

SUPREME COURT OF LOUISIANA

NO. 09-CC-0569

CRAIG STEVENS ARABIE, ET AL.

V.

CITGO PETROLEUM CORP., ET AL.

PER CURIAM*

This application arises from a suit filed by plaintiffs against CITGO Petroleum Corp. (“CITGO”) and others, based on a release of hazardous materials from a CITGO waste water treatment plant. During discovery, CITGO declined to produce certain documents sought by plaintiffs on the ground these documents were subject to the attorney-client privilege. Plaintiffs responded by filing a motion to compel production, asserting that the “crime-fraud” exception to the attorney-client privilege applied.

After a hearing, the district court granted plaintiffs’ motion in part. The district court made a finding that CITGO engaged in fraudulent conduct, and therefore concluded the attorney-client privilege did not apply. CITGO now seeks review of that ruling.

In order to vitiate the attorney-client privilege, the court must make a finding that the attorney-client relationship was intended to further continuing or future criminal or fraudulent activity. *State v. Taylor*, 502 So.2d 537 (La. 1987) (on second rehearing). The party challenging the privilege must (1) make an independent prima facie case that a crime has been committed, and (2) then demonstrate that the privileged information bears a relationship to the alleged crime or fraud. *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1988).

* Traylor, J. recused.

In the instant case, the district court determined that CITGO engaged in fraud, but did not determine whether the privileged information bore a relationship to that fraud. Without such a finding, we cannot determine whether the district court erred in applying the crime-fraud exception.¹

Accordingly, the judgment of the district court is vacated. The case is remanded to the district court, which is instructed to render a new ruling on plaintiffs' motion to compel after appropriate briefing from the parties and *in camera* review of the privileged documents.

¹ Because the district court's analysis is incomplete, we need not pass on the question of whether CITGO engaged in fraudulent conduct.