

DENY; and Opinion Filed April 25, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00360-CV

IN RE NCH CORPORATION, INC., Relator

**Original Proceeding from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-00657**

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Myers

In this original proceeding, relator complains of the trial court's order granting real party in interest's request for a Rule 202 deposition and subpoena duces tecum. Relator argues that the documents and testimony sought include privileged trade secret materials. Relator asks this Court to grant the petition and order the trial court to vacate its order.

Relator is the anticipated defendant in the contemplated litigation. Mandamus is, therefore, the proper vehicle by which to seek the relief requested. *In re Hewlett Packard*, 212 S.W.3d 356, 360 (Tex. App.—Austin 2006, orig. proceeding). To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). No adequate appellate remedy exists if a trial court orders a party to produce privileged trade secrets absent a showing of necessity. *In re Bass*, 113 S.W.3d 735, 745 (Tex. 2003) (orig. proceeding) (citing *In re Cont'l Gen. Tire, Inc.*, 979 S.W.2d 609, 615

(Tex. 1998) (orig. proceeding)). Further, a trial court abuses its discretion when it erroneously compels production of trade secrets without a showing that the information is “material and necessary.” *Id.* at 738, 743.

Based on the record before us, we conclude relator has not shown it is entitled to the relief requested. Accordingly, we **DENY** relator’s petition for writ of mandamus. . *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Lana Myers/

LANA MYERS
JUSTICE

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