IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-20274

U.S. COURT OF APPEALS
FILED
MAR 15 2002
CHARLES R. FULBRUGE III
CLERK

In Re: NANCY A. TEMPLE,

CA 01-3624

Petitioner.

Petition for Writ of Mandamus to the United States District Court for the Southern District of Texas, Houston

Before JOLLY, PARKER, and DENNIS, Circuit Judges.

BY THE COURT:

In an affidavit filed with this court on March 15, 2002, Helen J. Hodges declared that, based on her information and belief, Nancy A. Temple, a named defendant in *Wilt v. Fastow*, No. H-02-0576 (S.D.Tex.), was served with the *Wilt* complaint on March 7, 2002. The district court consolidated *Wilt* with *Newby v. Enron Corp., et al.*, No. H-01-3624 (S.D. Tex.), on February 18, 2002. If Ms. Temple was indeed served with the *Wilt* complaint, she is a party by virtue of the consolidation, and can therefore be ordered to appear in Houston, Texas for a deposition. Because the transcripts from the March 12 and 13 teleconferences with the district court do not reflect that the participants considered Ms. Temple to be a party, the case is remanded and the district court is hereby instructed to make a factual determination regarding whether Ms. Temple was served in the *Wilt* action. The stay entered by this court on March 13, 2002 remains in effect pending the district court's factual determination. Nothing in this order precludes the district court from

issuing a new order if the district court finds that Ms. Temple was, in fact, served and thereby made a party therein. IT IS SO ORDERED.