

DISSENT and Opinion Filed July 15, 2020



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

No. 05-20-00595-CV

IN RE AHMED ZIDAN, Relator

**Original Proceeding from the 429th Judicial District Court
Collin County, Texas
Trial Court Cause No. 429-02708-2018**

DISSENTING OPINION

Opinion by Justice Bridges

Because I would conclude the trial court did not abuse its discretion in abating the underlying case pending resolution of the ongoing case in Harris County, I respectfully dissent.

Mandamus is intended to be an extraordinary remedy, available only in limited circumstances. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). Mandamus is appropriate when the relator demonstrates that the trial court clearly abused its discretion and there is no adequate remedy by appeal. *See In re Reece*, 341 S.W.3d 360, 364 (Tex. 2011) (orig. proceeding). A trial court will be held to have abused its discretion only if the relator establishes that the trial court

could have reached but one decision, and not the decision it made. *See Walker*, 827 S.W.2d at 839–40.

Relator Ahmed Zidan argues in his mandamus petition that he “amended his petition to omit the request for a receiver over the Companies and limited the scope of the receivership request to the property located in Collin County.” This is true of Ahmed’s second amended petition. However, in his third amended petition, Ahmed limited some claims to property located in Collin County but then stated the following:

“To the extent that somehow Ahmed is not determined to be the exclusive member and manager of Prime United, a court-appointed receiver would be required to protect the real property in which Ahmed claims an interest through his membership interests in the companies, including the real property located in Collin County.”

I would construe Ahmed’s pleadings as continuing to assert claims and requests for relief against property and parties in Harris County. Specifically, Ahmed seeks injunctive relief against Alex Zidan, a Harris County resident, to prevent Alex from misappropriating funds from the companies at issue. Venue was therefore mandatory in Harris County. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 65.023 (mandatory venue in injunction cases in county in which parties sought to be enjoined reside); *In re Ameri-Fab, LLC*, No. 05-17-01458-CV, 2018 WL 739791, at *2 (Tex. App.—Dallas Feb. 7, 2018, orig. proceeding) (mem. op.)

Further, Ahmed seeks the appointment of a receiver “to protect the real property in which Ahmed claims an interest through his membership interests in the

companies,” presumably including Prime United, an L.L.C. with its principal place of business in Harris County. Again, Harris County is the mandatory venue for a receivership proceeding. *See* TEX. BUS. ORGS. CODE §§ 11.401, 11.402(b) (district court in county in which registered office or principal place of business of domestic entity is located has jurisdiction to appoint receiver).

The majority concludes both Ahmed’s request for injunctive relief and his request for a receiver are “ancillary” requests for relief, citing *In re Fox River Real Estate Holdings, Inc.*, 596 S.W.3d 759, 768 (Tex. 2020) (orig. proceeding) and *In re Ameri-Fab*.

The court in *In re Fox River Real Estate Holdings* addressed a situation in which the parties’ limited partnership agreement contained a venue selection clause establishing venue in Harris County. *In re Fox River Real Estate*, 596 S.W.3d at 762. Plaintiff filed a lawsuit in Washington County where the defendants were domiciled. *Id.* at 761–62. The defendants filed a motion to transfer venue, citing the venue selection clause, and the trial court granted the motion and transferred venue to Harris County. *Id.* at 762. The court of appeals denied the defendants’ petition for mandamus relief without reaching the issue of the applicability of section 65.023. *Id.* On petition for writ of mandamus in the Texas Supreme Court, the defendants argued the case was primarily a suit for injunctive relief, and section 65.023 established mandatory venue in Washington County, the defendants’ county of domicile. *Id.* at 765. The court concluded plaintiff’s “plea for an injunction

requiring disgorgement of all wrongfully acquired assets” was not “predominantly remedial to the bulk of the claims” plaintiff had asserted. *Id.* at 768. Because injunctive relief was not the primary and principal relief requested, the court determined section 65.023 did not apply. *Id.* Accordingly, the court concluded the trial court did not abuse its discretion in transferring the case to the parties’ agreed venue and denied the petition for mandamus relief. *Id.*

This Court, in *In re Ameri-Fab*, concluded requests for injunctive relief and the appointment of a receiver were ancillary to the other relief sought where the live pleading sought no injunctive relief and did not request the appointment of a receiver. However, in setting out the law applicable to the case, the court noted that “a request for injunctive relief is the primary or principal relief sought, and section 65.023 therefore governs venue, when the plaintiff specifically pleads for permanent injunctive relief.” *In re Ameri-Fab*, 2018 WL 739791, at *2. Similarly, the Court noted that section 64.071 of the civil practice and remedies code provides that an action to have a receiver appointed for a corporation with property in this state shall be brought in the county in which the principal office of the corporation is located. *Id.*

Here, Ahmed’s third amended petition, the live pleading, was entitled, in part, “Request for Temporary and Permanent Injunction.” The petition set forth the actions Ahmed asked the court to restrain and enjoin in a temporary injunction and permanent injunction. These actions included purporting to act for Prime United,

Kwik Kar, or Legacy; incurring any debts or liabilities on behalf of the Company; copying, destroying, or removing any of the Company's information or property from any of its offices; interfering with the Company's business; terminating any credit cards or other business lines of credit; withdrawing money from any Company accounts; and dissipating any Company assets. The prayer for relief asked for, among other things, entry of a temporary injunction and a permanent injunction. As discussed above, the petition sought the appointment of a receiver "to protect the real property in which Ahmed claims an interest through his membership interests in the companies," presumably including Prime United. Under these circumstances, I would conclude the trial court did not abuse its discretion in concluding venue was mandatory in Harris County and abating the Collin County case. *See Walker*, 827 S.W.2d at 839–40. Accordingly, I would deny the petition for writ of mandamus.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

200595DF.P05