NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

DYNATEMP INTERNATIONAL, INC., FLUOROFUSION SPECIALTY CHEMICALS, INC., HAROLD B. KIVLAN, IV, WILLIAM GRESHAM, DAVID COUCHOT,
Plaintiffs-Respondents

v.

RMS OF GEORGIA, LLC, dba Choice Refrigerants, R421A, LLC, KENNETH M. PONDER,
Defendants-Petitioners

2024-142

On Petition for Permission to Appeal pursuant to 28 U.S.C. Section 1292(b) from the United States District Court for the Eastern District of North Carolina in No. 5:20-cv-00142-FL, Judge Louise Wood Flanagan.

ON PETITION

Before DYK, REYNA, and CHEN, *Circuit Judges*.

PER CURIAM.

O R D E R

RMS of Georgia, LLC, R421A, LLC, and Kenneth M. Ponder (collectively, "RMS") petition for permission to appeal an order of the district court determining the scope of waiver created by reliance on an advice-of-counsel defense. The court certified the order for appeal pursuant to 28 U.S.C. § 1292(b). Dynatemp International, Inc., Fluorofusion Specialty Chemicals, Inc., Harold B. Kivlan, IV, William Gresham, and David Couchot oppose the petition.

Under § 1292(b), a district court may certify that an order that is not otherwise appealable is one involving a controlling question of law as to which there is substantial ground for difference of opinion and for which an immediate appeal may materially advance the ultimate termination of the litigation. Ultimately, this court must exercise its own discretion in deciding whether to grant permission to appeal an interlocutory order. *See In re Convertible Rowing Exerciser Pat. Litig.*, 903 F.2d 822, 822 (Fed. Cir. 1990). In this case, we conclude that an interlocutory appeal under § 1292(b) is not appropriate.

Accordingly,

IT IS ORDERED THAT:

The petition for permission to appeal is denied.

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

September 30, 2024
Date