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SUPREME COURT OF TEXAS
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No. 21-0407

IN THE
SUPREME COURT OF TEXAS

IN RE FORD + BERGNER LLP, DON D. FORD III, AND KENNETH A. KROHN,
Relators.

From the
Thirteenth Court of Appeals, Corpus Christi, Texas
No. 13-21-00105-CV

Petition for Writ of Mandamus

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Emergency Relief Requested

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STATEMENT OF THE CASE

Nature of the case:	Two of intervenors filed a motion for forfeiture of fees against Ford + Bergner. Rec.1. The trial court severed the matter into an ancillary proceeding. Rec.4. Intervenors filed a petition of intervention in that proceeding. Rec.12.
Respondent:	The respondent is the Honorable Timothy J. McCoy, Presiding Judge, County Court at Law No. 5, Nueces County, Texas, 2310 Gollihar Rd., Corpus Christi, Texas 78415.
Course of proceeding:	The intervenors pleaded breach of fiduciary duty and sought forfeiture as relief. Rec.12 at 49–53. They have obtained one evidentiary hearing on the matter with another anticipated. Rec.18.
Respondent's action:	The court has entertained this action, has made substantive rulings on the merits of the parties' claims and defenses, has ordered forfeiture before final judgment, and intends to make more rulings. Recs.4, 9, 18, 29–30.
Court of appeals disposition:	Relators filed a petition for writ of mandamus with the Corpus Christi Court of Appeals on April 19, 2021. The opinion was authored by Justice Tijerina and joined by Chief Justice Contreras and Justice Longoria. The opinion denies the petition without an analysis of the issues raised. *In re Ford + Bergner LLP*, No. 13-21-00105-CV, 2021 Tex. App. LEXIS 3377 (Tex. App.—Corpus Christi May 3, 2021, orig. proceeding) (mem. op.). Rec.28.

STATEMENT OF JURISDICTION

The Court has mandamus jurisdiction under Texas Government Code Section 22.002(a). Tex. Gov't Code § 22.002(a) ("The supreme court . . . may issue writs of . . . mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge . . . .").

ISSUES PRESENTED

1. Texas law establishes that, upon the death of the ward, the trial court's jurisdiction is limited to settling and closing the guardianship. The real parties in interest intervened and sought fee forfeiture five months after the proposed ward died. Does the trial court lack jurisdiction to begin a new proceeding and entertain claims brought by parties intervening into a matter under the guardianship?

2. Relators timely demanded a jury trial. The trial court held a "hearing" on the remedy of forfeiture of fees before the intervenors ever prevailed on their causes of action and demonstrated a right to any relief at all. Did the trial court violate relators' right to a jury trial by considering the merits of the intervenors' request for relief before any determination of liability to intervenors?

3. A trial court does not have inherent authority to order money to be paid into the court registry without the right to injunctive relief first being established. Intervenors did not apply for and the trial court did not grant injunctive relief against relators. Did the trial court clearly abuse its discretion by requiring over half a million dollars of relators' firm's operating budget to be placed into the court registry before final judgment?

4. (Unbriefed issue) The trial court ordered that if the law firm did not pay the money it had received into the registry of the court by a certain date, then a partner and former associate would be obligated to pay the amount into the court registry. Does the trial court have the authority to make employees of a law firm guarantors for the law firm's obligations that the trial court created?

INTRODUCTION

Real Parties in Interest seek to wrest well in excess of half a million dollars from Ford + Bergner's operating budget while remaining unencumbered by jurisdictional constraints or burdens of proof. Worse, the trial court has demonstrated a willingness to indulge these impulses.

In this case, the proposed ward of the guardianship passed away, triggering the trial court's obligation to settle and close the guardianship estate and restricting the trial court's subject-matter jurisdiction to that endeavor. In spite of this, the court allowed several of the proposed ward's grandchildren—the real parties in interest—to intervene and assert new causes of action against Ford + Bergner.

The proposed ward's grandchildren filed a motion to force Ford + Bergner to forfeit the fees it had incurred in the guardianship proceeding before ever establishing liability to the grandchildren. The trial court permitted this and set the hearing with three days' notice.

After the hearing, the trial court made substantive rulings relating to the request for the remedy of forfeiture, and required Ford + Bergner to pay $639,024.04 from its operating budget into the court registry. More hearings and orders are forthcoming.

STATEMENT OF FACTS

The proposed ward of the underlying guardianship proceeding is Leon R. Bernsen Sr. *In re Guardianship of Bernsen*, Nos. 13-17-00591-CV, 13-17-00593-CV, 2019 Tex. App. LEXIS 6854, at *1 (Tex. App.—Corpus Christi Aug. 8, 2019, pet. denied) (mem. op.). The guardianship proceeding began when concerns about his mental capacity arose. *Id.* at *3. His estate was alleged to include a partnership, Bernsen Farms, Ltd., and a trust, Bernsen Family Trust. *Id.* at *1.

In the guardianship proceeding, Ford + Bergner LLP—including Ford + Bergner's managing partner, Don D. Ford III, and an associate then at the firm, Kenneth A. Krohn—represented Leon Bernsen's daughter, Dianna Bernsen in her bid to become the guardian. *Id.* at *1.

On December 11, 2019, two of Leon Bernsen Sr.'s granddaughters, Lynn Allison and Lea Brown, filed a motion to disqualify Ford + Bergner, to have it referred to the State Bar of Texas, and for forfeiture of fees. Rec.1. Because Allison was not a party to the guardianship,[1] Ford + Bergner filed a motion to dismiss their motions. Rec.2.

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[1] Brown is an applicant to the guardianship proceedings. Allison was found to lack standing to participate. *In re Guardianship of Bernsen*,

Leon Bernsen Sr. passed away on March 24, 2020. Recs.15 at 1, 3 at 1. This triggered the trial court's obligation to settle and close the guardianship and dismiss the temporary guardian that it had appointed.

