

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00164-CV

IN RE MARTIN WOOD CO., INC. AND STONEHAM MILL, INC.

Original Proceeding

MEMORANDUM OPINION

Relators filed a petition for writ of mandamus and a motion for temporary relief. Relators are the plaintiffs in a fraud suit against Denise Pressley, Lawrence Ray Dirden II, and L2, Inc. The trial court denied relators' motion for summary judgment. Relators' petition seeks to compel the trial court to grant their motion for summary judgment. We deny temporary and mandamus relief.

Relators' trial court petition alleges that Pressley made purchases on the account of the Relators for supplies and building materials for a house being built on Dirden's property, which is encumbered by a purchase money lien. Pressley allegedly conspired with Dirden and L2, Inc., who are alleged to have knowingly used the misappropriated

funds to build the house. The petition seeks to impose a constructive trust on the property, which is subject to a lis pendens.

To support their argument that they do not have an adequate remedy by appeal, relators allege that the property taxes have not been paid on the property and that the property is the only asset from which they realistically might recover their losses. Relators allege that they will not be able to satisfy their judgment if the property is foreclosed upon by the first lienholder or seized by the taxing entity before relators obtain a judgment.

Mandamus will issue only to correct a clear abuse of discretion when that abuse cannot be remedied by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004); *Abor v. Black*, 695 S.W.2d 564, 566-67 (Tex. 1985). After reviewing the mandamus record and petition, we conclude that the relators have failed to establish an abuse of discretion by the trial court for which an appeal will not be an adequate remedy. *See Prudential*, 148 S.W.3d at 135-36. Accordingly, we deny the petition for writ of mandamus and request for temporary relief.

PETITION DENIED.

PER CURIAM

Opinion Delivered April 28, 2011
Before McKeithen, C.J., Gaultney and Horton, JJ.