

2026 Tex. Bus. 55



The Business Court of Texas,
1st Division

IN RE RADICAL HOOPS, LTD. §
and RADICAL MAVERICKS II, § Cause No. 26-BC01B-0067
LLC, §

Petitioners

**MEMORANDUM OPINION
AND ORDER DENYING EMERGENCY MOTION TO REMAND**

[¶ 1] Before the court is petitioners' August 3, 2026, Emergency Motion to Remand. The court considered the documents on file; the parties' arguments at an August 3, 2026, conference on the emergency motion; and the applicable law. Based on these items, the court denies that motion.

[¶ 2] The issue is whether the business court has authority to consider a Rule 202 petition to take a deposition before suit where the petitioner filed that petition in district court and the respondent filed a notice of removal to the business court. *See* TEX. R. CIV. P. 202. The petitioner moved to remand

the petition to the district court. Petitioner’s remand motion argues that a Rule 202 petition is not an “action” under Government Code § 25A.006(d)’s removal procedures because “action” means a lawsuit and a Rule 202 petition is not a lawsuit. Specifically, petitioners argue that

This Court should remand Petitioner’s Rule 202 Petition to the 134th District Court because the Texas Business Court does not have jurisdiction to hear Rule 202 petitions. Under Texas Government Code § 25A.004(b) this Court’s jurisdiction is limited to “civil actions.” A Rule 202 petition is not an “action.” *See Tema Oil & Gas Co. v. ETC Filed Servs.*, 705 S.W.3d 226, 231 (2024 Tex. Bus. 3) (“A civil action is a lawsuit.”).¹

[¶ 3] The court denies the remand motion because the Texas Supreme Court holds that an “action” includes a proceeding where a party seeks to enforce a claimed right (such as a Rule 202 petition).

I. BACKGROUND

[¶ 4] The court takes these facts from the removal notice and petitioners’ Verified Rule 202 Petition unless stated otherwise and assumes they are true for purposes of this motion:

¹ Radical Hoops, LTD. and Radical Mavericks II, LLC’s Emergency Motion to Remand (Remand Mot.) at 1.

[¶ 5] This dispute arises from petitioners’ claim that respondent (Arena Development Intermediate, LLC, (ADI)) is or may be tortiously interfering with petitioners’ asserted right to participate in a future arena development for the Dallas Mavericks professional basketball team.² According to petitioners, this dispute arises out of the sale by Mark Cuban (petitioner’s principal), of his majority interest in the Mavericks to respondent’s principals, members of the Adelson family.³ As part of that deal, Cuban and the Adelsons agreed to a partnership whereby Cuban could participate in “certain business opportunities” that he anticipated would include a destination casino.⁴

[¶ 6] In 2024, the Adelson family began actively pursuing a new arena to replace the American Airlines Center, where the Mavericks currently play their home games.⁵ Valley View Mall, a defunct shopping center located in North Dallas, became a leading candidate for the proposed new arena.⁶

² See Radical Hoops, LTD. and Radical Mavericks II, LLC’s Verified Rule 202 Petition (Rule 202 Pet.) at 5.

³ See Rule 202 Pet. at 3.

⁴ See Rule 202 Pet. at 3-4.

⁵ Rule 202 Pet. at 6.

⁶ Rule 202 Pet. at 6.

[¶ 7] In June 2026, respondent entered into an option agreement with the mall’s owner to buy a portion of the property intended to be the Mavericks’ future home (Valley View Option).⁷

[¶ 8] The Adelsons did not tell Cuban about that arrangement.⁸ Instead, they formed a Delaware entity (ADI) to complete the deal.⁹ Because Delaware law does not require respondent to disclose its members, Cuban and petitioners do not know respondent’s membership, corporate structure, or the scope of its involvement in the new arena and business opportunities related to it.¹⁰

[¶ 9] So, petitioners seek Rule 202 discovery to explore anticipated tortious interference with existing and prospective contracts claims related to these transactions.¹¹

II. DISCUSSION

[¶ 10] Petitioners ask the court to remand the Rule 202 Petition to the district court, arguing that a Rule 202 proceeding is not a removable “action”

⁷ Rule 202 Pet. at 6.