Instead, the trial court severed some of the pending motions from the guardianship cause number (2015-GU-00099-5) into a new cause number (2015-GU-00099-5A). Rec.4. The court placed two of the granddaughters' motions in the new cause number. *Id.* The court also transferred Ford + Bergner's motion to dismiss and then immediately denied it on the ground that Ford + Bergner was not a party to the guardianship proceeding. Recs.4, 5 at 2.

Once it was clear that the court intended to proceed in the ancillary matter, Ford + Bergner filed a jury demand and paid the fee. Recs.6–7.

On August 27, 2020—five months after the proposed ward had passed away—Allison and Brown along with their brother, Leon Garrick Bernsen (collectively, the "Bernsen Grandchildren") filed a petition in intervention into the severed cause. Rec.8. In it, they alleged wrongful payment of

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Nos. 13-17-00591-CV, 13-17-00593-CV, 2019 Tex. App. LEXIS 6854, at *39 (Tex. App.—Corpus Christi Aug. 8, 2019, pet. denied) (mem. op.).

attorneys' fees to Ford + Bergner but did not identify any causes of action. *Id.* at 5–7.

On the same day, the trial court signed an order on the granddaughters' motion to disqualify.[2] Rec.9. The court ordered Ford + Bergner to be disqualified from representing three individuals, including the already deceased proposed ward. *Id.* at 4. The Court acknowledged in its order that it was not ruling on the forfeiture remedy because of Ford + Bergner's jury demand. *Id.* at 1 n.1.

On February 5, 2021, the Bernsen Grandchildren filed their second amended petition. Rec.12. They purported to assert claims individually and on behalf of Bernsen Farms, Ltd. *Id.* at 1. They asserted breach of fiduciary duty and civil conspiracy against Ford + Bergner. *Id.* at 38–46. For damages, the Bernsen Grandchildren sought recovery of all attorneys' fees through the "equitable remedy of attorneys' fees forfeiture." *Id.* at 49–53.

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[2] On the same day, in the underlying guardianship proceeding, the trial court signed an order of contempt and commitment against Dianna Bernsen. That order is subject to a mandamus proceeding currently before this Court. *In re Dianna Bernsen*, No. 21-0226.

On February 23, 2021, the Bernsen Grandchildren filed a motion for forfeiture of attorneys' fees. Rec.13. Two days later, they filed a notice of hearing for March 2, 2021. Rec.14.

Ford + Bergner filed a motion for continuance. Rec.16. In it, Ford + Bergner reminded the court that it had filed a jury demand. *Id.* at 2. Nevertheless, the "hearing" took place, starting on March 2, 2021—almost a year after Leon Bernsen Sr. had passed away. Rec.18. Four days after the hearing started, the trial court signed an order requiring interlocutory forfeiture of fees. *Id.* Purporting to apply the factors set out in *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999), the court determined that Ford + Bergner committed breaches of its duties towards certain clients and ordered forfeiture of fees. *Id.* at 5. The court ordered Ford + Bergner LLP to pay $639,024.04 into the registry of the court by March 12, 2021. *Id.* at 5–6. The court further ordered that, if Ford + Bergner LLP failed to pay the total amount, Don D. Ford III and Kenneth A. Krohn were required to pay the money into the registry by March 31, 2021. *Id.* at 7. Finally, the order recognized that there would be further hearings on forfeiture. *Id.*

On April 16, 2020, the Bernsen Grandchildren filed a "Notice of Hearing [on the] Continuation of Motion for Forfeiture of Attorneys' Fees," set five

days later. Rec.20. Ford + Bergner sought mandamus review. Rec.23. The Corpus Christi Court of appeals denied the petition and lifted the stay. Rec.28. The trial court has set another hearing for forfeiture of more fees for May 19, 2021, has compelled the attendance of Don D. Ford III and Kenneth A. Krohn, and has compelled production of clients' invoices. Recs.29–30.

ARGUMENT

I. The Trial Court Clearly Abused Its Discretion by Requiring Ford + Bergner to Pay Money into the Court Registry During the Pendency of the Ancillary Proceeding

Mandamus allows a party to seek relief when it faces an immediate harm based on the trial court's clear abuse of discretion and the harm cannot be remedied by appeal. *In re Murrin Bros. 1885, Ltd.*, 603 S.W.3d 53, 56–57 (Tex. 2019). "'A trial court has no "discretion" in determining what the law is or applying the law to the facts,' even when the law is unsettled." *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135 (Tex. 2004). (quoting *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)).

Here, the trial court committed three clear abuses of discretion. Each error compounds the prior error and the resulting harm. First, the trial court entertained new claims when trial court's jurisdiction was limited to settling and closing the guardianship estate. Second, the trial court set a hearing on a request for relief before any liability to the Bernsen Grandchildren had been established and in violation of Ford + Bergner's jury demand. Third, after the hearing, the trial court issued an interlocutory order requiring Ford + Bergner to place well in excess of half a million dollars of its firm's operational budget into the registry within weeks of the order and without a final judgment.

A. The Trial Court Lacked Jurisdiction to Entertain an Ancillary Proceeding Initiated after the Death of the Proposed Ward

It is well established in Texas law that the "[d]eath of the ward necessarily terminates the guardianship." *Alford v. Halbert*, 12 S.W. 75, 76 (Tex. 1889). Upon that event, "[i]t has long been the public policy of this state that . . . the probate court loses jurisdiction of the guardianship matter, save and except that the guardianship shall be immediately settled and closed, and the guardian discharged." *Easterline v. Bean*, 49 S.W.2d 427, 428 (Tex. 1932). This remains true today. "It is axiomatic that, with the death of the ward, the guardianship of the person must end. But the estate must still be settled." *Zipp v. Wuemling*, 218 S.W.3d 71, 74 (Tex. 2007). Generally, when the ward dies, the parties with an interest in the estate are the guardian and the estate itself. *Id.* at 73. This requirement for the trial court to settle and close the guardianship after the death of the ward applies to the guardianship of the ward and the estate. Tex. Est. Code §§ 1202.001(b)(1), 1204.001(a), (b)(1).

