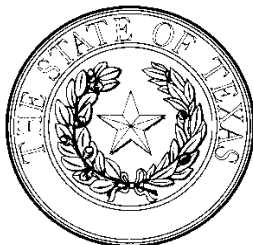


Opinion issued October 4, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00358-CV

IN RE HALLIBURTON ENERGY SERVICES, INC., Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Halliburton Energy Services, Inc. (“HESI”), filed a petition for writ of mandamus, seeking to compel the trial court to vacate its order granting real party in interest Charles Lane’s motion to compel production of documents.¹ HESI argues that the trial court abused its discretion in granting the order because the

¹ The Honorable Mike Engelhart, Judge of the 151st District Court of Harris County, Texas, Respondent. The underlying lawsuit is *Charles R. Lane v. Halliburton Energy Services, Inc.*, No. 2010-24540 (151st Dist. Ct., Harris County, Tex.).

order is overbroad, constitutes harassment, compels the production of irrelevant documents, and imposes an undue burden on HESI.

We conditionally grant the petition for writ of mandamus.

Background

Charles Lane worked in the legal department of HESI's New Orleans office from 1980 until 2007, when HESI decided to close that office. Lane alleges that several months before HESI closed the office, Jim Bullock, a senior vice-president and assistant general counsel, met with Lane and informed him that HESI wanted to continue to use his legal services. Bullock and Lane allegedly reached an oral agreement, pursuant to which Lane promised to (1) partner with another experienced attorney, (2) hire two associate attorneys to ensure that Lane could meet HESI's legal needs, (3) open an office in New Orleans and lease the former space of HESI's legal department, and (4) handle all of HESI's "offshore cases, personal injury cases, workers' compensation cases, and routine legal matters, from Louisiana and the Gulf of Mexico region, for an agreed hourly rate." In return, HESI allegedly promised to use Lane and his firm for all of its "offshore cases, personal injury cases, workers' compensation cases, and routine legal matters." Bullock also promised Lane that the "book of business" from HESI was worth approximately \$1.4 to \$2 million per year, and HESI "guaranteed that [Lane] would not experience a loss of income."

Lane alleges that, based on this agreement, he formed the firm Kraft Gatz Lane Benjamin LLC (“KGLB”) and began handling cases for HESI. After Bullock left HESI, “the number of Halliburton cases sent to [Lane] systematically began to decrease, both in volume and value,” and Lane learned that numerous cases that HESI had agreed to assign to Lane were actually assigned to other Louisiana law firms. After Lane contacted HESI and HESI continued to send cases to other Louisiana firms, Lane sued HESI for breach of contract, fraud, misrepresentation, fraudulent inducement, and promissory estoppel. Lane sought “[d]amages of sufficient amount to compensate [him] for [HESI’s] wrongful conduct, including reliance and benefit-of-the-bargain damages.”

In his first set of requests for production, Lane requested:

Documents as well as electronic documents showing the cost to the company of legal work, including both litigation and non-litigation matters, being sent to outside counsel or other law firms in the Louisiana and Gulf of Mexico regions for the past five years.

In response, HESI objected to this request as overly broad and unduly burdensome, as well as “to the extent that this Request seeks information not related to the claims or defenses as set forth in any of the pleadings.”

In his second set of requests for production, Lane requested “[d]ocuments that show any attorneys’ fees paid to any law firm, other than KGLB, for any and [all] legal matters in Louisiana since July 1, 2007” and “[d]ocuments that show any attorneys’ fees paid to any law firm, other than KGLB, for any and [all] legal

matters in the Gulf of Mexico Region since July 1, 2007.” HESI globally objected to all production requests that sought information “unrelated to the type of cases [Lane] claims were to be handled by him,” specifically, HESI’s offshore, personal injury, workers’ compensation, and routine legal cases from Louisiana and the Gulf of Mexico region.

Lane moved to compel the production of documents responsive to his requests. Lane argued that the requested documents are “clearly relevant” to his claims because he is “seeking compensatory damages equivalent to the benefit of his bargain under the agreement, which would include attorneys’ fees for [HESI’s] legal matters originating in Louisiana and the Gulf of Mexico region during the relevant time period.” Lane contended that his requests were not overly broad because they sought “pertinent information relating to the issues raised in the petition and answer.” He further argued that HESI produced no evidence demonstrating that Lane’s requests imposed an undue burden, and deposition testimony from HESI’s deputy general counsel indicated that the information could “easily be obtained.”

