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**IN RE MORLEY & MORLEY, P.C., AJMLAW, P.C., ARDEN J. MORLEY,  
ELAINE MORLEY, and LOOKOUT SERVICES, INC., Relators**

**NO. 14-08-01062-CV**

**COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON**

**2008 Tex. App. LEXIS 8991**

**November 25, 2008, Memorandum Opinion Filed**

**DISPOSITION:** [\*1] Petition Denied, Motion for Emergency Stay Denied as Moot.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Real party in interest, a computer consulting services provider, filed suit against relator customers in the Harris County Court at Law No. 4 (Texas). Relators filed a separate suit in district court, asserting a counterclaim. Relators sought mandamus relief and a motion for emergency stay after respondent, the county court's presiding judge, denied their motion to consolidate the two suits and transfer the consolidated suit to district court.

**OVERVIEW:** Relators argued in their counterclaim that they were fraudulently induced to enter into a computer-services contract with the provider, and they claimed to have suffered damages in excess of the jurisdictional limits permitted for the county court. The court found that relators had not demonstrated their entitlement to a writ of mandamus. Relators' counterclaim could be tried separately in district court; therefore, relators' ability to sue the provider for fraudulent inducement was preserved. The court disagreed with relators that their counterclaim might be barred in the district court under the doctrines of collateral estoppel and/or res judicata. Neither doctrine applied pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 31.004(a) (2008) because the county court lacked subject-matter jurisdiction to hear relators' fraudulent-inducement counterclaim. Relators had not shown that they stood to permanently lose substantial rights. Although separate trials in county court and district court might be more expensive and less efficient than a consolidated trial in district court, an appellate remedy was not inadequate merely because it might involve more expense or delay than mandamus.

**OUTCOME:** The court denied relators' petition for writ of mandamus and also denied as moot relators' motion for emergency stay.

**CORE TERMS:** counterclaim, writ of mandamus, emergency, res judicata, mandamus, orig, collateral estoppel, moot, consolidation, abused, jurisdictional limits, abuse of discretion, substantial rights, fraudulent-inducement, consolidated, county-court, permanently, preclusion, adequacy, scenario, judicata, Res, consulting, contending, lawsuit

**LexisNexis(R) Headnotes**

*Civil Procedure > Remedies > Writs > Common Law Writs > Mandamus*

*Civil Procedure > Appeals > Standards of Review > Abuse of Discretion*

[HN1] To be entitled to mandamus relief, a relator must demonstrate that a trial court clearly abused its discretion, and that the relator has no adequate remedy by appeal. A trial court abuses its discretion if it renders a decision that is arbitrary, unreasonable, or lacking in basis or reference to guiding legal principles. With respect to the resolution of

factual issues, an appellate court will not substitute its judgment for the trial court's; therefore, the relator must establish the trial court reasonably could have reached only one decision. On the other hand, a trial court has no discretion in determining what the law is or applying the law to the facts. Accordingly, a clear failure by the trial court to analyze or apply the law correctly constitutes an abuse of discretion.

***Civil Procedure > Remedies > Writs > Common Law Writs > Mandamus***

***Civil Procedure > Appeals > Standards of Review > General Overview***

[HN2] Whether a mandamus petitioner's appellate remedy is adequate has no comprehensive definition. In deciding the adequacy of relators' appellate remedy, an appellate court must carefully balance jurisprudential considerations implicating both public and private interests. In determining whether appeal is an adequate remedy from an order denying consolidation, the appellate court considers whether the benefits outweigh the detriments of mandamus review. An appeal is inadequate when a litigant is in danger of permanently losing substantial rights. That scenario may arise if an appellate court would not be able to cure the error, the litigant's ability to present a viable claim or defense is vitiated, or the error cannot be made part of the appellate record.

***Civil Procedure > Judgments > Preclusion & Effect of Judgments > Estoppel > Collateral Estoppel***

***Civil Procedure > Judgments > Preclusion & Effect of Judgments > Res Judicata***

[HN3] Within the general doctrine of res judicata, there are two principal categories: (1) claim preclusion, also known as res judicata, and (2) issue preclusion, otherwise known as collateral estoppel. Res judicata prevents a party from relitigating a claim that either has been finally adjudicated or, through the use of diligence, should have been litigated in the previous suit. By contrast, collateral estoppel prevents the relitigation of particular issues that already were resolved in an earlier suit.