Before the proposed ward died in this case, two of Leon Bernsen Sr.'s granddaughters, Lynn Allison and Lea Brown, filed a motion to disqualify Ford + Bergner, to have it referred to the State Bar, and for forfeiture of fees. Rec.1. The temporary guardian did not join or otherwise endorse this motion.

Ford + Bergner filed a motion to dismiss. Rec 2. While these motions were pending, the proposed ward passed away. Recs.15 at 1, 3 at 1. Any rights the granddaughters had to have their motions heard passed at that point. *Zipp*, 218 S.W.3d at 74; *Easterline*, 49 S.W.2d at 428.

Instead of denying or dismissing the granddaughters' motions, though, the trial court *sua sponte* severed two of their motions and Ford + Bergner's motion into a separate, ancillary cause. Rec.4. The same day, the trial court denied Ford + Bergner's motion to dismiss, determining that it was not a party to the suit. Rec.5 at 2.

The ancillary proceeding contained only two motions asserted by two people—only one of whom was a party to the guardianship—and no defendants. Yet, instead of denying the motions, the trial court maintained them in the ancillary proceeding, effectively inviting further action from the mostly nonparties. This was outside the trial court's jurisdiction. *Zipp*, 218 S.W.3d at 74; *Easterline*, 49 S.W.2d at 428.

The Bernsen Grandchildren argue that the trial court had jurisdiction because the severance created an independent suit under the trial court's jurisdiction as a county court at law. Rec.26 at 2–5 (quoted language on page 5). This is incorrect.

The proceeding, while placed into a separate cause number, was not severed from the guardianship itself.

> A claim is properly severable if (1) the controversy involves more than one cause of action, (2) the severed claim is one that would be the proper subject of a lawsuit if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues.

Guar. Fed. Sav. Bank v. Horseshoe Operating Co., 793 S.W.2d 652, 658 (Tex. 1990); *accord* Tex. R. Civ. P. 41. Here, there was no cause of action, the motions could not be the proper subject of an independent lawsuit, and the motions were based on the granddaughters' capacity as "persons interested in the welfare of Leon R. Bernsen (Sr.)." Rec.1 at 1.

Even if this Court were to hold that the Bernsen Grandchildren's intervening claims somehow retroactively applied to the severance, it still cannot support the severance. The Bernsen Grandchildren filed as intervenors. Rec.8. The only live matter in which they could have intervened was the guardianship. Intervening over five months after the proposed ward had died was well past tardy. In addition, the style of the case is "Guardianship of Leon R. Bersen, Sr. an incapacitated person." *Id.* Each of the Bernsen Grandchildren specifically emphasize their status as grandchildren

of the proposed ward and "beneficiaries under [his] will." *Id.* at 1–2. The fact that the trial court is a county court at law does not change this analysis.

Furthermore, the Texas Estates Code establishes that the severed case was ancillary to the guardianship. "The term 'guardianship proceeding' means a matter or proceeding *related to* a guardianship . . . ." Tex. Est. Code § 1002.015 (emphasis added); *accord* Tex. Est. Code § 1022.001(b). "For purposes of this code, in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes . . . an action for trial of the right of property that is guardianship estate property." Tex. Est. Code § 1021.005(a)(5).

The Bernsen Grandchildren claimed rights to the proposed ward's estate based on their status as grandchildren of the proposed ward. Recs.1 at 1, 8 at 1–2. Regardless of the cause number, the court's jurisdiction over the claims were based on its authority to consider matters ancillary to the guardianship. Tex. Est. Code §§ 1002.015, 1021.005(a)(5), 1022.001(b). Once the proposed ward died, the jurisdiction to consider these matters passed to the probate court. Tex. Est. Code §§ 32.001(a), 32.002.

The trial court clearly abused its discretion by considering the motions and claims and by severing them into an ancillary cause number after the proposed ward of the guardianship had passed away.

B. The Trial Court Could Not Hold a Procedurally Unidentifiable "Hearing" to Consider a Remedy Before Any Proof of Liability Had Been Established.

Once it was clear that the trial court was going to allow the Bernsen Grandchildren's claims to proceed instead of dismissing them after the death of the proposed ward, Ford + Bergner filed a jury demand and paid the requisite fee. Recs.6–7. "The right of trial by jury shall remain inviolate." Tex. Const. art. I, § 15.

Months after Ford + Bergner filed its jury demand, the Bernsen Grandchildren filed their petition in intervention, filed a motion for forfeiture of fees against Ford + Bergner, and set the motion for a hearing with three business days' notice. Recs.8, 11, 12–14. Ford + Bergner filed objections and a motion for continuance. Recs.15–16. Regardless, as the one-year anniversary of the death of the proposed ward loomed, the hearing took place. Recs.18, 31.

Afterwards, the trial court signed an order requiring interlocutory forfeiture of fees. Rec.18. The court made findings of fact based on the evidence presented at the purported hearing. *Id.* at 1–5. Purporting to apply the factors set out in *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999), the court determined that Ford + Bergner committed breaches of its duties towards certain clients and ordered Ford + Bergner LLP to pay $639,024.04 into the registry by March 12, 2021. *Id.* at 6. The court further ordered that, if Ford + Bergner LLP failed to pay the total amount into the court, Don D. Ford III and Kenneth A. Krohn were required to pay the money into the registry by March 31, 2021. *Id.* at 7. Finally, the order recognized that there would be further hearings with further evidence on additional funds to be forfeited by Ford + Bergner and other defendants. *Id.*

There is no legal authority to support this hearing. It was not a hearing on a motion for summary judgment. *See* Tex. R. Civ. P. 166(c) (requiring 21 days' notice for hearing; requiring evidence to be limited to evidence attached to motion and response; prohibiting testimony at hearing). It was not on an application for injunctive relief. *See* Tex. R. Civ. P. 682 (requiring petition to be verified before injunctive relief can be granted); Tex. R. Civ. P. 684 (requiring bond to be paid by applicant); *Butnaru v. Ford Motor Co.*, 84

S.W.3d 198, 204 (Tex. 2002) (requiring applicant to plead and prove cause of action, probable right to relief, and imminent irreparable injury). It was not a jury trial; no jury was present. *See* Tex. R. Civ. P. 216 (explaining that to be entitled to a jury trial, a party must timely request a jury trial and tender the fee). It could not have been a bench trial either. *See* Tex. R. Civ. P. 166 (establishing pretrial procedures), 245 (requiring 45 days' notice before trial).