In response to Lane’s motion to compel, HESI contended that Lane’s petition only claimed that HESI agreed to use his services for its “Louisiana, and Gulf of Mexico, offshore cases, personal injury cases, workers’ compensation

cases, and routine legal matters,” and his production requests were not so narrowly tailored.²

At the hearing on Lane’s motion to compel, Lane argued that a document demonstrating the type of legal matter, the firm to which the matter was sent, and the amount of fees that HESI paid regarding the matter would “not only show[] the breach [of the oral agreement], but also [would] show[] the damages.” HESI asserted several arguments regarding Lane’s standing to bring his claims and construction of the alleged contract, and it argued that Lane’s requested discovery was irrelevant and overbroad.

At the close of the hearing, the trial court informed HESI that it was “probably going to give [Lane] most of the [requested] discovery just because I think it needs to be—it’s based on the pleadings, as opposed to the merits of the claim.” The court urged the parties to meet and see if they could reach an agreement on what documents to produce. Lane’s attorney stated that he was really requesting fee information for “any state that abuts the Gulf of Mexico, obviously including Louisiana, if it’s a case that Chuck Lane handled previously,

² HESI also argued that even if Lane’s allegations regarding an oral contract were true, Lane, because he was a contract attorney for KGLB, “would not be entitled to recover fees paid to law firms as claimed in the Motion, so any request for information on fees paid to law firms is irrelevant to his claim.” Furthermore, HESI also argued that, based on its Master Retention Agreement with KGLB, KGLB’s representation was limited to non-commercial litigation in Louisiana, and HESI could terminate KGLB’s services at any time. These arguments relate to defenses HESI presented in its answer to Lane’s petition.

i.e., longshore, any offshore injury and a car wreck.” The court clarified that Lane was seeking “essentially a report from [HESI’s] computer system redacted . . . that would specify the amounts paid, the type of the matter . . . [a]nd to whom it was paid.” HESI’s counsel noted that this request was “much narrower than any of [Lane’s] requests or anything asked in the motion [to compel].”

After the hearing, the parties exchanged correspondence regarding the scope of the discovery request. HESI offered to provide fee information “for offshore, longshoremen, automobile accident and blowout claims related to the Gulf of Mexico . . . in Louisiana and for Texas cases specifically arising out of Gulf of Mexico offshore activities.” HESI refused to provide fee information for cases arising out of Mississippi, Alabama, and Florida. HESI also offered to provide fee information for the time period from July 2007 to April 19, 2010, the date Lane filed his original petition. Lane argued that HESI should present fee information for the time period of July 2007 to the present date.

When the parties were unable to come to a resolution, Lane informed the trial court that he had narrowed his discovery request to “documents that show outside counsel fee information for matters related to offshore, longshoremen, automobile accident, and blowout claims originating in Louisiana and the Gulf of Mexico Region since July 1, 2007 to present” and requested that the court rule on his motion to compel. On April 13, 2011, the trial court ordered that HESI “shall

produce all documents evidencing fees paid by [HESI] to outside law firms for legal matters originating in Louisiana and the Gulf of Mexico region since July 1, 2007 to the present and through the trial of this cause.” This mandamus proceeding followed.

Standard of Review

Mandamus relief is appropriate only if the trial court abuses its discretion and no adequate remedy by appeal exists. *In re CSX Corp.*, 124 S.W.3d 149, 151 (Tex. 2003) (per curiam); *In re Nolle*, 265 S.W.3d 487, 491 (Tex. App.—Houston [1st Dist.] 2008, orig. proceeding).

Generally, the scope of discovery is within the trial court’s discretion; however, the trial court must make an effort to impose reasonable discovery limits. *In re CSX*, 124 S.W.3d at 152; *Dillard Dep’t Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995) (per curiam). Texas Rule of Civil Procedure 192.3(a) provides that:

[A] party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

TEX. R. CIV. P. 192.3(a). “Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the dispute’s

resolution. Thus, discovery requests must be ‘reasonably tailored’ to include only relevant matters.” *In re CSX*, 124 S.W.3d at 152; *see also In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (per curiam) (“A reasonably tailored discovery request is not overbroad merely because it may include some information of doubtful relevance, and we have specifically recognized that ‘[p]arties must have some latitude in fashioning proper discovery requests.’”). In determining whether a discovery request or order is overbroad, a “central consideration” is whether “the request could have been more narrowly tailored to avoid including tenuous information and still obtain the necessary, pertinent information.” *In re CSX*, 124 S.W.3d at 153.