⁸ Rule 202 Pet. at 6.

⁹ Rule 202 Pet. at 6.

¹⁰ Rule 202 Pet. at 6-7.

¹¹ Rule 202 Pet. at 7-8.

under Government Code § 25A.006(d).¹² That request requires the court to analyze the interplay between Rule 202 and Government Code § 25A.006(d), the court’s removal statute.

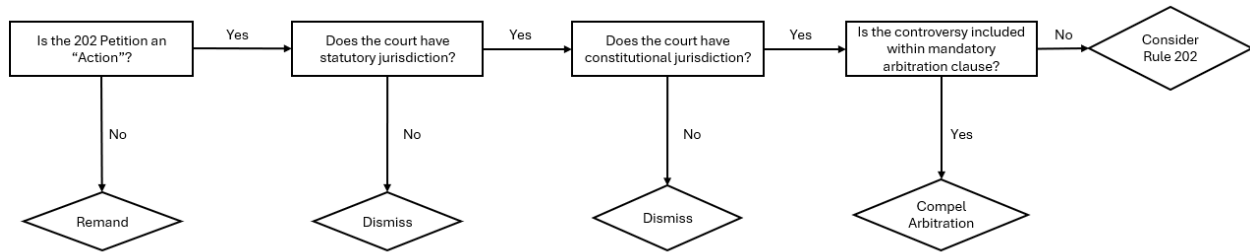
[¶ 11] To begin, Rule 202 permits a person to petition a court for an order authorizing the taking of a deposition on oral examination or written questions to either (i) perpetuate or obtain testimony for use in an anticipated suit or (ii) investigate a potential claim or suit. TEX. R. CIV. P. 202.1.

[¶ 12] Next, “A party to an *action* filed in a district or county court at law that is *within the jurisdiction of the business court* may remove the action to the business court.” TEX. GOV’T CODE. § 25A.006(d) (emphasis added).

[¶ 13] Thus, the statute presents two questions: First, is a Rule 202 proceeding an “action” under Government Code § 25A.006(d); and second, if so, is that action within the court’s subject matter jurisdiction. Additionally, respondent suggested during the August 3rd conference this controversy was included within a binding arbitration clause and so planned to file a motion to compel to that effect.

¹² Remand Mot. at 2.

[¶ 14] Accordingly, assuming respondent files its motion to compel, the following flow chart shows the proper analysis for this controversy:



A. A Rule 202 petition is an “action.”

1. Petitioners’ Authorities

[¶ 15] Petitioners cite *Yadav v. Agrawal*, 2025 Tex. Bus. 7, 708 S.W.3d 246 (3d Div.); *Osmose Util. Servs., Inc. v. Navarro Cnty. Elec. Coop.*, 2025 Tex. Bus. 3, 707 S.W.3d 117 (1st Div.); and *Tema Oil & Gas Co.*, 2024 Tex. Bus. 3, 705 S.W.3d 226 (8th Div.) for the premise that an “action” for business court jurisdiction purposes means a “lawsuit,” and a Rule 202 proceeding is not a lawsuit.¹³ The argument rests on the premise that “action” means only a lawsuit rather than a broader meaning where a party pursues a claimed right.

¹³ *Radical Hoops, LTD. and Radical Mavericks II, LLC’s Emergency Motion to Remand* (Remand Mot.) at 1-3.

[¶ 16] Petitioner’s argument is misplaced for several reasons. To begin, none of petitioners’ cited cases involved the removal of a Rule 202 proceeding and so did not address the precise question before the court.