The Bernsen Grandchildren argue that the hearing on their motion for forfeiture was allowed by *Burrow*. Rec.26 at 12 & n.50 (citing *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999)). The Bernsen Grandchildren point out that *Burrow* holds that, except in certain circumstances, forfeiture of fees should be decided by the trial court, not a jury. 997 S.W.2d at 245–46. Accordingly, they argue, the hearing did not violate Ford + Bergner's jury demand. Rec.26 at 12–13.

The largest problem with their argument can be found in *Burrow*. Forfeiture of attorneys' fees is a *remedy*, not a cause of action.[3] *See Burrow*,

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[3] The Bernsen Grandchildren and the trial court use the terms forfeiture and disgorgement interchangeably. *See, e.g.*, Recs.13 at 13, 18 at 5. Regardless, whether forfeiture and disgorgement are two words for the same thing or describe different legal concepts, they both are equitable remedies, not causes of action. *See Burrow v. Arce*, 997 S.W.2d 229,

997 S.W.2d at 245 ("Forfeiture of an agent's compensation . . . is an equitable remedy similar to a constructive trust.").

The Bernsen Grandchildren have asserted two claims against Ford + Bergner: breach of fiduciary duty and civil conspiracy. Rec.12 at 38–46. They assert that Ford + Bergner owed fiduciary duties to Bernsen Farms Ltd. and the Bernsen Family Trust. *Id.* at 38. They also claim that they are limited partners in the partnership and beneficiaries in the trust. *Id.* at 2. None of this has been proved. Nevertheless, the Bernsen Grandchildren sought—and the trial court allowed—consideration of a remedy against Ford + Bergner. There is no procedural process to put the cart before the horse like this.

Well before the matter of forfeiture of fees can be considered by the trial court, the Bernsen Grandchildren must prove that Ford + Bergner is actually liable to them under their asserted causes of action. Because Ford + Bergner has timely filed a jury demand, that preliminary determination of liability must be made by a jury. Nothing in the rules of civil procedure or in the *Burrow* opinion allows the trial court and the Bernsen Grandchildren to consider a remedy before determining liability.

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245 (Tex. 1999) (forfeiture); *Longview Energy Co. v. Huff Energy Fund LP*, 533 S.W.3d 866, 874 (Tex. 2017) (disgorgement).

C. The Trial Court Had No Authority to Require Ford + Bergner to Pay over Half a Million Dollars into the Court Registry During the Pendency of the Ancillary Matter

After the hearing on the remedy of forfeiture, the trial court issued an order. Rec.18. After making factual findings, the trial court ordered Ford + Bergner to forfeit $639,024.04. *Id.* at 2–6. The court ordered Ford + Bergner LLP to place the entire amount into the court registry within seven days of the order. *Id.* at 6. If Ford + Bergner LLP did not put the full amount into the registry by that time, Don D. Ford III and Kenneth A. Krohn were ordered to pay the difference into the registry within the following 19 days. *Id.* at 7.

Nothing in the order determined that Ford + Bergner had breached any fiduciary duties owed to the Bernsen Grandchildren or that the Bernsen Grandchildren had standing to assert breach of fiduciary duty on behalf of the clients Ford + Bergner represented. *See, e.g.*, *OAIC Commer. Assets, L.L.C. v. Stonegate Vill., L.P.*, 234 S.W.3d 726, 743 (Tex. App.—Dallas 2007, pet. denied) (holding element of breach of fiduciary duty claim is proof that defendant owed fiduciary duty to plaintiff); *Guest v. Cochran*, 993 S.W.2d 397 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (holding plaintiff lacked standing to sue because no attorney-client privilege existed between him and

attorney). Nor could have such matters been raised in the hearing without violating Ford + Bergner's right to a jury trial. *See* § I.B, *supra*.

Because this order is not a final judgment, the trial court lacked authority to order Ford + Bergner to pay money into the registry before final judgment. Typically, to require a party to take action or refrain from acting before final judgment, the movant must seek and obtain injunctive relief. *See Qwest Communs. Corp. v. AT&T Corp.*, 24 S.W.3d 334, 336 (Tex. 2000) (holding whether order is injunction turns on substance of order, not form). Injunctive relief requires proof of a cause of action, probable right to relief, and an imminent irreparable injury. *Butnaru*, 84 S.W.3d at 204. The requirements for injunctive relief are mandatory and must be strictly followed. *Interfirst Bank San Felipe, N.A. v. Paz Constr. Co.*, 715 S.W.2d 640, 641 (Tex. 1986).

Some intermediate courts of appeals have held that the trial court also has inherent authority to order money to be paid into the registry. *See, e.g.*, *In re Reveille Res. (Texas), Inc.*, 347 S.W.3d 301, 303–04 (Tex. App.—San Antonio 2011, orig. proceeding); *N. Cypress Med. Ctr. Operating Co. v. St. Laurent*, 296 S.W.3d 171, 178–79 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding). The original legal authority that this line of cases ultimately

rely on for this authority is *Castilleja v. Camero*, 414 S.W.2d 431 (Tex. 1967). *Castilleja* does not identify this as a trial court's inherent authority.