***Civil Procedure > Judgments > Preclusion & Effect of Judgments > Estoppel > Collateral Estoppel***

***Civil Procedure > Judgments > Preclusion & Effect of Judgments > Res Judicata***

[HN4] The legislature has limited the application of res judicata when a county-court trial will precede a trial in district court. Tex. Civ. Prac. & Rem. Code Ann. § 31.004(a) (2008). Res judicata presumes that the prior judgment was rendered by a court of competent jurisdiction. Thus, res judicata does not bar the subsequent litigation of a counterclaim over which the prior court lacked jurisdiction. Similarly, collateral estoppel does not apply if the previous trial court lacks the jurisdiction to make a full and final adjudication of the defendant's counterclaim.

**JUDGES:** Panel consists of Chief Justice Hedges, and Justices Yates and Boyce.

**OPINION**

**ORIGINAL PROCEEDING**

**WRIT OF MANDAMUS**

**MEMORANDUM OPINION**

On November 21, 2008, relators filed a petition for writ of mandamus and a motion for emergency stay with this court. See Tex. Gov't Code Ann. § 22.221(b) (Vernon 2004); Tex. R. App. P. 52. Relators contend the respondent<sup>1</sup> abused her discretion by denying their consolidation motion. Because we hold relators' appellate remedy is adequate, we deny the petition for writ of mandamus and deny as moot relators' motion for emergency stay.

<sup>1</sup> The respondent is the Honorable Roberta A. Lloyd, presiding judge of County Court at Law # 4, Harris County.

## BACKGROUND

Relators, which consist of Morley & Morley, P.C., AJMLAW, P.C., Arden J. Morley, Elaine Morley, and Lookout Services, Inc., are the defendants in a lawsuit brought in county court by the real party in interest, John Anderson & Co., L.L.C. d/b/a Houston Computer Consulting, L.L.C. ("HCC"). Pursuant to a written contract, HCC provided computer consulting services to relators. HCC brought suit in county court, contending relators failed to pay several of HCC's invoices [\*2] totaling \$ 19,842.52. In its suit, HCC also has requested an award of attorney's fees, and pre-judgment and post-judgment interest. The county court has scheduled a December 1, 2008 trial date.

Relators contend they were fraudulently induced to enter into the computer-services contract, however, and claim to have suffered damages in excess of the jurisdictional limits permitted for the county court. Therefore, on October 17, 2008, relators brought a separate suit in district court, in which they assert a counter-claim against John Anderson and John Anderson & Co., L.L.C. On November 3, relators asked the county court to consolidate the two lawsuits and then transfer the consolidated suit to district court. The county court denied relators' motion on November 7.

On November 21, relators filed a petition for writ of mandamus, contending the county court abused its discretion by denying their consolidation and transfer motion. In the interim, relators ask us to issue an emergency order staying the county court's December 1 trial setting. We conclude relators have an adequate appellate remedy. Therefore, we deny the mandamus petition and further deny, as moot, relators' motion for emergency [\*3] stay.

## STANDARD OF REVIEW

[HN1] To be entitled to mandamus relief, a relator must demonstrate that the trial court clearly abused its discretion, and that relators has no adequate remedy by appeal. *In re Sw. Bell Tel. Co.*, 226 S.W.3d 400, 403 (Tex. 2007) (orig. proceeding). A trial court abuses its discretion if it renders a decision that is arbitrary, unreasonable, or lacking in basis or reference to guiding legal principles. *See Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding); *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985) (orig. proceeding). With respect to the resolution of factual issues, we will not substitute our judgment for the trial court's; therefore, the relator must establish the trial court reasonably could have reached only one decision. *Walker*, 827 S.W.2d at 839-40. On the other hand, a trial court has no discretion in determining what the law is or applying the law to the facts. *See id.* at 840. Accordingly, a clear failure by the trial court to analyze or apply the law correctly constitutes an abuse of discretion. *Id.*

