Petition for Writ of Mandamus Denied and Memorandum Opinion filed December 16, 2010.

In The

Fourteenth Court of Appeals

NO. 14-10-01204-CV

IN RE SOLUM ENGINEERING, INC., Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
61st District Court
Trial Court Cause No. 2009-25799

M E M O R A N D U M O P I N I O N

On December 8, 2010, relator Solum Engineering, Inc. filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Relator asks this court to direct the respondent, the Honorable Al Bennett, presiding judge of the 61st District Court of Harris County, to reverse the final judgment signed September 2, 2010, in trial court cause number 2009-25799, styled *Preis & Roy, P.L.C. v. Solum Emgineering, Inc.* Relator also asked that we stay all post-judgment discovery pending our decision on the petition for writ of mandamus. *See* Tex. R. App. P. 52.10. We denied relator's request for an emergency stay on December 8, 2010.

In its first issue, relator asserts that the trial court abused its discretion in rendering a judgment for breach of contract. Relator argues that the trial court incorrectly analyzed and applied the law in rendering judgment against it. Relator asks this court to conclude that the court abused its discretion and reverse the final judgment.

In its second issue, relator asks that we stay the court's order compelling discovery to enforce this judgment. On November 19, 2010, the trial court signed an order compelling post-judgment discovery by December 8, 2010. Relator complains that it has no assets and post-judgment discovery serves no purpose other than harassment. Relator has not raised a challenge to any specific discovery request, identified the specific documents it has been ordered to produce, or provided this court with copies of the discovery requests

Mandamus relief is available only to correct a clear abuse of discretion for which the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). The adequacy of an appellate remedy should be determined by a "practical and prudential" balancing of the benefits and detriments of mandamus review. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136-37 (Tex. 2004).

When the ruling complained of is a final judgment, the aggrieved party will ordinarily have an adequate appellate remedy. *See Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 684 (Tex. 1989) (orig. proceeding) (extraordinary writs issue only in situations involving manifest and urgent necessity and not for grievances that may be addressed by other remedies). Mandamus is appropriate without a showing that an appeal is inadequate if a trial court issues an order beyond its jurisdiction or after its plenary power has expired. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000). A void order is one entered by a trial court that lacks jurisdiction over the parties or the subject matter, or is an order entered outside the trial court's capacity as a court. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990). Relator has not asserted that the trial court lacked

jurisdiction to enter the judgment, and nothing in our mandamus record suggests that the court lacked jurisdiction.

Relator has appealed the final judgment at issue in this mandamus proceeding and its appeal is pending under our number 14-10-01054-CV. Relator argues that it has no adequate remedy at law because substantial resources have been expended on five lawsuits concerning the underlying dispute and it should not be required to "wast[e] another year on four ongoing cases." It asserts that this underlying judgment will inevitably be reversed and we should grant mandamus relief to more expeditiously resolve the underlying dispute.

Mandamus relief is not intended to replace an ordinary appeal from a final judgment. In *Prudential,* the supreme court discussed mandamus review of *interlocutory* rulings, as follow:

> Mandamus review of incidental, interlocutory rulings by the trial courts unduly interferes with trial court proceedings, distracts appellate court attention to issues that are unimportant both to the ultimate disposition of the case at hand and to the uniform development of the law, and adds unproductively to the expense and delay of civil litigation. Mandamus review of significant rulings in exceptional cases may be essential to preserve important substantive and procedural rights from impairment or loss, allow the appellate courts to give needed and helpful direction to the law that would otherwise prove elusive in appeals from final judgments, and spare private parties and the public the time and money utterly wasted enduring eventual reversal of improperly conducted proceedings.

Prudential, 148 S.W.3d at 136. The issues in this case may be adequately resolved in an appeal from the final judgment. The detriments to reviewing final judgments by mandamus solely to expedite the resolution of the case far outweigh any benefits. Therefore, relator's appeal provides an adequate remedy.

In addition, according to the petition, relator has not attempted to supersede the judgment. Post-judgment discovery is precluded if the judgment debtor supersedes the judgment. *See* Tex. R. Civ. P. 621a (permitting certain post-judgment discovery "so long

as said judgment has not been suspended by a supersedeas bond or order of a proper court"); *see also* Tex. R. App. P. 24.1(f) ("Enforcement of a judgment must be suspended if the judgment is superseded."). Relator has not availed itself of its available remedy.

Because we conclude that relator has an adequate remedy at law, we deny the petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Jamison.