[¶ 17] For example, *Yadav* and *Tema Oil & Gas Co.* concerned whether the business court has jurisdiction over “actions” that commenced prior to September 1, 2024. *See Yadav*, 2025 Tex. Bus. 7 ¶ 14; *Tema Oil & Gas Co.*, Tex. Bus. 3 ¶ 8. *Yadav* and *Tema Oil & Gas Co.* thus defined “action” as “lawsuit” because the court was simply determining if it had jurisdiction to hear the underlying lawsuit. *Yadav*, 2025 Tex. Bus 7 ¶s 28-31; *Tema Oil & Gas Co.*, 2025 Tex Bus. 3 ¶s 15-18.

[¶ 18] Similarly, in *Osmose*, the court addressed whether Chapter 25A permitted removing parts of a pending lawsuit i.e., causes of action, or if a removal notice removed the entire “action.” *See* 2025 Tex. Bus. 3 ¶ 15.

[¶ 19] Accordingly, none of these prior decisions bear on whether pre-suit discovery controversies are included within the definition of “action.” As such, they do not inform the court’s decision in this case. *See Mitchell v. Town of Refugio*, 265 S.W.2d 261, 267 (Tex. App.—4th Dist. 1954, writ refused) (“[T]he bindingness of a precedent or the *ratio decidendi* of a case cannot be determined independently of the facts upon which the decision is based.”);

Ratio Decidendi, BLACK’S LAW DICTIONARY (12th ed. 2024) (“The principle or rule of law on which a court’s decision is founded.”); *see also* 21 C.J.S. Courts § 186 (April 2026 Update) (“The principle of precedent requires that, when the ***facts are the same***, the law should be applied the same.” (emphasis added)).

[¶ 20] Additionally, petitioners’ reliance on *Montoya Frazier v. Maxwell*, 734 S.W.3d 1, 10 (Tex. App.—2d Dist. 2025, pet. denied) is misplaced because that case concerned whether a Rule 202 proceeding is a “legal action” as defined by the Texas Citizens Participation Act (TCPA). *See* TEX. CIV. PRAC. & REM. CODE §§ 27.001-.011. However, *Montoya* turns on a 2019 TCPA amendment that limited the scope of actions subject to the TCPA by expressly excluding from that statute’s scope “a procedural step taken (or [] a motion made in an action) that does not amend or add a claim for legal, equitable, or declaratory relief.” *See id.* at 21 (quotation omitted). So, by relying on the 2019 TCPA amendments *to exclude* a Rule 202 proceeding from the meaning of “legal action” for TCPA purposes, *Montoya* implicitly holds that a Rule 202 proceeding would otherwise be a legal action.

2. The Texas Supreme Court

[¶ 21] The supreme court in *Jaster v. Comet II Const., Inc.*, distinguished between the broader term “action” and its component “suit” thusly:

The common meaning of the term “action” refers to an entire lawsuit or cause or proceeding, not to discrete “claims” or “causes of action” asserted within a suit, cause, or proceeding. BLACK’S LAW DICTIONARY at 28 (defining “action” as “[a] civil or criminal judicial proceeding”). “The term ‘action’ is generally synonymous with ‘suit,’ which is a demand of one’s rights in court.” *Thomas v. Oldham*, 895 S.W.2d 352, 356 (Tex. 1995); *see also In re Marriage of Combs*, 958 S.W.2d 848, 850 (Tex. App.—Amarillo 1997, no pet.) (holding that an “action” is “a demand for one’s legal right and has been held synonymous with ‘suit’ ”). A suit, in turn, is “any proceeding in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him.” *H.H. Watson Co. v. Cobb Grain Co.*, 292 S.W. 174, 176 (Tex. 1927) (citing *Weston v. City Council of Charleston*, 27 U.S. 449, 464, 2 Pet. 449, 7 L.Ed. 481 (1829)). Although the word “suit” can be “more general in its comprehension than the word ‘action,’” both terms refer to a judicial proceeding in which parties assert claims for relief. *Id.* Thus, under the common definition, “[a]n action is a judicial proceeding, either in law or in equity, to obtain certain relief at the hands of the court.” *Elmo v. James*, 282 S.W. 835, 839 (Tex. Civ. App.—Fort Worth 1926, writ dismiss’d w.o.j.). Historically, “action” referred to a judicial proceeding in a court of law, while “suit” referred to a proceeding in a court of equity. BLACK’S LAW DICTIONARY at 29.

