

Petition for Writ of Mandamus Denied and Memorandum Opinion filed July 9, 2020.



In The
Fourteenth Court of Appeals

NO. 14-20-00434-CV

**IN RE LUIS GARCIA DE LOS SALMONES AND MARIA GARCIA DE
LOS SALMONES, Relators**

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
234th District Court
Harris County, Texas
Trial Court Cause No. 2018-36029**

MEMORANDUM OPINION

On June 16, 2020, relators Luis Garcia De Los Salmones and Maria Garcia De Los Salmones 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, relators ask this court to compel the Honorable Lauren Reeder, presiding judge of the 234th District Court of Harris County, to set aside a temporary injunction, order funds in the

registry of the court disbursed to relators, and, in the alternative, order the amount of the bond increased as a condition of the temporary injunction.

BACKGROUND

Relators financed the sale of certain property to Anchor Development Group, LLC on September 22, 2016. On May 30, 2018, Harris County, the City of Houston, the Houston Independent School District, and the Houston Community College System sued relators and Anchor for the recovery of delinquent ad valorem taxes. Seven months later, relators made demand for payment on Anchor and gave notice of the intention to accelerate the unpaid principal of the promissory note secured by the deed of trust for Anchor's failure to make payments on the note and pay all taxes on the property. On March 12, 2019, relators gave Anchor notice of acceleration of the indebtedness under the note and the foreclosure sale.

Anchor requested a temporary restraining order and injunctive relief to prevent foreclosure because the acceleration of the note and scheduled foreclosure were purportedly invalid. According to Anchor, relators had attempted on previous occasions to foreclose the property, but Anchor successfully sought injunctive relief to prevent those previous attempts to foreclose.

On March 28, 2019, the trial court entered a temporary restraining order, and Anchor posted bond in the amount of \$5,000.00. The trial court, on April 12, 2019, signed an agreed order granting a temporary injunction, which enjoined relators from selling the property at a foreclosure sale or under the power of sale contained in the deed of trust. The trial court set bond at \$6,000.00 as security for the temporary injunction, ordered Anchor to pay \$1,576.76 under the note into the court's registry on a monthly basis, and set the trial for July 29, 2019.

On June 17, 2019, relators moved to dissolve the temporary injunction due to the delay caused by the legislative continuance because one of Anchor's attorneys was a member of the Texas Legislature. Relators complained that the delay in proceeding to the July 29, 2019 trial setting would unfairly tie up the funds in the registry of the court. As alternative relief to dissolving the injunction, relators asked the trial court to disburse the funds in the court's registry to relators. The trial court denied the motion.

Six months later, relators filed a motion urging the trial court to disburse funds from the court's registry, to put an end to Anchor's deposits into the court's registry, and, in the alternative, to dissolve the temporary injunction unless the amount of the bond was increased. The trial court held a hearing on relators' motion but made no ruling.

On April 17, 2020, relators filed an emergency motion, requesting the trial court to enter temporary orders sufficient to protect them from the negative effects of the temporary injunction. Relators asked the trial court to raise the bond from \$6,000.00 to \$250,000.00 and, if the bond was not posted on or before April 20, 2020, to dissolve the temporary injunction to allow relators to foreclose on the property. Relators also asked the trial court to order all funds in the court's registry disbursed to relators and order Anchor to make all future payments under the note to relators directly. The trial court denied the motion on April 29, 2020.

Relators bring this mandamus proceeding, asking this court to compel the trial court to dissolve the temporary injunction, order funds in the registry of the court disbursed to relators, and, in the alternative, order the amount of the bond increased as a condition of the temporary injunction.

ANALYSIS

I. Temporary Injunction

In this mandamus proceeding, relators contend that the trial court abused its discretion by refusing to dissolve the temporary injunction. Section 51.014(a)(4) specifically provides for an interlocutory appeal from an order overruling a motion to dissolve a temporary injunction. Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4). An interlocutory appeal provides an adequate remedy for challenging the trial court's order denying relators' motion to dissolve the temporary injunction. *Cf. In re Holland*, No. 14-09-00656-CV, 2009 3154479, at *2 (Tex. App.—Houston [14th Dist.] Oct. 1, 2009, orig. proceeding) (mem. op.) (per curiam) (holding interlocutory appeal from order granting temporary injunction provided adequate remedy for challenging order). Therefore, relators have an adequate remedy by appeal to challenge the order denying their motion to dissolve the temporary injunction.

II. Sufficiency of the Bond

Relators' further assert that the trial court abused its discretion by failing to increase the bond. Complaints regarding the sufficiency of a bond are addressed in an interlocutory appeal from a ruling on a temporary injunction. *See Sills v. Wedgeworth*, No. 09-17-00481-CV, 2018 WL 3384566, at *5–6 (Tex. App.—Beaumont July 12, 2018, no pet.) (mem. op.) (addressing challenge to sufficiency of bond in interlocutory appeal from order granting temporary injunction); *Williard Capital Corp. v. Johnson*, No. 14-16-00636-CV, 2017 WL 3567914, at *3–4 (Tex. App.—Houston [14th Dist.] Aug. 17, 2017, no pet.) (mem. op.) (same). Thus, relators' have an adequate appellate remedy.

III. Funds in Registry of the Court

Finally, relators maintain that the trial court abused its discretion by failing to set aside the requirement that Anchor deposit funds into the registry of the court. A court, through its inherent, power may order a party to pay disputed funds into the court's registry if there is evidence that the disputed funds are in danger of being lost or depleted. *O'Brien v. Baker*, No. 05-15-00489-CV, 2015 WL 6859581, at *3 (Tex. App.—Dallas Nov. 9, 2015, orig. proceeding) (mem. op.); *N. Cypress Med. Ctr. Operating Co., Ltd. V. St. Laurent*, 296 S.W.3d 171, 179 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding). Mandamus relief is available if the trial court orders disputed funds paid into the court's registry when there was no showing that the funds are in danger of being lost of depleted. *O'Brien*, 2015 WL 6859581, at *3–4; *N. Cypress Med. Ctr. Operating Co., Ltd.*, 296 S.W.3d at 179–80.

Relators bear the burden of bringing forth a record showing that they are entitled to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding). There is nothing in this record concerning what evidence was before the trial court when it ordered Anchor to deposit the monthly payments into the registry of the court. On this record, we cannot conclude that the trial court abused its discretion in ordering Anchor to deposit payments under the note into the court's registry.

CONCLUSION

Relators have not established that they are entitled to mandamus relief. Accordingly, we deny relators' petition for writ of mandamus.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Zimmerer and Poissant.