

Petition for Writ of Mandamus Denied and Memorandum Opinion filed August 23, 2011.



In The

Fourteenth Court of Appeals

NO. 14-11-00604-CV

IN RE SOUTHERN INSURANCE COMPANY, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
434th District Court
Fort Bend County, Texas
Trial Court Cause No. 10-DCV-186511

MEMORANDUM OPINION

On July 14, 2011, relator 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 complains that respondent, the Honorable James Shoemake, presiding judge of the 434th District Court of Fort Bend County, abused his discretion in failing to grant relator's Motion to Compel Appraisal and Abate. Real parties in interest, Jorge and Blanco Barrios, filed a response.

Mandamus will not lie absent a ruling by the trial court that is being challenged. *See Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 556 (Tex. 1990) (for mandamus to lie, the respondent "must have explicitly denied motions intended to compel

the deposition”); and *In re Baldridge*, No. 14-06-00647-CV, 2006 WL 2167239 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding) (denying mandamus because relators failed to provide court of appeals a written order, citing Tex. R. App. P. 52.3(j)(A) and *In re Bledsoe*, 41 S.W.3d 807, 811 (Tex.App.—Fort Worth 2001, orig. proceeding) (concluding that mandamus relief may be based on oral ruling only if the ruling is a “clear, specific, and enforceable order that is adequately shown by the record”)).

The record contains neither a written order nor an oral ruling denying relator’s Motion to Compel Appraisal and Abate. Relator cites *In re Shredder Co., L.L.C.*, 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, no pet.), for its holding the trial court abused its discretion by delaying ruling on a motion to compel arbitration. The *Shredder* court, however, conditionally granted writ to issue “only if the trial court *fails to rule on the motion* to compel arbitration.” *Id.* at 680 (emphasis added). The court expressly offered no opinion on the merits of the motion. *Id.* Relator does not ask us to compel the trial court to rule.

Relator has failed to establish it is entitled to mandamus relief. Accordingly, we deny relator’s petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Anderson, Brown, and Christopher.