No. 2D15-1966

IN THE SECOND DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

SAOWANNE S. PAGE,

Petitioner,

v.

JEREMIAH'S INTERNATIONAL TRADING COMPANY, INC. d/b/a AMERICA'S AUCTION NETWORK,

Respondent.

On Petition for a Writ of Certiorari
to the Circuit Court of the Sixth Judicial Circuit
in and for Pinellas County, State of Florida
L.T. No. 15-CA-55-15, Hon. Robert E. Beach

PROVISIONAL AMENDED RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Statement Of The Case

In a verified complaint, Respondent, Jeremiah's International Trading Company, Inc. d/b/a America's Auction Network ("AAN"), sued Petitioner, Saowanne S. Page, for civil theft, conversion, replevin, unjust enrichment, and equitable lien. App. B. ¶¶ 193-230. During discovery, AAN subpoenaed businesses and financial institutions to produce certain financial information related to their dealings with Ms. Page, which involved her liquidation of stolen jewelry, gemstones, and precious metals. App. E. Ms. Page objected to the subpoenas. App. F. The trial court convened a hearing regarding these objections. App. G. During the hearing, the trial court overruled all of Ms. Page's objections. App. G at 28. Thereafter, the trial court entered the three-page Order of April 27, 2015. App. A. Ms. Page's petition for writ of certiorari followed.

Statement Of The Facts

A. The Verified Complaint

AAN sells jewelry, gemstones, and precious metals through television auction networks. App. B ¶ 9. AAN employed Ms. Page for nearly seven years to work in its jewelry department. App. B ¶ 5. While employed by AAN, Ms. Page earned a modest annual wage of $22,000 to $35,000. App. B. ¶ 87.

On July 4, 2014, the St. Petersburg Police Department arrested Ms. Page for felony grand theft related to her thievery from AAN. App. B ¶ 135; *see also State v. Page*, No. 14-CF-40624 (Fla. Cir. Ct.). That same day, AAN fired Ms. Page. *See* App. B ¶ 135.

According to AAN's inventory records, AAN conservatively estimated Ms. Page had stolen at least $250,000 in jewelry, gemstones, and precious metals. App. B. ¶ 182. Additionally, a forensic analysis of Ms. Page's work computer indicated she had engaged in highly unusual transactions given her modest salary, such as purchasing two homes worth over $115,000 and $87,000 (financed with large deposits and mortgages, both of which she entirely paid off between 2010 and 2014), purchasing a brand new $40,000+ Lexus in 2013, and accumulating over $75,000 in her various bank accounts. App. B ¶¶ 89, 96, 115.

In a verified complaint, AAN sued Ms. Page for civil theft, conversion, replevin, unjust enrichment, and equitable lien. App. B. ¶¶ 193-230. Jeremiah Hartman, the owner and operator of AAN, signed the verified complaint under penalty of perjury. App. B ¶ 7.

B. The Subpoenas

To assist in proving its claims that Ms. Page had engaged in civil theft, conversion, replevin, unjust enrichment, and equitable lien, AAN subpoenaed Bank of America, N.A., the E-Gold Claims Process Administrator, Embassy

Mortgage Group, Inc., Lexus Financial Services, Cho Lon Jewelry, Sun Trust Mortgage, Inc., and Wells Fargo Bank, N.A. to produce certain financial information related to their dealings with Ms. Page. App. E.

C. The Objections

Ms. Page objected to the subpoenas on the basis that they (1) "seek[] private, confidential financial information" that is "irrelevant" and "not reasonably calculated to lead to the discovery of admissible evidence," and (2) are "premature." App. F at 1.

D. The Hearing

AAN set Ms. Page's objections for a hearing, which a court reporter transcribed. App. G. During the hearing, Ms. Page contended for the first time that she was entitled to an evidentiary hearing (although she neither actually asked for such a hearing nor proffered any evidence). App. G at 7.

E. The Order

In its entirety, the Order of April 27, 2015[1] ruled as follows:

> This cause came before the Court on April 7, 2015, on Defendant's Objection to Plaintiffs January 26, 2015 Amended Notice of Production. The Court having been informed and advised, it is now ORDERED and ADJUDGED that Defendant's Objection to Plaintiff's January 26, 2015 Amended Notice of Production is OVERRULED.
>
> Plaintiff Jeremiah's International Trading Company, Inc. d/b/a America's Auction Network ("AAN") filed an Amended Notice of

[1] In the trial court, the case is assigned to Hon. Walter L. Schafer, Jr.'s

Production from nonparties including Wells Fargo Bank, Bank of America, the E-Gold Claims Process Administrator, Embassy Mortgage Group, Cho Lon Jewelry, Lexus Financial Services, and SunTrust Mortgage. Defendant filed an objection to each subpoena but later withdrew her objection to the issuance of a subpoena to Cho Lon Jewelry.

