

Opinion issued September 3, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00250-CV

**IN RE SPRAGUE, RUSTAM & DIAMOND, PC, MICHAEL SPRAGUE,
INDIVIDUALLY, AND J. CHRISTOPHER DIAMOND, INDIVIDUALLY,
Relators**

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relators, Sprague, Rustam & Diamond, PC, Michael Sprague, individually, and J. Christopher Diamond, individually, have filed a petition for a writ of mandamus challenging the trial court's order denying their motion to compel the production of documents protected by the attorney-client privilege.

We deny relators' petition for writ of mandamus.¹

Mandamus is an extraordinary remedy that is only available in limited circumstances. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). In the case of a challenge to a decision within the trial court's discretion, mandamus will only issue where relators establish that "the trial court failed to reach the only reasonable conclusion." *In re Mem'l Hermann Hosp. Sys.*, 464 S.W.3d 686, 698 (Tex. 2015). Discovery matters are generally within the trial court's sound discretion, but "mandamus will issue to correct a discovery order if the order constitutes a clear abuse of discretion and there is no adequate remedy by appeal." *See In re Colonial Pipeline Co.*, 968 S.W.2d 938, 941 (Tex. 1998).

Relators have not demonstrated that the trial court committed an abuse of discretion in refusing to compel the production of certain privileged documents pursuant to the "offensive use" doctrine. *See Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 163 (Tex. 1993) (setting forth standard for application of "offensive use" doctrine for waiver of privilege). Accordingly, we deny relators' petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a), (d). All pending motions are dismissed as moot.

¹ The underlying case is *Coastal Cargo of Texas, Inc. and Tokio Marine HCC v. Sprague, Rustam & Diamond, PC, Michael Sprague, individually, and J. Christopher Diamond, individually*, Cause No. 2017-76096, in the 127th District Court of Harris County, Texas, the Honorable R.K. Sandill presiding.

PER CURIAM

Panel consists of Justices Keyes, Lloyd, and Landau