

Mandamus Conditionally Granted; and Opinion Filed October 30, 2013.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-13-01340-CV

IN RE SEVEN HILLS COMMERCIAL, LLC, Relator

**Original Proceeding from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-12-06312-D**

MEMORANDUM OPINION

Before Justices Bridges, Lang-Miers, and Lewis
Opinion by Justice Lewis

Relator filed this mandamus proceeding after the trial court signed an order requiring it to dismiss an arbitration proceeding. In order to obtain mandamus relief, relator must show both that the trial court has abused its discretion and that it has no adequate appellate remedy. *In re Prudential Ins. Co.*, 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). Relator has met this burden.

The trial court found that the parties did not have an agreement to arbitrate, stayed the arbitration filed on relator's behalf and ordered relator and others to cause that arbitration to be dismissed. "A court may stay an arbitration commenced or threatened on application and a showing that there is not an agreement to arbitrate." TEX. CIV. PRAC. & REM. CODE ANN. § 171.023 (West 2011). However, nothing in this section, or elsewhere, gives a trial court the power to require dismissal of an arbitration. We conclude that it was an abuse of discretion for the trial court to do so.

Accordingly, we conditionally grant relator's petition for writ of mandamus. A writ will issue only in the event the trial court fails to vacate the portions of its September 11, 2013 order granting first amended application to stay and dismiss arbitration and denying plaintiff's motion to compel arbitration and stay/abate or, alternatively, to compel arbitration and dismiss and of its September 18, 2013 amended order that require dismissal of the arbitration.

/David Lewis/

DAVID LEWIS
JUSTICE

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