

Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion filed July 20, 2023.



In The

Fourteenth Court of Appeals

NO. 14-23-00364-CV

IN RE THOMAS LUTZ, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
165th District Court
Harris County, Texas
Trial Court Cause No. 01-18-0002-0341**

MEMORANDUM OPINION

On May 23, 2023, relator Thomas Lutz filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. § 22.221; *see also* Tex. R. App. P. 52. In the petition, relator asks this Court to compel the Honorable Ursula Hall, presiding judge of the 165th District Court of Harris County, to rule on relator's motion to confirm arbitration award.

On June 6, 2023, this Court requested that real parties in interest RWH Homebuilders, LP; RWH Builders, LLC; Rohe & Wright Homebuilders, LP; and Rohe & Wright Builders, LLC (collectively, “Rohe and Wright”) file a response by July 6, 2023, to relator’s petition for writ of mandamus. To date, no response has been filed.

Ordinarily, to be entitled to a writ of mandamus, the relator must show that the trial court abused its discretion and relator does not have an adequate remedy by appeal. *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020) (orig. proceeding); *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 130 (Tex. 2018) (orig. proceeding). When a motion is properly pending before a trial court, the act of considering and ruling on it is ministerial, and mandamus may issue to compel the trial court to act. *Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (orig. proceeding) (per curiam). To establish that the trial court abused its discretion by failing to rule, a relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time. *See O’Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (orig. proceeding).

In this case, the record reflects that relator properly filed his motion to confirm arbitration award on November 30, 2022, and set the motion for submission on December 19, 2022. The record further reflects that Rohe and Wright submitted their opposition to relator’s motion to confirm arbitration award on December 14, 2022 but never filed a motion to vacate, correct, or modify the award. Relator’s motion has been pending a reasonable time. On May 8, 2023, relator filed a letter with the trial court requesting a ruling on the motion. While

there is no precise test to determine whether the amount of time it takes a trial court to rule is reasonable, the trial court's delay in ruling in this case is unreasonable. *See In re Univ. of Tex. MD Anderson Cancer Ctr.*, No. 01-19-00201-CV, 2019 WL 3418567, at *2 (Tex. App.—Houston [1st Dist.] July 30, 2019, orig. proceeding) (mem. op.). The trial court's delay in ruling has prevented relator from pursuing post-judgment discovery and obtaining whatever post-judgment relief may be necessary to enforce the judgment. As such, the trial court has abused its discretion in not ruling on relator's motion to confirm arbitration award. Moreover, there is no adequate remedy at law.

Accordingly, without addressing the merits of the pending motion, we grant the requested relief and order the trial judge to rule on relator's motion to confirm arbitration award within thirty days of the date of this memorandum opinion. We are confident the trial judge will act in accordance with this opinion and a writ of mandamus will issue only if the trial judge does not act.

PER CURIAM

Panel consists of Justices Wise, Bourliot, and Spain.