438 S.W.3d 556, 563-64 (Tex. 2014).

[¶ 22] It follows that a Rule 202 proceeding is an “action” because petitioners are seeking to enforce their claimed right to conduct pre-suit discovery. *See* TEX. R. CIV. P. 202.1; *see also* *Action*, BLACK’S LAW DICTIONARY (12 ed. 2024) (“A civil or criminal proceeding”); *Id.* (quoting 1 Morris M. Estee, *Estee’s Pleadings, Practice, and Forms* § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885)) (“An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right[.]”); *Action*, <https://www.merriam-webster.com/dictionary/action> (last visited Aug. 3, 2026) (“The initiating of a proceeding in a court of justice by which one demands or enforces one’s right.”). Thus, an action is a proceeding that may include, but is not limited to, a lawsuit.

B. The Court’s Subject Matter Jurisdiction

[¶ 23] Because subject matter jurisdiction is essential to a court’s power to decide a case, the court cannot render judgment on matters over which it lacks subject matter jurisdiction. *In re City of Dallas*, 501 S.W.3d 71, 73 (Tex. 2016) (per curiam). Also, a party is unable to obtain by Rule 202 what it would be denied in the anticipated action. *Id.*

[¶ 24] Since a Rule 202 petition is an “action” for Government Code § 25A.006(d)’s purposes, the court must decide whether this action is “within the jurisdiction of the business court.” That issue has two parts (i) statutory subject matter jurisdiction and (ii) constitutional subject matter jurisdiction.

1. This petition concerns an anticipated lawsuit within the court’s statutory subject matter jurisdiction.

[¶ 25] Here, the subject matter jurisdiction question begins with whether the anticipated action/lawsuit would be in this court’s statutory subject matter jurisdiction. *See In re DePinho*, 505 S.W.3d 621, 623-25 (Tex. 2016) (Rule 202 discovery improper where court would lack subject matter jurisdiction over the anticipated action).

[¶ 26] Respondent’s Notice of Removal pleads two qualified transactions give rise to petitioners’ claims (i) the multi-billion-dollar sale of the majority ownership of the Dallas Mavericks and (ii) the Valley View Option valued at over \$50 million and that the amounts in controversy exceed \$5 million.¹⁴ Accordingly, this Rule 202 proceeding is alleged to be “an action arising out of a qualified transaction” with an ultimate amount in controversy

¹⁴ See Respondent’s Notice of Removal at 2-4, 6.

meeting the court's subject matter jurisdiction. *See* TEX GOV'T CODE §§ 25A.001(14), .004(d)(1).

[¶ 27] Finally, related to statutory subject matter jurisdiction is whether the business court has the authority to decide a Rule 202 petition. The legislature established that authority by providing that the business court may “grant any relief that may be granted by a district court.” TEX. GOV'T CODE § 25A.004(a)(2). Thus, because a district court may grant the relief requested by the Rule 202 petition, so can the business court if it otherwise has subject matter jurisdiction.

2. The Court's Constitutional Subject Matter Jurisdiction: Ripeness

[¶ 28] Whether this controversy meets the court's constitutional jurisdiction is not necessary for the court to decide the emergency motion to remand, so the court will address that issue during the Rule 202 petition hearing.

III. CONCLUSION

[¶ 29] Accordingly, the court denies petitioners' emergency motion to remand.

It is so ORDERED.

A handwritten signature in blue ink, reading "Bill Whitehill", is positioned above a horizontal line.

BILL WHITEHILL

Judge of the Texas Business Court,
First Division

SIGNED: August 5, 2026

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