

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL - SECOND DISTRICT

FILED

OCT 24 2010

MIREILLE G. DALLAL et al.,

B227178

CLERK

Petitioners,

(Super. Ct. No. VC049767)

v.

(William A. Allen, Commissioner)

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent;

ALTERNATIVE WRIT OF MANDATE and
ORDER

CORE-MARK INTERNATIONAL, INC.,

Real Party in Interest.

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES:

The court has read and considered the petition for writ of mandate filed on September 7, 2010, the supplemental exhibit filed on September 15, 2010, and the preliminary response filed on October 14, 2010.

Petitioners challenge that portion of the respondent trial court's order requiring petitioner Mireille Dallal to produce tax returns she filed jointly with her husband. Petitioners seek an order directing the trial court to vacate its order and to enter a new order sustaining their objection to the production of those returns. While it appears to this court that the trial court's order should be vacated for the reasons discussed below, this court believes the appropriate remedy is for the trial

court to reconsider the matter based upon the applicable legal principles.

Although tax returns are privileged, “[t]he privilege is not absolute.” (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 721.) As the Supreme Court explained, “the privilege is waived or does not apply in three situations: ‘(1) there is an intentional relinquishment [citation], (2) the “gravamen of [the] lawsuit is so inconsistent with the continued assertion of the taxpayer’s privilege as to compel the conclusion that the privilege has in fact been waived” [citation], or (3) a public policy greater than that of confidentiality of tax returns is involved [citation].’ ” (*Ibid.*, quoting *Sammut v. Sammut* (1980) 103 Cal.App.3d 557, 560.)

Real party in interest asserts that the third of these exceptions to the confidentiality of tax returns supports production of the tax returns in this case.¹ This exception requires a balancing of the competing interests. In this case, however, there is nothing in the record to indicate that the trial court engaged in any balancing of interests. Without knowing which interests the trial court considered, we cannot determine if it abused its discretion in ordering the production. Accordingly, this court believes the appropriate remedy is for the trial court to vacate its order requiring production of the tax returns and to thereafter reconsider its order.²

Based on the above, and good cause appearing therefor, you are directed to:

¹ Real party invokes the public policies of (1) facilitating the ascertainment of truth in legal proceedings, and (2) facilitating enforcement of judgments.

² If upon reconsideration the trial court determines that production is warranted, the trial court’s order should reflect the balancing of the relevant interests and should include a protective order (see *Weingarten v. Superior Court* (2002) 102 Cal.App.4th 268, 276), which real party in interest concedes is appropriate. We express no opinion concerning whether, upon reconsideration, the trial court should or should not require production of the tax returns.

(a) vacate that portion of your August 26, 2010 order directing petitioner Mireille Dallal to produce her joint tax returns, and to thereafter reconsider the propriety of requiring such production, or

(b) in the alternative,

SHOW CAUSE before this court, in its courtroom at 300 South Spring Street, Los Angeles, California, at 9:00 a.m. on December 17, 2010, why you have not done so and why a peremptory writ of mandate requiring you to do so should not issue.

If the respondent court elects to proceed under alternative (a) above, the respondent court is directed to deliver to this court (via facsimile or other method of delivery) a copy of the minute order reflecting its action on or before November 15, 2010.³

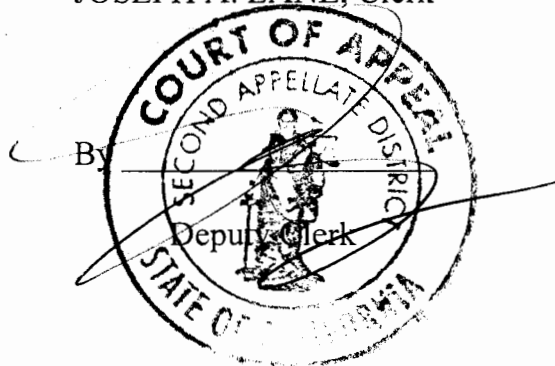
If the respondent court elects not to proceed under alternative (a) above, real party in interest may serve and file a written return to the petition on or before November 22, 2010.

Petitioners may serve and file a reply within seven days after the return is filed.

By order of this court.

ATTEST my hand and the seal of this court this 29th day of October, 2010.

JOSEPH A. LANE, Clerk



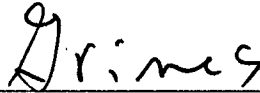
³ The minute order need not necessarily reflect that the trial court has reconsidered its original order. It need only reflect that the trial court has vacated its original order and has agreed to reconsider the matter.

ORDER


Let the foregoing writ issue.



FLIER, Acting P. J.



GRIMES, J.



O'CONNELL, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution