

No. 08-0531

Supreme Court of Texas

***In Re: International Profit Associates, Inc., et al.,
Relators***

Hon. Mark Greenberg, County Court at Law No. 5,
Dallas County, Texas
Respondent

Emergency Motion for Temporary Relief

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Texas Rule of Appellate Procedure 52.10, Relators move for a temporary stay of all proceedings in the trial court until this Court can review and rule on Relators' petition for writ of mandamus. The relief is necessitated by the trial court's clear error in refusing to dismiss this case pursuant to the enforceable forum selection clause negotiated and executed by the parties.

BACKGROUND AND NATURE OF RELIEF REQUESTED

In June, a few days before Relators filed the petition for writ of mandamus with this Court, the trial court set this case for jury trial on January 12, 2009. This Court ordered briefing on the merits of the petition. The briefing process was completed by December 3, 2008, pursuant to the schedule set by the Court.

Relators filed a motion to abate the proceedings in the trial court, which was opposed

by Real Party in Interest, Riddell Plumbing, Inc. At a hearing on the motion, the trial court and the parties agreed to continued the trial setting to May 4, 2009 to give this Court time to rule on the petition for writ of mandamus. [See Exhibit A].

In the interim, however, Riddell Plumbing has filed a motion for partial summary judgment and set it for hearing on March 20, 2009. [See Exhibit B]. Relators filed a motion for continuance and a second motion to abate, but the trial court will not hear those motions prior to March 20. Consequently, Relators are being forced to expend resources to respond to Riddell Plumbing's motion for summary judgment as well as prepare for a possible trial.

Relators respectfully ask this Court to grant this motion for temporary relief by staying all the proceedings in the trial court as soon as practicable, and prior to March 13, 2009 (when Relator's response to Riddell Plumbing's motion for summary judgment must be filed) and March 20, 2009 (the date of the hearing on the motion for summary judgment).

ARGUMENT

The basis of Relators' petition for writ of mandamus is the enforcement of a forum selection clause requiring suit in Illinois. The purpose of the forum selection clause will clearly be defeated if Relators are forced to complete discovery, respond to a motion for summary judgment and proceed to trial before this Court considers the mandamus petition.

This Court has held repeatedly that mandamus relief is the only viable method to effectively remedy a trial court's clear error in refusing to enforce a valid forum selection clause. *In re AutoNation*, 228 S.W.3d 663, 667 (Tex. 2007); *In re International Profit Assoc.*, – S.W.3d – , 52 Tex. Sup. Ct. J. 272 (Tex. 2009). The Court has emphasized that

subjecting a party to trial in a forum other than that contractually agreed on is “clear harassment” that leads to a waste of judicial resources. *AutoNation*, 228 S.W.3d at 667-68. The issues that the petition addresses are important and warrant review by this Court.

The Court should therefore grant this motion to stay in order to preserve any rights that Relators might have until a determination as to those rights can be made.

PRAYER

For these reasons, Relators respectfully request that the Court grant this motion and stay all proceedings in the trial court pending this Court’s review and a decision on the petition for mandamus. Relators also request such further relief to which they are entitled.

Respectfully submitted,

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Verification

State of Texas §
 §
County of Kendall §

Kelly P. Rogers, being duly sworn on her oath, says that she is counsel for Relators in the above referenced action, that she has read the foregoing Emergency Motion for Temporary Relief, and that all facts therein not verified through the mandamus record are within her own knowledge and are true and correct. In addition, the Notice of Jury Trial attached hereto as Exhibit A is a true and correct copy of the original document filed in County Court at Law No. 5, Dallas County, Texas. The letter from opposing counsel attached hereto as Exhibit B is a true and correct copy of the letter received by counsel in this case notifying counsel of the hearing setting.

Kelly Putney Rogers

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of March, 2009.

Notary Public, State of Texas

Certificate of Notice of Motion and of Conference

Pursuant to Texas Rule of Appellate Procedure 10.1 and 52.10, Relators notified counsel for Plaintiff Riddell Plumbing, Inc. on March 5, 2009, that Relators would seek temporary relief as described herein. Relators conferred with opposing counsel concerning the matters raised in this motion. Riddell Plumbing is opposed to any stay.

Kelly Putney Rogers

Certificate of Service

This is to certify that a true and correct copy of the above and foregoing has been served via telecopier and/or certified mail, return receipt requested, as follows:

Respondent:

Hon. Mark Greenberg
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on this the ____ day of March, 2009.

KELLY P. ROGERS