In *Castilleja*, a permanent injunction was entered after an earlier trial against had been entered against the defendant prohibiting that the defendant from removing a certain amount of money from a bank account other than to deposit into the registry. *Id.* at 432. After that suit, the plaintiff brought a writ of mandamus proceeding against the same defendant, on the basis that the money had been transferred out of the account but not into the registry. *Id.* at 432–33. In the hearing on the mandamus proceeding, the defendant asserted that he did not intend to satisfy the judgment in the earlier case. *Id.* at 433. This Court held, "[u]nder such circumstances a court can order payment of the disputed funds into its registry until its ownership is determined." *Id.*

For authority, *Castilleja* relied on *Ex Parte Preston*, 347 S.W.2d 938 (Tex. 1961). In *Preston*, the trial court issued a temporary restraining order prohibiting a husband in a divorce proceeding from disposing of any assets. *Id.* at 939. Before being served, the husband sold some real estate and then refused to pay the sale proceeds into the registry. *Id.* This Court held upheld

the trial court's authority to order the money to be paid into the registry under these circumstances. *Id.* at 939–40.

None of these cases stand for the proposition that the trial court has the authority to order money to be paid in the registry without the application for injunctive or mandamus relief. The line of cases declaring such authority hold that it can be exercised by providing "evidence the funds are in danger of being 'lost or depleted.'" *Reveille*, 347 S.W.3d at 304. This is a far less strict standard than what is required for injunctive relief. *See Qwest*, 24 S.W.3d 336; *Butnaru*, 84 S.W.3d at 204; *Interfirst*, 715 S.W.2d at 641.

There is no reason to conclude that requiring a party to pay over half a million dollars of its operating budget into the registry is less onerous than any other form of temporary injunctive relief. Accordingly, there is no basis for holding a request for money to be paid into the registry should be subject to a lesser burden than what is required for injunctive relief or should be able to avoid appellate review.

Even if the trial court has the inherent authority to order money to be paid into the registry without proof for injunctive relief, the trial court's order still fails because there was no allegation, proof, or finding that Ford +

Bergner was at risk of not paying any obligations it may face in a final judgment. *See* Rec.18; *Reveille*, 347 S.W.3d at 304.

The trial court did not have the inherent authority to order Ford + Bergner to pay $639,024.04 of its operating budget into the registry before final judgment was rendered. Accordingly, the order must be withdrawn.

II. Ford + Bergner Lacks an Adequate Remedy to Challenge Payment of over Half a Million Dollars without Proof of Liability in a Matter over which the Trial Court Lacks Subject Matter Jurisdiction

To establish its right to mandamus relief, the relator must show that it lacks and adequate remedy by appeal. *Prudential*, 148 S.W.3d at 135–36. "The operative word, 'adequate,' has no comprehensive definition; it is simply a proxy for the careful balance of jurisprudential considerations that determine when appellate courts will use original mandamus proceedings to review the actions of lower courts." *Id.* at 136. This Court considers whether the benefits to mandamus review is outweighed by the detriments. *Id.* This depends heavily on the circumstances and is better guided by general principles than simple rules. *Id.* at 137.

The trial court has required Ford + Bergner to defend against a suit over which there is no subject-matter jurisdiction. *See In re John G.*, 315

S.W.3d 519, 522 (Tex. 2010) ("Mandamus is proper if a trial court issues an order that exceeds its jurisdictional authority."). It has forced Ford + Bergner to defend against equitable relief without any proof of liability by a jury. *See Prudential*, 148 S.W.3d at 139 (holding denial of jury trial is subject to mandamus relief). And it has ordered interlocutory payment of $639,024.04 into the registry. *See Travelers Indem. Co. v. Mayfield*, 923 S.W.2d 590, 594 (Tex. 1996) (granting mandamus relief to reject claim of inherent authority of trial court to award fees against opposing party).

These injuries threaten not only to disrupt Ford + Bergner's ability to operate but also threatens to harm all of its clients and Ford + Bergner's ability to zealously pursue and defend their interests. The trial court should not be permitted to continue these proceedings that are "little more than a fiction" when so much harm is threatened. *Prudential*, 148 S.W.3d at 137.

CONCLUSION AND PRAYER

Ford + Bergner LLP, Don D. Ford III, and Kenneth A. Krohn seek the following relief in the alternative:

- declare the substantive orders of the trial court in Cause No. 2015-GU-00099-5A (the orders signed on August 27, 2020 and March 5, 2021) void and require the trial court to dismiss for lack of jurisdiction the claims in Cause No. 2015-GU-00099-5A;
- strike the substantive orders of the trial court in Cause No. 2015-GU-00099-5A and require the trial court to hold a jury trial on all substantive disputes; or
- strike Don D. Ford III, and Kenneth A. Krohn from the March 5, 2021 order of forfeiture and strike the deadlines in the order for Ford + Bergner LLP to pay money into the court registry.

Respectfully submitted,

By: */s/ Derek D. Bauman*

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CERTIFICATE OF FACTUAL SUPPORT

I hereby certify that I have reviewed the foregoing document and concluded that every factual statement in the foregoing document is supported by competent evidence included in the appendix or the record.

/s/ Derek D. Bauman
Derek D. Bauman

CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared in Microsoft Word for Office for Home and Business in Charter 14-point font. The word-count function shows that, excluding those sections exempted under TRAP 9.4(i)(1), the brief contains 4,489 words.

/s/ Derek D. Bauman
Derek D. Bauman

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2021, a true and correct copy of the foregoing has been served on counsel below via e-service.

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APPENDIX TABLE OF CONTENTS

Appendix 1

Order on Motion to Disqualify
August 27, 2020

CAUSE NO. 2015-GU-000099-5-A

GUARDIANSHIP OF	**§**	**IN THE COUNTY COURT**
	§	
LEON R. BERNSEN, SR.	**§**	**AT LAW NO. FIVE**
	§	
AN INCAPACITATED PERSON	**§**	**NUECES COUNTY, TEXAS**

ORDER

On the 10th day of June, 2020, came on for consideration Lynn Bernsen Allison's and Lea Bernsen Brown's Motion to Disqualify,[1] and the court having considered same, all responses, all arguments of all counsels, all legal authorities, Texas Disciplinary Rules of Professional Conduct, all evidence before the court, and such other matters, the court rules as follows:

The court finds that the Motion to Disqualify was filed by Lynn Bernsen Allison and Lea Bernsen Brown in Cause No. 2015-GU-00099-5 on December 11, 2019.