## ADEQUACY OF RELATORS' APPELLATE REMEDY

[HN2] Whether a mandamus petitioner's appellate remedy is *adequate* "has no comprehensive [\*4] definition." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). In deciding the adequacy of relators' appellate remedy, we must carefully balance jurisprudential considerations implicating both public and private interests. *See id.* In determining whether appeal is an adequate remedy from an order denying consolidation, we consider whether the benefits outweigh the detriments of mandamus review. *See id.* An appeal is inadequate when a litigant is in danger of permanently losing substantial rights. *In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 211 (Tex. 2004) (orig. proceeding). That scenario may arise if an appellate court would not be able to cure the error, the litigant's ability to present a viable claim or defense is vitiated, or the error cannot be made part of the appellate record. *Id.*

None of these scenarios is present in this case. Relators contend its fraudulent-inducement counterclaim cannot be presented in county court because the amount in controversy exceeds \$ 100,000. *See* Tex. Gov't Code Ann. § 25.0003(c)(1) (Vernon 2004). However, its counterclaim may be tried separately in district court; therefore, relators' ability to sue HCC for [\*5] fraudulent inducement is preserved. *See Van Waters & Rogers*, 145 S.W.3d at 211. Relators respond that their counterclaim, which cannot be presented in the county-court trial, may be barred in the district court under the doctrines of collateral estoppel and/or res judicata. We disagree.

[HN3] Within the general doctrine of res judicata, there are two principal categories: (1) claim preclusion, also known as res judicata, and (2) issue preclusion, otherwise known as collateral estoppel. *Barr v. Resolution Trust Corp.*, 837

S.W.2d 627, 628 (Tex. 1992). Res judicata prevents a party from re-litigating a claim that either has been finally adjudicated or, through the use of diligence, should have been litigated in the previous suit. *See id.* By contrast, collateral estoppel prevents the re-litigation of particular issues that already were resolved in an earlier suit. *See id.* at 628-29.

Initially, we note that [HN4] the Legislature has limited the application of res judicata when a county-court trial will precede a trial in district court. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.004(a) (Vernon 2008); *C/S Solutions, Inc. v. Energy Maint. Servs. Group LLC*, 274 S.W.3d 299, 2008 Tex. App. LEXIS 8504, 2008 WL 4757003, at \*8 (Tex. App.--Houston [1st Dist.] Oct. 30, 2008, no pet. h.). [\*6] We further conclude that neither doctrine applies in this case, because the county court lacks subject-matter jurisdiction to hear relators' fraudulent-inducement counterclaim. *See Kitchen Designs, Inc. v. Wood*, 584 S.W.2d 305, 307 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.) (requiring dismissal of counterclaim exceeding county court's jurisdictional limit). Res judicata presumes that the prior judgment was rendered by a court of competent jurisdiction. *See Igal v. Brightstar Info. Tech. Group, Inc.*, 250 S.W.3d 78, 86 (Tex. 2008). Thus, res judicata does not bar the subsequent litigation of a counterclaim over which the prior court lacked jurisdiction. *See id.*; *Texas A&M Univ. Sys. v. Luxemburg*, 93 S.W.3d 410, 418 (Tex. App.--Houston [14th Dist.] 2002, pet. denied). Similarly, collateral estoppel does not apply if the previous trial court lacks the jurisdiction to make a full and final adjudication of the defendant's counterclaim. *See SWEPI, L.P. v. Camden Res., Inc.*, 139 S.W.3d 332, 340 (Tex. App.--San Antonio 2004, pet. denied).

Relators have not shown that they stand to permanently lose substantial rights. *See Van Waters & Rogers*, 145 S.W.3d at 211. Although separate trials [\*7] in county court and district court may be more expensive and less efficient than a consolidated trial in district court, an appellate remedy is not inadequate merely because it may involve more expense or delay than mandamus. *See Walker*, 827 S.W.2d at 842. We conclude relators have not demonstrated their entitlement to a writ of mandamus.

Accordingly, we deny the petition for writ of mandamus. Because of our resolution of this matter, we need not decide whether relators have demonstrated an abuse of discretion by the trial court. We also deny as moot relators' motion for emergency stay.

PER CURIAM

Petition Denied, Motion for Emergency Stay Denied as Moot, and Memorandum Opinion filed, November 25, 2008.