully moved the trial court to compel appraisal. The appraisal award exceeded Liberty's prior estimates. Liberty paid the award to Marchbanks and subsequently moved for summary judgment on all his claims. The trial court granted Liberty's motion and rendered a take-nothing judgment.¹ The court of appeals affirmed, holding that Liberty's payment of the appraisal award entitled it to summary judgment on Marchbanks's TPPCA claim as a matter of law. 558 S.W.3d 308, 312–13, 316 (Tex. App.—Houston [14th Dist.] 2018).

Marchbanks filed a petition asking this Court to decide whether payment of an appraisal award extinguishes TPPCA liability as a matter of law. Meanwhile, we decided two cases relevant to the issues Marchbanks raises in his petition. In *Barbara Technologies Corp. v. State Farm Lloyds*, we held that “payment in accordance with an appraisal is neither an acknowledgment of liability nor a determination of liability under the policy for purposes of TPPCA damages under section 542.060.” 589 S.W.3d 806, 820 (Tex. 2019). On the same day, we restated in *Ortiz v. State Farm Lloyds* that “an insurer's payment of an appraisal award does not as a matter of law bar an insured's claims under the Prompt Payment Act.” 589 S.W.3d 127, 135 (Tex. 2019).

¹ Initially, the trial court granted Liberty's motion for summary judgment in part regarding Marchbanks's claim for breach of contract and severed the remaining extra-contractual claims. The court later granted summary judgment for Liberty regarding the extra-contractual claims on the ground that Liberty's full and timely payment of the appraisal award precluded Marchbanks from recovering on his extra-contractual claims as a matter of law. Marchbanks appealed only the dismissal of his extra-contractual claims.

The court of appeals concluded that, as a matter of law, Marchbanks could not maintain his TPPCA claim due to Liberty's payment of the appraisal award. Under *Barbara Technologies* and *Ortiz*, this was error. Without hearing oral argument, *see* TEX. R. APP. P. 59.1, we reverse the judgment of the court of appeals and remand the case to the trial court to consider Marchbanks's TPPCA claim in light of those decisions.

OPINION DELIVERED: June 19, 2020