Defendant is a former employee of AAN, which sells jewelry and other items through television auctions. Defendant's duties at AAN included matching mountings with precious stones. AAN's Verified Complaint states that during her tenure with AAN, from September 10, 2007, through July 4, 2014, Defendant stole various jewelry items from AAN with a cumulative value of over a quarter of a million dollars. The Verified Complaint further states that Defendant was in a bankruptcy when she began work with AAN, where her gross annual earnings before withholdings ranged from $22,000 to $35,000. Nonetheless, the Verified Complaint states that she has acquired two different properties and that she purchased and then completely paid off a mortgage on a six-figure residence from 2010 through 2012.

The Court finds that the issuance of the subpoenas is justified for the following reasons: (1) Due to the nature of this case, which deals with allegations of theft by Defendant, AAN is entitled to inquire into Defendant's financial information in an attempt to prove its allegations.

In particular, AAN is seeking to trace the proceeds of the alleged thefts. *Friedman v. Heart Institute*, 863 So. 2d 189, 194 (Fla. 2003) ("A party's finances, if relevant to the disputed issues of the underlying action, are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party.").

(2) AAN has provided a Verified Complaint signed and notarized by AAN's owner. *Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1264 (Fla. 4th DCA 2013) (stating that "[t]he plaintiffs verified amended complaint provided a reasonable evidentiary basis for the financial discovery").

(3) The allegations of the Verified Complaint are sufficient to show substantial financial activity which appears inconsistent with Defendant's known resources and therefore justifies an inquiry into her financial affairs.

(4) The appropriate time frame for the subpoenas is from September 10, 2007, when Defendant began work with AAN, through the present.

(5) The Court overrules all objections, including evidentiary objections, made by Defendant during the hearing.

Counsel for AAN may prepare subpoenas for the time frame stated above, with appropriately updated dates, and serve the same on Wells Fargo Bank, Bank of America, the E- Gold Claims Process Administrator, Embassy Mortgage Group, Lexus Financial Services, and SunTrust Mortgage.

DONE and ORDERED in Chambers, at Pinellas County, Florida on this 27th day of April, 2015.

App. A at 1-3.

ARGUMENT

First, the trial court did not depart from the essential requirements of law when it overruled Ms. Page's objections and allowed AAN to conduct routine discovery into Ms. Page's finances. Ms. Page's finances are relevant to AAN's causes of action for civil theft, conversion, replevin, unjust enrichment, and equitable lien. Ms. Page was not entitled to an evidentiary hearing because she is a party, not a nonparty. Ms. Page misconceives what relevance means and misplaces her reliance on cases that involve nonparties and improvident dictum. For those

reasons, the Court must deny Ms. Page's petition for writ of certiorari: certiorari jurisdiction cannot be used to create new law as Ms. Page proposes here.

Second, the trial court did not depart from the essential requirements of law when it overruled Ms. Page's objection that the subpoenas allowed discovery of Ms. Page's financial information after AAN had fired her. Courts around this country have authorized net worth audits in similar circumstances. Accordingly, the Court should not modify the subpoenas.

Third, the Court's denial of the petition for writ of certiorari should be with prejudice and on the merits.

Standard Of Review

A writ of certiorari is an extraordinary common law remedy that must meet "strict prerequisites," should be employed only in "very limited circumstances," is "entirely within the discretion of the court," and is "[not] available as a matter of right." *Abbey v. Patrick*, 16 So. 3d 1051, 1053 (Fla. 1st DCA 2009). To obtain a writ of certiorari, a "petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal." *Parkway Bank v. Fort Myers Armature Works*, 658 So. 2d 646, 648 (Fla. 2d DCA 1995). Prongs (2) and (3) concern only this Court's jurisdiction; it is only prong (1) that goes to the

merits. *See id.* at 648-49 (describing prongs (2) and (3) as "the two jurisdictional prongs" and prong (1) as the "standard of review on the merits").

