

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 20, 2017

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

In re: TEXAS BRINE COMPANY, LLC,

Petitioner.

No. 17-6134  
(D.C. No. 5:16-CV-01026-D)  
(W.D. Okla.)

ORDER

Before **BRISCOE, O'BRIEN**, and **PHILLIPS**, Circuit Judges.

Texas Brine Co. petitions this court for a writ of mandamus vacating the district court's order partially enforcing a subpoena duces tecum in a case out of the Eastern District of Louisiana. We deny the petition.

Texas Brine filed a motion to quash the subpoena that was filed in the Western District of Oklahoma and the district court granted it in part and denied it in part. Specifically, the district court ordered Texas Brine's management consulting/public relations firm to produce several classes of requested documents "subject to privilege screening and production of a [privilege] log consistent with Fed. R. Civ. P. 26(b)(5)(A)." Pet. App. at 113. Texas Brine appealed this determination to this court and the appeal is still pending. *See* Appeal No. 17-6075. Texas Brine filed the instant petition as a protective action in case we decide the district court's order is not subject to interlocutory appeal. Texas Brine argues in its appeal and in its mandamus petition that the district court read Louisiana's privilege statute too narrowly.

“Only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of [the] extraordinary remedy [of mandamus].” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). “Mandamus is not the same as, nor is it a substitute for, a direct appeal.” *In re Motor Fuel Temperature Sales Practices Litig.*, 641 F.3d 470, 487 (10th Cir. 2011). Therefore, “[t]here must be more than what we would typically consider to be an abuse of discretion in order for the writ to issue.” *Cooper Tire*, 568 F.3d at 1186. The petitioner must show it has “no other adequate means to attain the relief [it] desires” and its “right to the writ is clear and indisputable.” *Id.* at 1187 (internal quotation marks omitted). Further, this court, “in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” *Id.* (internal quotation marks omitted).

In its petition, Texas Brine admits that “the extension of the attorney-client privilege to a public relations consultant under Louisiana law is an issue of first impression and counsels in favor of appellate review of the issue.” Pet. at 10. While appellate review might be useful to the parties, the fact that Louisiana law provides no clear answer to the extent of Texas Brine’s claimed privilege assures us that Texas Brine cannot establish a “clear and indisputable” right to vacatur of the district court’s order. The petition for a writ of mandamus is denied.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk