Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

R.J. REYNOLDS TOBACCO COMPANY, Petitioner.	)))	**S. Ct. Civ. No. 2018-0049** Re: Super. Ct. Civ. Nos. 631/2010, 692/2010 (STT)

On Petition for Writ of Mandamus
Superior Court Judge: Hon. Michael C. Dunston

Considered and Filed: July 24, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN,** Associate Justice.

APPEARANCES:

Chad C. Messier, Esq.
Dudley, Topper and Feuerzeig, LLP
St. Thomas, U.S.V.I.
Attorney for Petitioner.

OPINION OF THE COURT

PER CURIAM.

This matter comes before the Court pursuant to a July 23, 2018 petition for writ of mandamus filed by R.J. Reynolds Tobacco Company, which requests that this Court issue a writ, on an expedited basis, directing the Superior Court judge assigned to the underlying matter (the "Nominal Respondent") to quash a subpoena issued by the plaintiffs in that case. For the reasons that follow, we deny the petition.

I. BACKGROUND

The underlying action against R.J. Reynolds was brought by two plaintiffs—Lucian Evans England, Sr. and Patrice Hale Brown—who allege that they developed cancer as a result of smoking cigarettes manufactured by Lorillard Tobacco Company, which had subsequently merged with R.J. Reynolds. On April 13, 2018, plaintiffs' counsel e-mailed a subpoena to R.J. Reynolds's

counsel which directed an unnamed R.J. Reynolds corporate representative to provide live in-person testimony in the trial in the underlying matter, which is set to commence on July 24, 2018. On May 22, 2018, R.J. Reynolds moved the Superior Court to quash the subpoena because it purportedly fails to comply with Rule 45 of the Virgin Islands Rules of Civil Procedure—in that it compels attendance at a trial greater than 100 miles from R.J. Reynolds's corporate headquarters in Winston-Salem, North Carolina—and because personal service had purportedly not been made in accordance with Rule 45(b)(1).

The Nominal Respondent orally ruled on the motion to quash at a July 2, 2018 hearing, stating that the plaintiffs could subpoena a live representative of R.J. Reynolds for trial, but that a new subpoena would need to issue that specified the subject matter upon which the witness would be examined, and provide the expected date of when the witness would be called to testify. However, the Nominal Respondent did not explain the reasons for rejecting R.J. Reynolds's arguments for quashing the subpoena. Subsequently, plaintiffs' counsel e-mailed to R.J. Reynolds's counsel a list of topics for examination at trial but did not formally serve a new subpoena.

At a telephonic hearing on July 20, 2018, R.J. Reynolds moved to stay enforcement of the April 13, 2018 subpoena, but the Nominal Respondent declined to do so. On July 23, 2018—the day before trial in the underlying matter is set to begin—R.J. Reynolds filed a petition for writ of mandamus with this Court, which requests that this Court issue a writ directing the Nominal Respondent to quash the subpoena because it purportedly violates the geographical limitations of Rule 45 and was allegedly not served. Additionally, R.J. Reynolds argues that the Nominal Respondent exceeded his authority in permitting the live trial testimony through his July 2, 2018 oral order because he purportedly "transform[ed] the Rule 30(b)(6) discovery mechanism into a

means to compel an opponent's testimony on cherry-picked topics at trial under the guise of a Rule 45 subpoena." (Pet. 15.)

II. DISCUSSION

This Court possesses original jurisdiction to adjudicate petitions for writs of mandamus. See 4 V.I.C. § 32(b). To obtain a writ of mandamus, a petitioner must establish that his or her right to the writ is clear and indisputable and that there is no other adequate means to attain the desired relief. *In re Le Blanc*, 49 V.I. 508, 516 (V.I. 2008). Furthermore, even if those two prerequisites are met, the issuing court must be satisfied that the writ is appropriate under the circumstances. *In re Morton*, 56 V.I. 313, 319 (V.I. 2012).

Here, R.J. Reynolds has failed to establish that it has no other adequate means to attain the desired relief. The Nominal Respondent's denial of its motion to quash, the propriety of the July 2, 2018 oral ruling permitting the testimony contingent on issuance of a new subpoena along with a list of topics for examination, and whether the plaintiffs complied with the terms of the July 2, 2018 oral ruling are all issues that could be raised on direct appeal after entry of a final judgment. *See Le Blanc*, 49 V.I. at 517 ("[A] petitioner cannot claim the lack of other means to relief, if an appeal taken in due course after entry of a final judgment would provide an adequate alternative to review by mandamus.") (quoting *In re Briscoe*, 448 F.3d 201, 212 (3d Cir. 2001)).

In its petition, R.J. Reynolds implies that an appeal after final judgment would not constitute an alternate adequate means for obtaining relief because the relief, if granted, "would come too late," in that "a corporate representative [would] travel to testify at a trial over 1,500 miles from where they work and reside in North Carolina." (Pet. 18.) However, alternate means of obtaining appellate review of the subpoena exist short of mandamus. For instance, R.J. Reynolds could simply refuse to comply with the subpoena, be held in contempt, and then appeal

the order imposing the contempt sanction to this Court. *See In re People of the V.I.*, 49 V.I. 297, 309 (V.I. 2007) (denying mandamus petition because the petitioner could "stand in contempt, and appeal from the court's ruling" to obtain the desired relief); *see also, Doble v. U.S. Dist. Court*, 249 F.2d 734, 734-35 (9th Cir. 1957) ("If the service of a subpoena on a witness outside the District and more than one hundred miles from the place of trial is unjustified by any statute and is contrary to the plain language of Rule 45(e)(1) . . . and therefore without force and void, as petitioner claims, petitioner is not without recourse. He may disregard it. If proceedings are brought against him, if he is correct, he might have a punitive order reversed on appeal."). Consequently, R.J. Reynolds has failed to establish one of the three prerequisites to obtaining mandamus relief from this Court.[1]

III. CONCLUSION

Because R.J. Reynolds may obtain appellate review of the Nominal Respondent's decisions with respect to the subpoena on appeal from an adverse final judgment and may obtain immediate review by standing in contempt and appealing from the contempt order, it has failed to meet its burden of establishing that it is entitled to a writ of mandamus. Accordingly, we deny the petition.

Dated this 24th day of July, 2018.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

[1] Because R.J. Reynolds must satisfy all three prerequisites to obtain mandamus relief, and has failed to establish that there is no adequate means to obtain the desired relief short of mandamus, we decline to consider whether R.J. Reynolds has satisfied the other two requirements.