Merits

I. THE TRIAL COURT DID NOT DEPART FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN IT ALLOWED AAN TO CONDUCT ROUTINE DISCOVERY INTO MS. PAGE'S FINANCES

Ms. Page seems to argue her financial information cannot be discovered because (1) it is irrelevant, (2) it is personal and confidential, and (3) it cannot be produced without an evidentiary hearing.[2] Ms. Page is incorrect.

A. The Trial Court Did Not Depart From The Essential Requirements Of Law When It Concluded Ms. Page's Finances Were Relevant

It is not clear whether Ms. Page contends the trial court departed from the essential requirements of law when it concluded her financial information was relevant. If she does so contend, she is incorrect.

"A party's finances, if relevant to the disputed issues of the underlying action, are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party." *Friedman v. Heart Institute*, 863 So. 2d 189, 194 (Fla. 2003). "Relevant evidence is evidence tending to prove or disprove a material fact." § 90.401, *Fla. Stat.* "[T]he concept of relevancy has a much wider

[2] Ms. Page apparently no longer contends the subpoenas are "premature."

application in the discovery context than in the context of admissible evidence at trial." *Improvement Trust Fund v. AEE*, 99 So. 3d 450, 458 (Fla. 2012). Financial discovery is routinely allowed in cases involving theft, fraud, or mismanagement.[3] "An appellate court will not disturb a trial court's determination that evidence is relevant and admissible absent an abuse of discretion." *Gosciminski v. State*, 132 So. 3d 678, 693 (Fla. 2013).

Exercising its discretion, the trial court recited the verified complaint's primary allegations and concluded Ms. Page's financial information was relevant "[d]ue to the nature of this case, which deals with allegations of theft by

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[3] *See A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006) (collecting cases and noting that financial records and tax returns are "clearly relevant" and therefore producible in civil RICO litigation), *rev'd on other grounds*, 305 F. App'x 489 (9th Cir. 2008); *State Farm v. CPT Medical,* 375 F. Supp. 2d 141, 156 (E.D.N.Y. 2005) (financial records, including tax returns and patient information are relevant in civil RICO action); *MedCity Rehabilitation v. State Farm*, 2013 WL 1898374, at *2-3, 7 (E.D. Mich. May 7, 2013) (holding that financial documents "before, during and after" relationship at issue are relevant to show, among other things, damages); *NetJets Aviation v. Peter Sleiman Development,* 2011 WL 6780879, at *6-7 (M.D. Fla. Dec. 27, 2011) (holding that financial discovery is allowable to support veil-piercing allegations); *Belaire at Boca v. AIA*, 2007 WL 1830873, at *2 (S.D. Fla. June 22, 2007) (ordering production of financial information pertaining to other of defendant's insureds to show that many other customers were defrauded, over objection that 1,100 other customers insurance policies could be implicated); *S. Pan v. S.B. Ballard*, 2009 WL 1405100, at *3 (M.D. Fla. May 19, 2009) ("[b]ased upon the reasons proffered by Plaintiff for seeking Defendant Ballard's financial records, *supra,* . . . the Court is satisfied that the discovery sought by Plaintiff is reasonably calculated to lead to admissible evidence"); *Fin. Bus. Equip. v. Quality Data*, 2008 WL 4663277 (S.D. Fla. Oct. 21, 2008) (ordering production of five years of profit and loss, cash flow, and tax returns in order to show lost profits).

Defendant," which therefore entitled AAN "to inquire into Defendant's financial information in an attempt to prove its allegations" by "trac[ing] the proceeds of the alleged thefts." App. A at 2. There is no error, much less an abuse of discretion, in this ruling that Ms. Page's finances are relevant.[4]

Accordingly, the trial court did not depart from the essential requirements of law when it concluded Ms. Page's finances were relevant.

B. Because Ms. Page's Finances Are Relevant, They Can Be Discovered Whether Or Not They Are Personal And Confidential

It is unclear whether Ms. Page contends the trial court departed from the essential requirements of law when it ordered production of her financial information, even if otherwise relevant, because it happens to be personal and confidential. If she does so contend, she is incorrect. "A party's finances, if relevant to the disputed issues of the underlying action, are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party." *Friedman*, 863 So. 2d at 194. The Florida Supreme Court has spoken; nothing further needs to be said.

[4] Indeed, the approach of using a "net worth audit" to detect and prove liability was specifically endorsed in *United States v. Bonnano Family*, 119 F.R.D. 625, 628 (E.D.N.Y. 1988). In that civil RICO case, the government sought to prove that one of the defendants did not have sufficient legitimate income to acquire several businesses he bought. Similarly, AAN will show that Ms. Page lacked sufficient legitimate income to acquire, among other things, several homes, a new luxury car, and various jewelry and cash while working for less than $15 per hour.

C. The Trial Court Did Not Depart From The Essential Requirements Of Law When It Overruled Ms. Page's Objections Without An Evidentiary Hearing, Because She Is A Party, Not A Nonparty, And She Is Relying On Improvident Dictum

Ms. Page contends the trial court departed from the essential requirements of law because it did not hold an evidentiary hearing before overruling her objections to the subpoenas.[5] Ms. Page is incorrect for two reasons. First, verified complaints constitute a sufficient evidentiary basis to obtain financial discovery. Second, Ms. Page is a party, not a nonparty, and the weight of authority provides that only nonparties are entitled to such an evidentiary hearing.

Friedman is the leading Florida Supreme Court case on financial discovery and makes no mention of any need for an "evidentiary hearing." Instead, it states:

> Certainly, the substance of the Florida Rules of Civil Procedure, buttressed by litigant-protecting caselaw, strikes the proper balance between allowing appropriate discovery and protecting litigants' privacy and equitable interests. . . . [W]here materials sought by a party "*would appear to be relevant to the subject matter of the pending action*," the information is fully discoverable. A party's finances, if relevant to the disputed issues of the underlying action, are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party.

[5] Ms. Page claims she was deprived of an evidentiary hearing because she should have been given an opportunity to cross-examine Mr. Hartman. But Ms. Page received notice of the subpoenas on January 26, 2015 and had over two months to prepare for the April 7, 2015 hearing, yet failed to depose Mr. Hartman, propound any discovery, subpoena Mr. Hartman for the hearing, or even notify AAN that she desired to cross-examine him. Since the April 7, 2015 hearing, Ms. Page has pursued no further discovery.

863 So. 2d at 194-95 (emphasis supplied); *see also Epstein v. Epstein*, 519 So. 2d 1042, 1043-44 (Fla. 3rd DCA 1988) (stating that "discovery as to the finances of [two of defendants'] ventures, which the court denied, was quite relevant to the subject matter of this case" and reversing and remanding for a new trial).

The Order of April 27, 2015 specifically ruled that AAN's Verified Complaint was a sufficient evidentiary basis to obtain financial discovery:

> AAN has provided a Verified Complaint signed and notarized by AAN's owner. *Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1264 (Fla. 4th DCA 2013) (stating that "[t]he plaintiff's verified amended complaint provided a reasonable evidentiary basis for the financial discovery").

App. A at 2. Indeed, this ruling was consistent with *Friedman*, *Elsner*, and the great weight of Florida cases considering the issue.[6]

1. Ms. Page Misplaces Her Reliance On *Rowe v. Rodriguez-Schmidt*, *Spry v. Professional Employer Plans*, and *Borck v. Borck*

To support her contention that she was entitled to an evidentiary hearing, Ms. Page relies primarily on *Rowe v. Rodriguez-Schmidt*, 89 So. 3d 1101 (Fla. 2d DCA 2012), *Spry v. Professional Employer Plans*, 985 So. 2d 1187 (Fla. 1st DCA 2008), and *Borck v. Borck*, 906 So. 2d 1209 (Fla. 4th DCA 2005). Her reliance is

[6] In *Frenkel v. Acunto*, the court held that Fla. Stat. 655.059(e), which states that books and records of a financial institution "shall be made available for inspection and examination . . . pursuant to a subpoena," allows financial discovery pursuant to an otherwise valid subpoena. 2014 U.S. Dist. LEXIS 131696, at *15, *20 (S.D. Fla. Sept. 19, 2014).

misplaced, however, because those cases are easily distinguishable. Moreover, *Spry* is improvident dictum.

