

SUPREME COURT OF TEXAS

In re American Airlines, Inc.

In re American Airlines, Inc. · No. No. 20-0789 · Decided October 22, 2021

SUMMARY

The Supreme Court of Texas conditionally granted American Airlines, Inc.’s petition for writ of mandamus, holding that the trial court improperly compelled the deposition of a high-level corporate officer without applying the apex-deposition standards. The court concluded that the requesting party had not shown that the officer possessed unique or superior personal knowledge or attempted less intrusive discovery methods. The court also held that American’s delay in seeking mandamus relief was justified and that permissive appeal was not an adequate alternative remedy.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	October 22, 2021
DOCKET	No. 20-0789
DISPOSITION	writ_granted
PROCEDURAL POSTURE	American Airlines sought mandamus relief from a trial-court discovery order compelling the deposition of Elise Eberwein, a high-level corporate official. The court of appeals denied mandamus relief based on delay, and the Texas Supreme Court conditionally granted the petition.
STANDARD OF REVIEW	Mandamus requires a clear abuse of discretion and the absence of an adequate remedy by appeal. Discovery rulings are reviewed for abuse of discretion, and mandamus may issue when an erroneous order compelling an apex deposition cannot be adequately remedied on appeal.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; precedential.
PARTIES	American Airlines, Inc. v. Dr. Donald Arnette

TOPICS

discovery dispute

writ of certiorari

appellate procedure

standard of review

civil procedure

PRACTICE AREAS

civil procedure

discovery

appellate procedure

mandamus

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by compelling the deposition of a high-level corporate official without requiring the requesting party to satisfy the apex-deposition standards.
2. Whether American's delay in seeking mandamus relief waived its right to relief.
3. Whether a permissive interlocutory appeal provided an adequate appellate remedy.

HOLDINGS

1. A party seeking to depose a high-level corporate official must first arguably show that the official possesses unique or superior personal knowledge of discoverable information or make a good-faith but unsuccessful effort to obtain the information through less intrusive discovery methods. Because Arnette satisfied neither requirement, the trial court was required to grant American's protective-order motion and could not compel Eberwein's deposition.
2. A party resisting an apex deposition need not use a particular procedural vehicle to invoke the apex doctrine; substance controls over form, and a motion to quash, motion for protective order, or comparable request to prohibit the deposition is sufficient.
3. American did not waive mandamus relief through unreasonable delay because the delay was explained by the trial court's four-month failure to notify the parties of its order and Arnette's failure to satisfy the order's deposition-notice precondition.
4. A permissive interlocutory appeal was not an adequate remedy because the statutory prerequisites were not satisfied and Texas precedent recognizes the inadequacy of appeal when a trial court erroneously compels an apex deposition.

KEY QUOTATIONS

"When a party seeks to depose a corporate president or other high-level corporate official, "the trial court should first determine whether the party seeking the deposition has arguably shown that the official has any unique or superior personal knowledge of discoverable information." (at 1)

"With the apex-deponent issue squarely before the court and properly invoked by Eberwein's affidavit denying knowledge of relevant facts, the trial court clearly abused its discretion in compelling her deposition without requiring Arnette to comply with the Crown Central standards." (at 5)

"Accordingly, without hearing oral argument, we conditionally grant American's petition for writ of mandamus." (at 7)

FACTUAL BACKGROUND

Arnette alleged that an American gate agent improperly accessed his personal information and used it to harass him through text messages, email, and telephone messages. As the discovery deadline approached, Arnette sought to depose Elise Eberwein, an executive vice president of People and Communications for American's

parent company and one of six members of its Executive Leadership Team. Eberwein submitted an affidavit stating that she had no personal knowledge, much less unique or superior knowledge, of relevant facts. American offered to produce a corporate representative for deposition, but Arnette declined and relied on Eberwein's online biography describing her general management responsibilities.

PROCEDURAL HISTORY

Arnette sued American after alleging that an airline gate agent improperly accessed and used his personal information to harass him. Arnette sought to depose Eberwein, an executive vice president and member of American's executive leadership team, despite her affidavit disclaiming personal knowledge of relevant facts and American's offer to produce a corporate representative instead. The trial court denied American's protective-order motion and compelled Eberwein's deposition, while requiring a new notice identifying deposition topics. The court of appeals denied mandamus relief because American filed more than a year after the order. The Texas Supreme Court held that the delay was reasonably explained and that the trial court abused its discretion by compelling the apex deposition.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The writ will issue only if the trial court fails to promptly vacate the order compelling Eberwein's deposition.

CASES CITED

- Crown Cent. Petroleum Corp. v. Garcia, 904 S.W.2d 125, 126, 128 (Tex. 1995)
- In re BP Prods. N. Am., Inc., 244 S.W.3d 840, 842 n.2 (Tex. 2008)
- In re Alcatel USA, Inc., 11 S.W.3d 173, 175-77, 179, 181 (Tex. 2000)
- In re Daisy Mfg. Co., 17 S.W.3d 654, 658-59 (Tex. 2000)
- AMR Corp. v. Enlow, 926 S.W.2d 640, 644 (Tex. App.—Fort Worth 1996, orig. proceeding)
- In re Newport Classic Homes, L.P., L.L.C., No. 04-18-00126-CV, 2018 WL 4903065, at *3 (Tex. App.—San Antonio Oct. 10, 2008, orig. proceeding)
- In re Miscavige, 436 S.W.3d 430, 438-40 (Tex. App.—Austin 2014, orig. proceeding)
- Rivercenter Assocs. v. Rivera, 858 S.W.2d 366, 367 (Tex. 1993)
- Callahan v. Giles, 155 S.W.2d 793, 795 (Tex. 1941)
- In re Int'l Profit Assocs., Inc., 274 S.W.3d 672, 675-77 (Tex. 2009)
- In re Gonzales, 619 S.W.3d 259, 261 (Tex. 2021)
- In re American Airlines, Inc., 2020 WL 5651658, at *1 (Tex. App.—Dallas Sept. 23, 2020)

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