

Supreme Court of Texas

No. 24-0557

In re Red Bird Trail Apartments, Bridgeway Capital, LLC, and
NCM Management LTD.,

Relators

On Petition for Writ of Mandamus

JUSTICE YOUNG, concurring in the denial of the petition for writ of mandamus.

A jury has already been selected for this trial, which relators ask the Court to stay, primarily because of the eve-of-trial introduction of significant new evidence (including a new expert report) that relates to causation and damages. It is possible that there is good cause for real parties in interest to submit this evidence so long after discovery closed nearly four years ago. But any justification for disclosing it so soon before trial is hard to imagine. Under Texas Rule of Civil Procedure 193.6, the consequence of such untimeliness is the exclusion of the evidence or a continuance. The trial court has insisted on proceeding with trial, but—despite relators’ repeated efforts to obtain a ruling—has refused to address the admissibility of the new evidence. The trial court will have no choice but to rule on that matter when the evidence is proffered. This Court’s denial of relators’ request to stay the trial should

not be misunderstood as suggesting that there is no problem with proceeding to trial and using this evidence. To the contrary, if the trial proceeds and the evidence is presented, any outcome unfavorable to defendants would seem, at the least, to mandate a new trial. The long and troubling history of this ill-starred case, and the fact that a jury has been selected without such basic matters as the present issue having been resolved, hardly inspires confidence, but the trial court remains free to make further rulings and manage the conduct of the trial in a way that will avoid such a massive waste of party and judicial resources. On these understandings, I concur in the denial of the stay and petition for writ of mandamus.

Evan A. Young
Justice

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