

FILED

AUG 11 2005

CAROL ANNE FLORES, CLERK
COURT OF APPEALS
NINTH DISTRICT
Beaumont, Texas

In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-05-223 CV

IN RE POPULAR LEASING USA, INC.

Original Proceeding

MEMORANDUM OPINION

In this original proceeding, relator, Popular Leasing USA, Inc., seeks mandamus relief from the respondent's May 12, 2005, order denying relator's motion to dismiss. In the underlying class action lawsuit, the real party in interest, Party Props, Inc., and three other plaintiffs, sued relator and three other defendants under a number of theories including rescission of certain equipment rental leases, unreasonable debt collection practices, injunctive relief, and declaratory judgment. Both relator and Party Props, Inc. agree that all of the other plaintiffs and defendants have either settled their respective claims, or have agreed to transfer venue of said claims.

Party Props, Inc.'s pleadings allege, *inter alia*, that the equipment subject to the equipment rental agreement in question never worked; that relator was aware of relator's assignor's (Norvergence) fraudulent misrepresentation to Party Props, Inc. that the leased equipment would work; that in July of 2004, relator's assignor sought Chapter 11 bankruptcy protection of which relator was fully aware; and that the forum selection clause contained in the equipment rental agreement in question is unenforceable because it does not provide for a specific venue should either party wish to litigate any issue relating to the equipment rental agreement. Invoking the forum selection clause in the equipment rental agreement, relator filed its motion to dismiss for lack of jurisdiction. Respondent later issued his order denying relator's motion to dismiss.

A writ of mandamus will issue to correct a clear abuse of discretion when there is no other adequate remedy at law. *See In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001) (orig. proceeding). The trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). When the trial court's decision rests on resolution of fact issues, the party opposing the trial court's decision must establish that the court could reasonably have reached only one decision. *Id.* at 840. We find the relator has not demonstrated that the respondent abused his

discretion, nor has relator shown that it is entitled to the relief sought. Accordingly, the petition for writ of mandamus is denied.

WRIT DENIED.

PER CURIAM

Submitted on June 6, 2005
Opinion Delivered August 11, 2005

Before McKeithen, C.J., Kreger and Horton, JJ.



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BENCKENSTEIN &
OXFORD, LLP

CHIEF JUSTICE
STEVE MCKEITHEN

JUSTICES
DAVID B. GAULTNEY
CHARLES KREGER
HOLLIS HORTON

Court of Appeals
State of Texas
Ninth District

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RE: Case Number: 09-05-00223-CV
Trial Court Case Number: A-173174

Style: In Re Popular Leasing USA, Inc.

Enclosed is a copy of the Court's Memorandum Opinion issued this date in the above styled and numbered cause. The petition for writ of mandamus is denied.
Also, enclosed is a copy of the Court's judgment.

Sincerely,

CAROL ANNE FLORES, CLERK

CC: Judge James W. Mehaffy Jr

**COURT OF APPEALS
NINTH DISTRICT OF THE STATE OF TEXAS**
1001 Pearl, Suite 330
Beaumont, Texas 77701

Judgment entered August 11, 2005


No. 09-05-00223-CV

In Re Popular Leasing USA, Inc.

Original Proceeding

Per Curiam

The Relator, Popular Leasing USA, Inc., filed a petition for writ of mandamus in the above styled and numbered cause and the same being considered, it is the opinion of this Court that the same be and is hereby DENIED. A copy of this judgment shall be certified below for observance.

A handwritten signature in black ink, appearing to read 'CAF', with a long horizontal flourish extending to the right.

Carol Anne Flores
Clerk of the Court