Borck and *Rowe* are both distinguishable because they involved discovery directed to third parties' financial information, not parties' financial information. Specifically, in *Borck*, nonparties filed a petition for writ of certiorari to quash a trial court's order that they produce their financial information. 906 So. 2d at 1209. Without an evidentiary hearing, the trial court had ordered such production. *Id.* at 1211. Because there had been no evidentiary hearing to determine the financial information's relevance or compelling reason for its disclosure, *Borck* granted a writ of certiorari and quashed the order. *Id.* But *Borck* said nothing about requiring such evidentiary hearings for parties. Similarly, *Rowe* granted a writ of certiorari to a nonparty petitioner because the trial court "ordered production of a nonparty's financial information without considering any evidence regarding its relevance." 89 So. 3d at 1104. Again, *Rowe* said nothing about requiring such evidentiary hearings for parties. Here, because Ms. Page is the defendant, not a nonparty, she cannot rely on *Borck* or *Rowe* to argue the trial court departed from the essential requirements of law when it overruled her objections without an evidentiary hearing because "certiorari jurisdiction cannot be used to create new law." *Nader v. Fla. Dep't of Highway Safety & Motor Vehicles*, 87 So. 3d 712, 723 (Fla. 2012).

Accordingly, because Ms. Page cannot rely in her certiorari petition on *Borck* or *Rowe*, her only basis for contending there has been some departure from the essential requirements of law is to rely on *Spry*. But *Spry* is also distinguishable (albeit for a different reason) and improvident dicta.

First, *Spry* is distinguishable. In *Spry*, a workers' compensation case, the financial discovery had no apparent relevance and the respondent failed to present any evidence as to the relevance of the claimant's financial information. 985 So. 2d at 1188-89. Here, however, the relevance of Ms. Page's financial information is explained at length in the verified complaint, which was sworn under penalty of perjury and constitutes evidence. *See* App. B; *see supra* Argument I.A.

Second, *Spry* is improvident dictum. Specifically, the Fourth District recently distinguished *Borck*, *Rowe*, and *Spry* in *Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1263 (Fla. 4th DCA 2013). *Elsner* involved defendants who petitioned for certiorari to quash a discovery order that required prejudgment production of their financial information. *Id.* at 1262. Those defendants raised the same arguments and relied on the same cases as Ms. Page does here. *See id.* at 1263. The *Elsner* court rejected all those arguments and denied the petition for certiorari. *Id.* In doing so, *Elsner* noted that *Spry*'s remark about an "evidentiary hearing . . . is dicta . . . [and] should not be read to create a *per s*e rule requiring trial courts to conduct mini-trials on discovery issues in all cases." *Id.* at 1264.

Moreover, *Elsner* went on to hold that a "verified amended complaint provided a reasonable evidentiary basis for the financial discovery. Petitioners have not shown a departure from the essential requirements of law." *Id*.[7]

Similarly, the First District itself also implied that *Spry*'s statement was dicta by sidestepping the issue that it had (supposedly) determined two years earlier in *Spry* when it decided *Jackson v. Computer Science Raytheon*, 36 So. 3d 754, 755 (Fla. 1st DCA 2010) ("it is unnecessary to address the second argument as to whether a hearing must always be held prior to ordering the production of financial documents even when relevancy may be readily apparent"). Because Ms. Page is relying only on *Spry*'s dictum, it goes without saying that she cannot satisfy her extraordinarily high burden of demonstrating a departure from the essential requirements of law. *See Nader*, 87 So. 3d at 723 ("certiorari jurisdiction cannot be used to create new law").

Other recent cases demonstrate *Spry* was not only *dicta*, but an aberration.[8] For example, in *Bianchi & Cecchi Services v. Navalimpianti USA, Inc.*, the Third

[7] Notably, the verified amended complaint in *Elsner* was under fire from (an apparently nonfrivolous) pending motion to dismiss. *Id*. at 1264. AAN, whose initial verified complaint has now withstood Ms. Page's motion to dismiss, stands an even stronger position than the plaintiff in *Elsner*.

Additionally, AAN's Verified Complaint easily supports a motion for leave to amend to add punitive damages. Such a pleading would then justify financial discovery. Thus, Ms. Page can only incrementally forestall, but not prevent, this financial discovery.