A discovery order that compels overly broad discovery “‘well outside the bounds of proper discovery’ is an abuse of discovery for which mandamus is the proper remedy.” *Hall*, 909 S.W.2d at 492 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (per curiam)); *see also In re Allstate Cnty. Mut. Ins. Co.*, 227 S.W.3d 667, 670 (Tex. 2007) (per curiam) (“Overbroad requests for irrelevant information are improper whether they are burdensome or not”); *In re CSX*, 124 S.W.3d at 152 (“The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure.”).

The party resisting discovery bears the “heavy burden” of establishing an abuse of discretion and inadequate appellate remedy. *In re Nolle*, 265 S.W.3d at

491 (citing *In re CSX*, 124 S.W.3d at 151). A trial court clearly abuses its discretion when its action is “so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *Id.* Furthermore, the party making the objection must present any evidence necessary to support the objection. *See* TEX. R. CIV. P. 193.4(a); *In re CI Host, Inc.*, 92 S.W.3d 514, 516 (Tex. 2002) (orig. proceeding).

Analysis

HESI argues that the trial court erred in compelling production of “all documents evidencing fees paid by [HESI] to outside law firms for legal matter originating in Louisiana and the Gulf of Mexico region since July 1, 2007 to the present and through the trial of this cause.” Specifically, we address HESI’s argument that the discovery compelled by the trial court is overbroad, permits Lane a “fishing expedition,” and includes irrelevant documents beyond the “offshore cases, personal injury cases, workers’ compensation cases, and routine legal matters” pleaded by Lane. HESI also argues that the trial court abused its discretion in ordering production of “all documents” rather than the computer-system-summary report Lane’s counsel mentioned in argument before the trial court.³

³ HESI makes several other arguments that we do not address here. We note that HESI’s arguments that Lane lacks standing to recover any attorney’s fees and that the terms of the agreement do not allow Lane to recover the damages that he pleaded in his petition do not support a grant of the petition for writ of mandamus. *See In re Rogers*, 200 S.W.3d 318, 324 (Tex. App.—Dallas 2006, orig.

Lane's original request for production sought:

Documents as well as electronic documents showing the cost to the company of legal work, including both litigation and non-litigation matters, being sent to outside counsel or other law firms in the Louisiana and Gulf of Mexico regions for the past five years.

Subsequently, Lane himself acknowledged that a more limited discovery request was sufficient to obtain the information he required: Lane narrowed his discovery request to “documents that show outside counsel fee information for matters related to offshore, longshoremen, automobile accident, and blowout claims originating in Louisiana and the Gulf of Mexico Region since July 1, 2007 to present” at the time that he requested the court rule on his motion to compel. Neither of these requests sought “all documents” related to HESI's employment of outside legal representation.

The discovery ordered by the trial court was much broader even than Lane's original discovery request, as the trial court compelled production of “all

proceeding) (holding, when petition was “broadly pleaded” and had not been “challenged or narrowed through special exceptions or any other pleading vehicle,” that party “cannot attempt to limit the scope of the pleading through discovery objections”); *In re Citizens Supporting Metro Solutions, Inc.*, No. 14-07-00190-CV, 2007 WL 4277850, at *3 (Tex. App.—Houston [14th Dist.] Oct. 18, 2007, orig. proceeding) (mem. op.) (holding that “[t]he scope of discovery is measured by the live pleadings regarding the pending claims” and that “[i]f, as here, the trial court does not rule on the merits of any of the claims, then the scope of discovery in the mandamus proceeding will be based on the pleadings.”) (citing *Lunsford v. Morris*, 746 S.W.2d 471, 473 (Tex. 1988) (stating that discovery is based on matters relevant to the claims pleaded and that parties need not prove their claims before they are entitled to discovery), *overruled on other grounds*, *Walker v. Packer*, 827 S.W.2d 833, 842 (Tex. 1992)).

documents evidencing fees paid by [HESI] to outside law firms.” This order compels discovery that is overbroad, and it “could have been more narrowly tailored to avoid including tenuous information and still obtain the necessary, pertinent information.” *See In re CSX*, 124 S.W.3d at 153.

Conclusion

We conditionally grant the petition for writ of mandamus and direct the trial court to amend its discovery order to the extent that it required HESI to produce broader discovery than that requested by Lane. The writ will issue only if the court fails to comply.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Higley, and Massengale.