The court finds that the Motion to Disqualify was joined in by Bradley Pickens on or about December 30, 2019 (in Cause No. 2015-GU-00099-5).

The court finds that the Motion to Disqualify was severed from Cause No. 2015-GU-00099-5 into Cause No. 2015-GU-00099-5-A on or about April 29, 2020.

The court finds that Don Ford, Kenneth Krohn, and Ford + Bergner LLP filed a Jury Demand on or about May 14, 2020 in Cause No. 2015-GU-00099-5-A. This Jury Demand filed by Don Ford, Kenneth Krohn, and Ford + Bergner LLP (such jury demand signed by Betsy Grubbs, as

[1] The motion is actually titled: Motion to Disqualify Ford + Bergner LLP; Motion to Refer Ford + Bergner LLP to State Bar of Texas For Discipline; Motion to Forfeit Fees (Burrow v. Arce, 997 S.W.2d (1999)), and this motion may be sometimes referred to as the "Motion to Disqualify" (further understanding that the court is making no ruling relating to the "Motion to Forfeit Fees (Burrow v. Arce, 997 S.W.2d (1999)) given Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's request for a jury trial on such portion of the motion).

counsel for all of them) specifically requested a jury trial on behalf of Don Ford, Kenneth Krohn, and Ford + Bergner LLP in Cause No. 2015-GU-00099-5-A.[2]

The court finds that Don Ford, Kenneth Krohn, and Ford + Bergner LLP (pleading signed by Betsy Grubbs, as counsel for all of them) filed a "Joinder and Supplemental Response to Motion to Disqualify" on or about June 10, 2020 praying that the Motion to Disqualify be denied.[3]

The court finds that Don Ford, Kenneth Krohn, and Ford + Bergner LLP (pleading signed by Betsy Grubbs) filed a "Motion to Quash Service and for Protection" noting that "Betsy Grubbs ("Grubbs"), an attorney who entered an appearance on behalf of Ford + Bergner LLP, Ford, and Krohn" was served with subpoenas on behalf of Don Ford and Kenneth Krohn. By this filing, Don Ford, Kenneth Krohn, and Ford + Bergner LLP prayed "the Court quash service of the June 8, 2020 subpoenas," for "protection from these subpoenas" – further praying that the court "quash the . . . subpoenas," "enter orders protecting Ford & Krohn from attending any in person hearing . . .," and to "protect Ford and Krohn from complying . . . ."

The court finds that Don Ford, Kenneth Krohn, and Ford + Bergner LLP are parties to Cause No. 2015-GU-00099-5-A; and thereby, may appeal and/or mandamus and/or seek

[2] Only a party to a cause may demand a jury.

[3] In Cause No. 2015-GU-00099-5, Don Ford, Kenneth Krohn, and Ford + Bergner LLP filed a special appearance. In Cause No. 2015-GU-00099-5-A, Don Ford, Kenneth Krohn, and Ford + Bergner LLP never filed a special appearance. Moreover, the Motion to Dismiss filed in Cause No. 2015-GU-00099-5 was filed by Stephen Livingston ("Livingston") with Don Ford, Kenneth Krohn, and Ford + Bergner LLP signing as Livingston's attorneys (not signing as parties to the Motion to Dismiss); whereas this Joinder and Supplemental Response to Motion to Disqualify is a pleading filed by Don Ford, Kenneth Krohn, and Ford + Bergner with Betsy Grubbs signing for Don Ford, Kenneth Krohn, and Ford + Bergner LLP (as parties in Cause No. 2015-GU-00099-5-A). Don Ford, Kenneth Krohn, and Ford + Bergner LLP are parties to Cause No. 2015-Gu-00099-5-A, notwithstanding the fact that Don Ford, Kenneth Krohn, and Ford + Bergner LLP were not parties to the Motion to Dismiss filed by Livingston.

further review of this Order as may be permitted pursuant to Texas law (at such time as may be permitted pursuant to Texas law).

The court finds that Don Ford, Kenneth Krohn, and Ford + Bergner LLP represented – at times material and relevant – Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) in Cause No. 2015-GU-00099-5 and Cause No. 2013-DCV-3624-A (both causes pending in Nueces County, Texas).

The court finds that Leon R. Bernsen (Sr.) and Dianna Bernsen were and/or are opposing parties to the same litigation.

The court finds that Stephen Livingston, as limited guardian of the estate of Leon R. Bernsen (Sr.), and Dianna Bernsen were and/or are opposing parties to the same litigation.

The court finds Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) created the appearance of impropriety (and was an impropriety, in fact).

The court finds Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) compromised the integrity of the legal proceedings and apparent fairness of the administration of justice in multiple cases on file (including but not limited to Cause No. 2015-GU-00099-5 and Cause No. 2013-DCV-3624-A).

The court finds Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) would tend to skew the trial process and mislead a jury (and Don Ford, Kenneth Krohn, and Ford + Bergner LLP have demanded jury trials on several matters of great consequence).

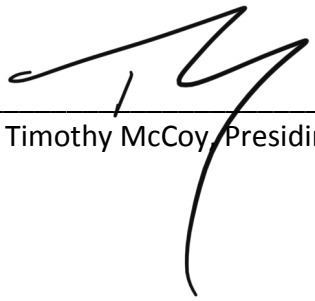
The court finds Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) would tend to promote collusion; and this is of heightened concern considering Leon R. Bernsen's (Sr.) lack of competence coupled with the Thirteenth Court of Appeals opinions in Cause No. 2015-GU-00099-5.

