



NUMBER 13-17-00642-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**IN RE SCRAP METAL SERVICES, LLC;
SMS ALL STAR HOLDINGS, LLC; ALL STAR METALS, LLC;
JEFRY K. GERTLER; RICHARD A. GERTLER; AND NIKHIL SHAH**

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Justices Rodriguez, Benavides, and Longoria
Memorandum Opinion Per Curiam¹**

Relators Scrap Metal Services, LLC; SMS All Star Holdings, LLC; All Star Metals, LLC; Jefry K. Gertler; Richard A. Gertler, and Nikhil Shah filed a petition for writ of mandamus and motion for emergency stay in the above cause on November 20, 2017. Through this original proceeding, relators seek to vacate orders: (1) denying relators' third amended motion to abate; (2) denying relators' third amended motion to dismiss for

¹ See TEX. R. APP. P. 52.8(d) ("When granting relief, the court must hand down an opinion as in any other case," but when "denying relief, the court may hand down an opinion but is not required to do so."); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

lack of subject matter jurisdiction; (3) denying in part relators' special exceptions to plaintiff's second amended petition; and (4) denying relators' second amended motion to judicially notice and apply the law of Mexico. Through their motion for emergency stay, relators seek to stay all proceedings in the trial court including the trial of this matter which is set for December 4, 2017. This Court requested and received responses to the motion for emergency stay and the petition for writ of mandamus from the real party in interest, Sustainable Products Services LLC. Further, relator has filed a reply to the real party's response.

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). Additionally, mandamus relief is proper when the trial court issues a void order, and in such cases the relator need not demonstrate the lack of an adequate remedy by appeal.

See *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) (per curiam).

The Court, having examined and fully considered the petition for writ of mandamus, the response, the reply, and the applicable law, is of the opinion that relators have not shown themselves entitled to the relief sought. In this original proceeding, relators raise issues pertaining to standing, capacity, choice of law, and indispensable parties. Based upon the record presented, we agree with the real party in interest that relators have not shown that the trial court's orders in this case are void, or that the trial court abused its discretion and extraordinary circumstances render a remedy by appeal inadequate. Accordingly, we DENY the motion for emergency stay and the petition for writ of mandamus. See TEX. R. APP. P. 52.8(a).

PER CURIAM

Delivered and filed the
29th day of November, 2017.