

Memorandum Opinion Dated September 30, 2016, is Withdrawn, Petition for Writ of Mandamus Denied and Corrected Memorandum Opinion filed October 3, 2016.



In The
Fourteenth Court of Appeals

NO. 14-16-00776-CV

IN RE CRESTLINE DIRECT FINANCE, L.P. AND RAHUL VAID, Relators

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
113th District Court
Harris County, Texas
Trial Court Cause No. 2016-65706**

CORRECTED MEMORANDUM OPINION¹

On September 29, 2016, relators Crestline Direct Finance, L.P. and Rahul Vaid filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relators ask this court to compel the Honorable

¹ The memorandum opinion dated September 30, 2016, is withdrawn. We issue this corrected memorandum opinion in its place.

Michael Landrum, presiding judge of the 113th District Court of Harris County, to vacate a Temporary Restraining Order (TRO) that the Honorable R.K. Sandill (the ancillary judge) signed on September 28, 2016. In their petition, relators argue that the TRO is void because it does not define the injury that will be suffered absent the entry of the TRO and describe why such unnamed injury is irreparable, as required by Rule 680 of the Texas Rules of Civil Procedure.

“Mandamus relief generally requires a predicate request for an action and a refusal of that request.” *In re Le*, 335 S.W.3d 808, 814–15 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (citing *Axelsson, Inc. v. McIlhany*, 798 S.W.2d 550, 556 (Tex. 1990)). “But, the requirement that there be a predicate request and adverse ruling is excused when such a request would have been futile and the trial court’s refusal little more than a formality.” *Id.* at 815. Relators have not shown that they requested the trial court to vacate the TRO for the reasons stated in their petition or that doing so would be futile. We believe that the requirement that relators should first seek relief from the trial court is particularly applicable, when, as here, relators appeared at the hearing on the TRO and the record does not show that relators objected to the TRO on the grounds stated in their petition.

Accordingly, we deny relators’ petition for writ of mandamus without prejudice to refile after the arguments stated in their petition have been presented to and ruled on by the trial court.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Boyce and Christopher.