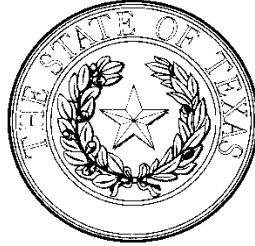


Opinion issued August 30, 2012



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00722-CV

IN RE WÄRTSILÄ NORTH AMERICA, INC., Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Wärtsilä North America, Inc., seeks mandamus relief directing the respondent to withdraw his order granting the motion to compel and to conduct an

evidentiary hearing on certain “gateway” matters and rule on those matters prior to sending the dispute to arbitration in the future.¹

Mandamus requires the relator to show that (1) the trial court clearly abused its discretion and (2) the relator has no adequate remedy by appeal. *In re Gulf Exploration, LLC*, 289 S.W.3d 836, 842 (Tex. 2009). It is generally unavailable if the order at issue compels arbitration: even if the relator can meet the first prong of this test by showing an abuse of discretion, it can rarely meet the second prong. *Id.* Indeed, “[i]f a trial court compels arbitration when the parties have not agreed to it, that error can unquestionably be reviewed by [final] appeal.” *Id.*

Although parties may expend time and money if they are ordered to arbitration improperly, delay and expense—standing alone—will not render the final appeal inadequate. *Id.* That rule is especially true when the substance of the arbitration is a contract claim, because the prevailing party can recover fees and expenses. *Id.* The underlying case here involves only contract claims, and no conflicting legislative mandates are implicated. *See id.* (identifying rare exception when mandamus may allow appellate court to give direction to law that would otherwise prove elusive in appeal from final judgment). In sum, Wärtsilä has not carried its burden to show that it lacks an adequate remedy by appeal. *Compare id. with In re Sthran*, 327 S.W.3d 839, 846 (Tex. App.—Dallas 2010, orig.

¹ The underlying case is cause number 2009-54441, which is pending in the 55th District Court of Harris County, Texas, the Hon. Jeff Shadwich presiding.

proceeding) (concluding that relator lacked adequate remedy by appeal when “legislative mandates might be construed to conflict” and it was “not clear that any fees and expenses incurred as a result of arbitration [would] be recoverable” in tort action), and *In re Villanueva*, 311 S.W.3d 475, 483–84 (Tex. App.—El Paso 2009, orig. proceeding) (concluding that relator lacked adequate remedy by appeal when relator would not be able to recover fees and expenses in tort action and, more compellingly, because case involved “conflicting rulings” which were “significant rulings in exceptional cases”).

Therefore, the petition for writ of mandamus is **denied**.

PER CURIAM

Panel consists of Justices Higley, Sharp, and Huddle.