The court finds that there are compelling reasons supporting the disqualification of Don Ford, Kenneth Krohn, and Ford + Bergner LLP; and compelling referral of same to the State Bar of Texas for Discipline.

IT IS THEREFORE ORDERED that:

1. Don Ford, Kenneth Krohn, and Ford + Bergner LLP are hereby disqualified from any and all representation of Stephen Livingston;
2. Don Ford, Kenneth Krohn, and Ford + Bergner LLP are hereby disqualified from any and all representation of Dianna Bernsen;
3. Don Ford, Kenneth Krohn, and Ford + Bergner LLP are hereby disqualified from any and all representation of Leon R. Bernsen (now deceased).
4. Don Ford, Kenneth Krohn, and Ford + Bergner LLP are to be referred to the State Bar of Texas so that all disciplinary issues relating to Don Ford, Kenneth Krohn, and Ford + Bergner LLP (for conduct in or relating to Cause Nos. 2015-GU-00099-5, 2015-GU-00099-5-A, 2013-DCV-3624-A (all pending in Nueces County, Texas), and related causes) may be fully investigated and addressed by the State Bar of Texas (Office of Chief Disciplinary Counsel).

Signed and entered on this the 27 day of August, 2020.



Judge Timothy McCoy, Presiding

Appendix 2

Order of Forfeiture
March 5, 2021

CAUSE NO. 2015-GU-000099-5-A

GUARDIANSHIP OF	§	**IN THE COUNTY COURT**
	§	
LEON R. BERNSEN, SR.	§	**AT LAW NO. FIVE**
	§	
AN INCAPACITATED PERSON	§	**NUECES COUNTY, TEXAS**

ORDER

On the 1st day of March, 2021, came on for consideration Intervenors' / Limited Partners' 'Interested Party's' Motion for Forfeiture of Attorneys' Fees, and the court having considered same, all responses, all evidence and court records, all arguments of counsels, and all legal authorities, the Court finds and rules as follows:

1. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Dianna Bernsen from at least February 15, 2017 to present.
2. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Bernsen Farms Ltd. from December 18, 2018 to present.
3. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Stephen Livingston from September 20, 2017 to present.
4. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Stephen Livingston as purported guardian of Leon R. Bernsen (Sr.) from January 30, 2019 to present.
5. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Dianna Bernsen as general partner of Bernsen Farms Ltd. from June 3, 2020 to present.

6. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Dianna Bernsen as agent under Durable Power of Attorney from October 18, 2019 to present.
7. In various legal proceedings as revealed by court documents, Ford + Bergner LLP represented Ford + Bergner LLP from August 27, 2020 to present.
8. It has been judicially determined that Dianna Bernsen, at times relevant, has interests adverse to Leon R. Bernsen (Sr.); and now his (Leon R. Bernsen (Sr.'s)) estate.
9. It has been judicially determined that Dianna Bernsen, as general partner of Bernsen Farms Ltd. (therefore, Bernsen Farms Ltd.), at times relevant, has interests adverse to any person serving as guardian for Leon R. Bernsen (Sr.) (to wit: Stephen Livingston, as purported guardian of Leon R. Bernsen (Sr.)).
10. Ford + Bergner LLP, at times relevant, simultaneously owed to all seven (7) clients listed above the duty of loyalty and utmost good faith, the duty of candor, the duty to refrain from self-dealing, the duty to act with integrity of the strictest kind, the duty of fair, honest dealing, and the duty of full disclosure.
11. The Court has previously found that:
    (a) Leon R. Bernsen (Sr.) and Dianna Bernsen were and/or are opposing parties to the same litigation.
    (b) Stephen Livingston, as guardian of the estate of Leon R. Bernsen (Sr.), and Dianna Bernsen were and/or are opposing parties to the same litigation.
    (c) Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) created the appearance of impropriety (and was an impropriety, in fact).

(d) Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) compromised the integrity of the legal proceedings and apparent fairness of the administration of justice in multiple cases on file (including but not limited to Cause No. 2015-GU-00099-5 and Cause No. 2013-DCV-3624-A).

(e) Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) would tend to skew the trial process and mislead a jury (and Don Ford, Kenneth Krohn, and Ford + Bergner LLP have demanded jury trials on several matters of great consequence).

(f) Don Ford's, Kenneth Krohn's, and Ford + Bergner LLP's representation of Stephen Livingston, Dianna Bernsen, and Leon R. Bernsen (Sr.) would tend to promote collusion; and this is of heightened concern considering Leon R. Bernsen's (Sr.) lack of competence coupled with the Thirteenth Court of Appeals opinions in Cause No. 2015-GU-00099-5.

12. A "person is not entitled to be paid when he has not provided the loyalty bargained for and promised."[1]

13. " . . . the central purpose of the remedy [forfeiture] is to protect relationships of trust from an agent's disloyalty or other misconduct. Appropriate application of the remedy cannot therefore be measured by a principal's actual damages. An agent's breach of fiduciary duty should be deterred even when the principal is not damaged."[2]

[1] See *Burrow v. Arce,* 997 S.W.2d 229, 237-238 (Texas Supreme Court, 1999).
[2] See *Burrow,* at p. 240.

14. "Thus, when forfeiture of an attorney's fee is claimed, a trial court must determine from the parties whether factual disputes exist that must be decided by a jury before the court can determine whether a clear and serious violation of duty has occurred, whether forfeiture is appropriate, and if so, whether all or only part of the attorney's fee should be forfeited."[3]

15. "If the relevant facts are undisputed, these issues may, of course, be determined by the court as a matter of law. . . . [T]he court must determine, based on the factors we have set out, whether the attorney's conduct was a clear and serious breach of duty to his client and whether any of the attorney's compensation should be forfeited, and if so, what amount. Most importantly, in making these determinations the court must consider whether forfeiture is necessary to satisfy the public's interest in protecting the attorney-client relationship. The court's decision whether to forfeit any or all of an attorney's fee is subject to review on appeal as any other legal issue."[4]

16. The adversity between several of Ford + Bergner LLP's clients, including Leon R. Bernsen, Dianna Bernsen (in various capacities), Stephen Livingston (in various capacities), and Bernsen Farms Ltd., has been confirmed on appeal (and thus no fact issue remains relating to this).

