

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

MISCELLANEOUS DOCKET NO. 936

IN RE VOTER VERIFIED, INC.,

Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida in case no. 09-CV-1968, Senior Judge Patricia C. Fawsett.

ON PETITION FOR WRIT OF MANDAMUS

Before MAYER, LOURIE, and BRYSON, Circuit Judges.

BRYSON, Circuit Judge.

ORDER

Voter Verified, Inc. (VVI) petitions for a writ of mandamus to direct the United States District Court for the Middle District of Florida to (1) enter a default judgment, (2) strike the answer and counterclaim filed by Diebold, Incorporated, (3) reinstate VVI's motions for summary judgment, (4) "[p]rohibit the District Judge and the Magistrate Judge from acting any further in either of the consolidated cases," (5) transfer consolidated cases to the United States District Court for the Northern District of Florida, (6) stay all proceedings until the cases are transferred, (7) "render without effect and/or quash all subpoenas which have issued," (8) "[a]uthorize VVI to have discovery regarding of [sic] all matters related to DIEBOLD's default," (9) appoint a special master "to investigate the circumstances . . . with respect to DIEBOLD's default and the activity of personnel of the Clerk's office and the offices of the Court," and (10) "[o]rder the Defendants and their attorneys and law firms to show cause why sanctions under Rule 11(c) should not be imposed."

VVI filed a patent infringement action against Premier Election Solutions, Incorporated and Diebold Incorporated on November 19, 2009 and the summons was served on November 24, 2009. An answer was due by December 14, 2009. On December 15, 2009, VVI filed a motion for a default judgment because Diebold had not filed a timely answer. On December 16, 2009, Diebold submitted an untimely answer and counterclaim. A magistrate judge denied VVI's motion for a default judgment and subsequently denied VVI's motion to vacate her earlier order. VVI filed objections to the magistrate judge's orders and sought additional relief.

On March 18, 2010, the district court granted leave for Diebold to file its answer and counterclaim out of time, affirmed the magistrate judge, and denied other various relief. VVI petitions for a writ of mandamus, asserting various errors and alleging misconduct by court staff or counsel.

In its March 18, 2010 order, the district court agreed with VVI that the clerk's office could have entered a default judgment. The district court further stated that had a default judgment been entered, it would have been set aside based on a showing of good cause for the untimely answer and counterclaim. Thus, the district court affirmed the magistrate judge's order "to the extent that it finds that Diebold established good cause for setting aside a default judgment pursuant to Federal Rule of Civil Procedure 55(c)."

The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power. In re Calmar, Inc., 854 F.2d 461, 464 (Fed. Cir. 1988). A party seeking a writ bears the burden of proving that it has no other means of attaining the relief desired, Mallard v. U.S. Dist. Court for the Southern

Dist. of Iowa, 490 U.S. 296, 309 (1989), and that the right to issuance of the writ is "clear and indisputable," Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980).

VVI has not shown a clear abuse of discretion concerning the district court's ruling of good cause for the untimely answer and counterclaim. VVI also has not shown why it cannot challenge that ruling, and seek the other relief it requests, on appeal from a final judgment, if appropriate.

Accordingly,

IT IS ORDERED THAT:

The petition for a writ of mandamus is denied.

FOR THE COURT

MAY 03 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Anthony I. Provitola, Esq.
Jennifer E. Hoekel, Esq.
United States District Court for the Middle District of Florida, Clerk

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THE FEDERAL CIRCUIT

MAY 03 2010

JAN HORBALY
CLERK