

SUPREME COURT OF TEXAS

In re CI Host, Inc., Creative Innovations, Inc., and Hosting Services International, Inc.

In re CI Host, Inc., 92 S.W.3d 514 (Tex. 2002) · No. No. 00-1150 · Decided November 21, 2002

SUMMARY

The Supreme Court of Texas considered a mandamus petition challenging an order requiring CI Host to produce computer backup tapes in a civil discovery dispute. The court held that CI Host failed to support its claim that the Electronic Communications Privacy Act protected all information on the tapes and therefore did not establish a clear abuse of discretion. The court denied mandamus relief without prejudice, allowing the parties and trial court to address segregation of protected information and appropriate privacy protections.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Hankinson
JURISDICTION	Texas
DECIDED	November 21, 2002
DOCKET	No. 00-1150
DISPOSITION	writ_denied
PROCEDURAL POSTURE	CI Host petitioned the Supreme Court of Texas for mandamus relief from a trial court discovery order requiring production of March 1, 2000 backup tapes. The court of appeals denied mandamus relief. The Supreme Court denied mandamus without prejudice.
STANDARD OF REVIEW	Mandamus issues only to correct a clear abuse of discretion when no adequate remedy at law exists. The Supreme Court reviewed whether the trial court abused its discretion in ordering production of the backup tapes and held that the trial court did not abuse its discretion on the record presented.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; precedential.
PARTIES	CI Host, Inc., Creative Innovations, Inc., Hosting Services International, Inc. v. Tom Speer, Henri Boll, Limits Unknown, Inc.

TOPICS

discovery dispute writ of certiorari appellate procedure standard of review commercial litigation

PRACTICE AREAS

civil procedure commercial litigation appellate procedure electronic discovery
privacy and data protection

QUESTIONS PRESENTED

1. Whether the trial court clearly abused its discretion by ordering CI Host to produce the backup tapes in their entirety.
2. Whether CI Host met its burden under the Texas Rules of Civil Procedure to support its objection that the Electronic Communications Privacy Act protected all information on the tapes.
3. Whether mandamus relief should be granted or denied without prejudice in light of acknowledged protected information and potential third-party privacy interests.

HOLDINGS

1. A party asserting an objection or privilege to a discovery request must present evidence establishing the factual and legal basis for the objection and, when only part of the requested material is protected, must produce the discoverable material and segregate the protected material. CI Host did not meet that burden because it failed to show that all information on the tapes constituted protected contents of a communication in electronic storage under the ECPA and failed to segregate the information it admitted was not protected.
2. The trial court did not abuse its discretion by ordering production of the backup tapes on the record before it.
3. Mandamus relief should be denied without prejudice where the record shows that the tapes contain both protected and unprotected information, some information may be confidential to customers, and the information can be segregated and addressed through an appropriate protective order.

KEY QUOTATIONS

“The extraordinary writ of mandamus issues only to correct a clear abuse of discretion by a lower court when no adequate remedy at law exists.” (515)

“Any party making an objection or asserting a privilege must present any evidence necessary to support the objection or privilege.” (516)

“Thus, in light of CI Host's failure to produce evidence to support its ECPA objection or to segregate and produce the information it has now admitted is not protected by the ECPA, we cannot conclude that the trial court abused its discretion in overruling that objection and ordering the tapes produced.” (517)

“Without expressing an opinion on the merits of CI Host's ECPA objection, we conclude that the trial court did not abuse its discretion by ordering production of the tapes on the record before it.” (517)

FACTUAL BACKGROUND

CI Host operated a web-hosting business and maintained backup tapes containing customer-related data. Three former customers alleged that a server crash left their businesses without service for ten days and that CI Host failed to maintain promised service availability and daily backups. They sought production of March 1, 2000 backup tapes in discovery. CI Host asserted that the federal Electronic Communications Privacy Act protected all information on the tapes, but it initially offered no supporting evidence and later provided only general testimony and an affidavit; the parties ultimately acknowledged that the tapes contained both protected and unprotected information that could be segregated.

PROCEDURAL HISTORY

Former CI Host customers sued over a server crash and alleged failures in web-hosting and data-backup services. The trial court ordered CI Host to preserve and later produce backup tapes, overruling CI Host's objections based in part on the federal Electronic Communications Privacy Act. After a second hearing at which CI Host offered limited affidavit and attorney testimony, the trial court reaffirmed its order, and the court of appeals denied mandamus relief. The Supreme Court concluded that CI Host had not supported its ECPA objection under the Texas discovery rules, but denied mandamus without prejudice because the tapes contained both protected and unprotected information and third-party privacy interests might require segregation and a protective order.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

No formal remand was ordered. Mandamus was denied without prejudice to CI Host's reurging its objection in the trial court. The trial court was directed to give serious consideration to third-party privacy interests and to address segregation of protected information and any necessary protective order as the case proceeded.

CASES CITED

- In re Alford Chevrolet-Geo, 997 S.W.2d 173, 176 (Tex. 1999)
- Walker v. Packer, 827 S.W.2d 833, 839 (Tex. 1992)
- Eli Lilly & Co. v. Marshall, 850 S.W.2d 155, 160 (Tex. 1993)