17. The fiduciary duties owed by Ford + Berger LLP to his many clients is not in dispute (and thus no fact issue remains relating to this).

The Court, therefore, finds:

1. After thorough review of the factors set forth in *Burrow v. Arce,* 997 S.W.2d 229 (Texas Supreme Court, 1999), and Texas Disciplinary Rules of Professional Conduct 1.06, 1.07,

[3] See *Burrow*, at p. 246.
[4] See *Burrow*, at p. 246.

and 1.08., the Court finds Ford + Bergner LLP owed, at times relevant, fiduciary duties (including the duty of loyalty) to Dianna Bernsen, on the one hand, and Stephen Livingston as purported guardian of Leon R. Bernsen (Sr.), on the other hand – and such representation of multiple clients with interests adverse to each other was Ford + Bergner LLP's engaging in clear and serious violations of duties owed by Ford + Bergner LLP to its clients.

2. After thorough review of the factors set forth in *Burrow v. Arce,* 997 S.W.2d 229 (Texas Supreme Court, 1999), and Texas Disciplinary Rules of Professional Conduct 1.06, 1.07, and 1.08., the Court finds Ford + Bergner LLP owed, at times relevant, fiduciary duties (including the duty of loyalty) to Bernsen Farms Ltd., on the one hand, and Stephen Livingston as purported guardian of Leon R. Bernsen (Sr.), on the other hand – and such representation of multiple clients with interests adverse to each other was Ford + Bergner LLP's engaging in clear and serious violations of duties owed by Ford + Bergner LLP to its clients.

This Court understands and fully supports the rule of law that a "person is not entitled to be paid when he has not provided the loyalty bargained for and promised."[5] This Court holds sacred the importance of the public policy consideration to " . . . protect relationships of trust from an agent's disloyalty or other misconduct."

IT IS, THEREFORE, ORDERED THAT:

1. Ford + Bergner LLP is disgorged of and immediately forfeits the following attorneys' fees paid by Bernsen Farms Ltd. to Ford + Bergner LLP:

   (a) $30,156.25 (paid on or about March 2017);

   (b) $62,967.27 (paid on or about April 2017);

[5] See *Burrow v. Arce,* 997 S.W.2d 229, 237-238 (Texas Supreme Court, 1999).

(c) $40,544.26 (paid on or about May 2017);

(d) $24,123.91 (paid on or about June 2017);

(e) $95,745.44 (paid on or about July 2017);

(f) $52,281.82 (paid on or about August 2017);

(g) $35,014.17 (paid on or about September 2017);

(h) $22,354.95 (paid on or about October 2017);

(i) $25,819.35 (paid on or about November 2017);

(j) $17,216.43 (paid on or about December 2017);

(k) $19,818.75 (paid on or about January 2018);

(l) $13,533.86 (paid on or about February 2018);

(m)$24,968.75 (paid on or about March 2018);

(n) $22,619.38 (paid on or about April 2018);

(o) $26,196.33 (paid on or about May 2018);

(p) $41,193.14 (paid on or about June 2018);

(q) $10,137.65 (paid on or about July 2018);

(r) $4,116.97 (paid on or about August 2018);

(s) $19,916.97 (paid on or about September 2018);

(t) $53,795.80 (paid on or about October 2018); and

(u) $22,321.94 (paid on or about November 2018).

IT IS ORDERED THAT all amounts set forth herein above shall be paid into the registry of this court on or before March 12, 2021, to be held in the registry of this court until further order from this court.

IT IS FURTHER ORDERED THAT, in the event that Ford + Bergner LLP fails to timely pay the disgorged / forfeited attorneys' fees into the registry of the court (as court ordered herein), then Don Ford III and Kenneth Krohn are ordered to pay any unpaid balance into the registry of the court (on or before March 31, 2021).

IT IS ORDERED THAT all relief not granted herein is denied without prejudice (given Movants' announcement on the record that there is additional evidence to present relating to additional funds possibly subject to forfeiture).

Signed and entered on this the 5 day of March, 2021.

Timothy McCoy, Judge Presiding

Appendix 3

Opinion from Corpus Christi Court of Appeals
13-21-00105-CV
May 3, 2021

NUMBER 13-21-00105-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE FORD + BERGNER LLP, DON D. FORD III, AND KENNETH A. KROHN

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Longoria and Tijerina
Memorandum Opinion by Justice Tijerina[1]

On April 19, 2021, relators Ford + Bergner LLP, Don D. Ford III, and Kenneth A. Krohn filed a petition for writ of mandamus and a motion for emergency relief. Relators assert that (1) the trial court lacks jurisdiction over the underlying matters, (2) relators are entitled to a trial by jury, and (3) the trial court abused its discretion by ordering disputed funds to be placed into the registry of the court. This Court granted relators' request for

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

emergency relief, ordered the trial court proceedings stayed, and requested and received a response to the petition for writ of mandamus from the real parties in interest, Lynn Bernsen Allison, Lea Bernsen Brown, and Leon Garrick Bernsen. *See* TEX. R. APP. P. 52.2, 52.4, 52.8, 52.10.

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam). To obtain relief by writ of mandamus, a relator must establish that an underlying order is void or a clear abuse of discretion and that no adequate appellate remedy exists. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). A trial court abuses its discretion when its 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 at 712. We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against its detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus, the response filed by the real parties in interest, the reply, and the applicable law, is of the opinion that the relators have failed to meet their burden to obtain relief. Accordingly, we lift the stay previously imposed in this case. *See* TEX. R. APP. P. 52.10(b) ("Unless vacated or modified, an order granting temporary relief is effective until the case is finally decided."). We deny the petition for writ of mandamus.

JAIME TIJERINA
Justice

Delivered and filed on the
3rd day of May, 2021.

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