ACCEPTED
04-15-00276-CV
FOURTH COURT OF APPEALS
SAN ANTONIO, TEXAS
5/4/2015 9:23:55 PM
KEITH HOTTLE
CLERK

NO. 04-15-00276-CV

IN RE:	§	IN THE FOURTH
	§	
DESCON CONSTRUCTION, L.P.,	§	COURT OF APPEALS
	§	
Relator.	§	SAN ANTONIO, TEXAS

FILED IN
4th COURT OF APPEALS
SAN ANTONIO, TEXAS
5/4/2015 9:23:55 PM
KEITH E. HOTTLE
Clerk

RELATOR'S MOTION FOR EMERGENCY STAY

Relator asks the Court for an emergency stay of the trial and proceedings in the District Court. This case is set for trial on the trial court's docket on May 11, 2015 at 9:00 a.m. Therefore, Relator respectfully requests that this Court waive the ten day period for considering motions pursuant to Tex. R. App. P. 10.3(3) and issue a ruling granting stay on or before May 8, 2015.

A. Introduction

1. Relator is Descon Construction, L.P.; real party interest is Rio Grande City Consolidated Independent School District.

2. Respondent is The Honorable Ana Lisa Garza, Judge Presiding in the 229th Judicial District Court of Starr County, Texas.

3. Real Party in Interest, Rio Grande City Consolidated Independent School District, filed suit against Descon Construction, L.P. in the 229th Judicial District, Starr County, Texas, in the case styled *Rio Grande City Consolidated Independent School District v. Descon Construction L.P., Cause No. DC-14-46.*

4. Relator attaches a certificate of compliance certifying that on May 4, 2015, they notified Real Party in Interest by telephone that a motion for temporary relief would be filed.

Tex. R. App. P. 52.10(a). This motion is being served on Real Party in Interest and Respondent electronically contemporaneously with the filing of this motion.

5. Relator has filed a petition for writ of mandamus, served on both the Real Party in Interest and Respondent, establishing its right to mandamus relief based on Respondent's orders which allowed Real Party in Interest to name six new individuals and entities as defendants a week before trial, despite the fact that none of the newly named individuals and entities have been served and are not before the Court.

Respondent has been notified that underlying counsel does not represent the newly added parties and that there may be a conflict between the parties. Nonetheless, the Court ordered counsel for Relator to provide information regarding those entities on one hour' notice without having the opportunity to contact counsel for any of the entities. It is believed that similar demands would be made on issues including disclosure of evidence and securing the witnesses for trial. Respondent denied Relator's motion to abate or motion for continuance so that service could be had and counsel for the entities could appear.

Trial, which is projected to last three to four weeks, is less than one week away. As of this date, Relator does not know if the newly named parties will waive service and appear at trial, or allow a default to be taken against them. In either instance, due to the timing of Respondent's actions, it may not be possible to develop an appellate record that adequately preserves the defenses to the allegation that Relator is jointly and severally liable with the newly named individuals and entities.

In the absence of a stay, the subject matter of this mandamus will be mooted by trial. If Relator is forced to proceed to trial in this construction defect case under the theory that it is jointly and severally liable with six unserved entities and individuals with whom it may be adverse, its appellate rights will be compromised. Additionally, Relator will suffer irreparable injury and overwhelming loss of resources which, in all likelihood, cannot be fully remedied on appeal or in a subsequent proceeding.

6. Real Party in Interest Rio Grande City Consolidated Independent School District does not agree to this motion. The remaining parties either agree to this motion or have not responded to attempts to confer, but are believed, in good faith, to be in agreement with this motion as set forth in the attached affidavit.

B. Argument & Authorities

7. The Court may grant temporary relief pending its determination of an original proceeding. Tex. R. App. P. 52.10(b).

8. This emergency stay is necessary to maintain the status quo of the parties and to preserve the Court's jurisdiction to consider the merits of the original proceeding. *In re Reed*, 901 S.W.2d 604,609 (Tex. App.—San Antonio 1995, orig. proceeding).

9. This motion is verified by counsel for Relator.

C. Conclusion

10. Relator seeks mandamus relief to preserve its rights to develop a defense and appellate record. In the absence of mandamus relief, Relator will be allocated liability for individuals and entities who are not before the Court. This case is set on the court's docket

for May 11, 2015 at 9:00 a.m. If stay is not granted, this mandamus will be rendered moot by trial.

D. Prayer

11. For the reasons stated in this motion, Relator asks the Court for an emergency stay to maintain the status quo of the parties and preserve the Court's jurisdiction to consider the merits of Relator's original proceeding.

Respectfully submitted,

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Date: May 4, 2015

By: */s/ Karen L. Landinger*

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ATTORNEYS FOR RELATOR,
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CERTIFICATE OF SERVICE

I certify that a copy of *Relator's Motion for Emergency Stay* was served on the following on May 4, 2015, before 10:00 p.m. local time of the recipient as indicated:

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/s/ Karen L. Landinger
KAREN L. LANDINGER

STATE OF TEXAS §
BEXAR COUNTY §

AFFIDAVIT OF ROBERT M. SMITH

Before me, the undersigned notary, on this day personally appeared ROBERT M. SMITH, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is ROBERT M. SMITH. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. "Relator has filed a petition for writ of mandamus contemporaneously with this Motion.

3. "This case is set for trial on the trial court's docket for May 11, 2015 at 9:00 a.m.

4. "All interested parties affected by this motion have been notified of the filing of the mandamus and of Relator's request for emergency relief to stay the underlying proceedings.

5. "Real Party in Interest Rio Grande City Consolidated Independent School District opposes this motion."

6. "Defendants Halff Associates, Inc., and Menton J. Murray III P.E. agree to this motion."

7. "Defendant D & J Site Construction, Inc., agrees to this motion"

8. "Defendant Faires Plumbing Co., Inc., has been granted summary judgment in this case, but affirmatively stated that it has no opposition to this motion."

9. "Defendant Limon Masonry Inc., is unopposed to this motion."

10. "Defendant ERO International, LLP., Daniel Block, & Eli R. Ochoa, are not opposed to this motion.

11. "Defendant C&M Contracting, Inc., is not opposed to this motion."

12. "Defendants Daniel Vasquez, Individually and dba Twin City Glass, and Zarate Suspended Ceiling, Inc., has not responded to undersigned's attempts to confer as of the time of filing."

13. "Defendants AAS Consulting, Inc., dba Advance Air Systems, C.A. Ray & Son Painting Contractors, Inc., RGV-R&R Construction Services LLC.,, Perez Consulting

Engineers and KBM Air Conditioning, Inc., have been granted summary judgment and are no longer in this suit."

FURTHER AFFIANT SAYETH NOT.

ROBERT M. SMITH

Sworn to and subscribed before me by ROBERT M. SMITH on this, the 4th day of May, 2015.

TERRIE A. EDWARDS
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
FEB. 29, 2016

Notary Public in and for the State of Texas

CERTIFICATE OF CONFERENCE AND COMPLIANCE

Under Texas Rule of Appellate Procedure 52.10(a), I certify that on May 4th, 2015, I notified Rio Grande City Consolidated Independent School District, through counsel of record, Norman Jolly, by telephone that a motion for temporary relief would be filed. A copy of this motion was served on Norman Jolly electronically at the time of filing. All other parties to this proceeding were also notified that a motion for temporary relief would be filed and were electronically served.

/s/ Karen L. Landinger

KAREN L. LANDINGER
Attorney for Relator