

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2010-1164

ADVANCED MAGNETIC CLOSURES, INC.,

Plaintiff,

v.

ROME FASTENER CORPORATION, ROME FASTENER SALES CORPORATION,  
ROMAG FASTENERS, INC., and RINGS WIRE, INC.,

Defendants-Appellees,

v.

IRVING BAUER and G. BAUER INC.,

Movants-Appellants.

Appeal from the United States District Court for the Southern District of  
New York in case no. 98-CV-7766, Judge Paul A. Crotty.

ON MOTION

Before RADER, ARCHER, and GAJARSA, Circuit Judges.

PER CURIAM.

### ORDER

Irving Bauer and G. Bauer Inc. (Bauer) move for a stay, pending appeal, of the January 7, 2010 order entered by the United States District Court for the Southern District of New York denying their motion to quash and/or modify subpoenas duces tecum. The court considers whether Bauer's appeal should be dismissed for lack of jurisdiction.

The district court entered judgment in favor of Rome Fastener Corporation et al. (Rome) in the amount of \$1,314,816.16. Advanced Magnetic Closures Inc. (AMC) appealed the judgment and that appeal, 2009-1102, is pending. After that appeal was

filed, Rome served subpoenas ad testificandum and duces tecum on AMC and Bauer. AMC and Bauer moved to quash or modify the subpoenas, and the district court denied that motion. Bauer appealed the district court's order denying the motion to quash or modify and now seeks a stay, pending appeal.

In Connaught Labs., Inc. v. SmithKline Beecham P.L.C., 165 F.3d 1368 (Fed. Cir. 1999), the court ruled that a nonparty could not obtain appellate review of a discovery order through direct appeal of an order denying a motion to quash. The court ruled that it lacked jurisdiction to review such an order. The court further stated that relief through a writ of mandamus is also not available in this situation. Rather, the court held, “[n]onparties may secure review of a discovery order by refusing to comply with it and appealing a consequent contempt order.” Id. at 1370. See also In re Joint E. & S. Dists. Asbestos Litig., 22 F.3d 755 (7th Cir. 1994) (order allowing postjudgment discovery is not appealable but immediate review may be sought of a contempt order if individual is held in criminal contempt for disobeying the previous order requiring production of documents).

In this case, Bauer appeals an order denying a motion to quash. Such an order is not appealable. Connaught, 165 F.3d at 1370. Because this court lacks jurisdiction, the appeal is dismissed.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed for lack of jurisdiction.
- (2) The motion is moot.
- (3) The revised official caption is reflected above.

FOR THE COURT

January 27, 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Gerald Orseck, Esq.  
Norman H. Zivin, Esq.

s17