District declined to adopt a per se rule requiring an evidentiary hearing before enforcing a civil subpoena requesting financial documents in a fraud case:

> we decline BCS's invitation to tie the hands of trial court judges by creating a hard and fast rule requiring the trial court to conduct an evidentiary hearing or an in-camera review.
>
> Plainly, trial judges are in a better position than appellate court judges to determine what mechanism should be employed in a given case when deciding whether the requesting party has established that the need for the information outweighs the privacy rights of the non-party. *See Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1263 (Fla. 4th DCA 2013) ("We . . . decline to adopt a *per se* rule requiring a trial court always to conduct an evidentiary hearing before ordering financial discovery from a party. Such a mandatory rule would be inconsistent with the Florida Supreme Court's refusal to limit the discretion of trial courts with specific rules or formulas."); *see also 2245 Venetian Court Bldg. 4, Inc. v. Harrison*, 149 So. 3d 1176 (Fla. 2d DCA 2014) (finding no reversible error where the trial court failed to conduct an evidentiary hearing prior to ordering the disclosure of financial records because the relevancy of the requested documents was readily apparent and the personal right to privacy was not at issue).
>
> . . . .
>
> In some, albeit not most, cases, the trial court—without conducting an evidentiary hearing or an in-camera inspection of the subject records—is able to perform the required balancing test by reviewing the pleadings and the record evidence to date, and by being informed by counsel's argument. *See, e.g.*, *Harrison*, 149 So. 3d at 1181; *Elsner*. 126 So. 3d at 1263-64. In this case, despite not conducting an evidentiary hearing or an in-camera inspection of the subject financial

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[8] Five years earlier, the First District decided a similar case without mentioning any need for any evidentiary hearing. *Brandsmart v. Schaffer*, 855 So. 2d 145 (Fla. 1st DCA 2003) (noting that it was the failure to analyze the need for the requested discovery, and not a failure to hold a full-blown evidentiary hearing, which was objectionable).

> documents, the record is clear that the trial court performed the required balancing test; indeed, the trial court's order was expressly crafted to balance the competing interests of Navalimpianti's right to know and BCS's right to privacy.

159 So. 3d 980, 983-84 (Fla. 3d DCA 2015). *Bianchi* endorses what the trial court did here in applying a commonsense approach in balancing relevance against privacy without slavish adherence to any rigid formula.

2. Ms. Page Misplaces Her Reliance On *Charlotte County v. Grant Medical* and *McMurrain v. Fason*

Relatedly, in arguing the verified complaint was insufficient because she had no opportunity to cross-examine Mr. Hartman (which she could have done earlier at deposition and for which she was unprepared at the hearing, *see supra* note 5), Ms. Page misplaces her reliance on *Charlotte County v. Grant Medical*, 68 So. 3d 920 (Fla. 2d DCA 2011), and *McMurrain v. Fason*, 573 So. 2d 915 (Fla. 1st DCA 1990). Those cases are easily distinguishable.

In *Charlotte County*, the court issued a preliminary injunction, not a discovery order. In that case, the court correctly concluded that admissible evidence was required to support the injunction. 68 So. 3d at 922-23. In other words, although *Charlotte County* held verified complaints are insufficient when there is a noticed and contested evidentiary hearing, there was no requirement for such a hearing here. *Elsner*, 126 So. 3d at 1263-64.

In *McMurrain*, the complaint was both unverified and filed with attachments that contradicted the pleading. 73 So. 2d at 917-918. The facts alleged, moreover, were insufficient to support the writ of attachment obtained. *Id*. at 918. Additionally, unlike Florida Rule of Civil Procedure 1.351(d),[9] the statute at issue in *McMurrain* specifically required both (1) an immediate hearing and (2) that the party who sought the writ prove the grounds. *Id*. at 919. *McMurrain* specifically condemned a party who, like Ms. Page, appeared for an "evidentiary hearing" but failed to present any evidence.

Finally, Ms. Page's proposed rule is bad policy. Ms. Page's proposed requirement of an evidentiary hearing, with the full panoply of protections required to obtain the substantive relief at issue in *Charlotte County* and *McMurrain*, would turn ordinary civil procedure principles on their head. A plaintiff would not only be required to make a prima facie showing of relevance, but would also be required to prove its entire case on the merits in order to unlock the files containing the information required to meet that burden. This would require parties to prepare for contested hearings at the stage of the litigation when they are unequipped to do so and their pleadings—verified or not—are entitled to the presumption of truth. Such a procedure would derail discovery in many cases, as it has here, where Ms. Page's

[9] "Ruling on Objection. If an objection is made by a party under subdivision (b), the party desiring production may file a motion with the court seeking a ruling on the objection or may proceed pursuant to rule 1.310." Fla. R. Civ. P. 1.351(d).

tactics have turned a routine (and usually uncontested) discovery matter into a full-blown sideshow that has already delayed this matter for months and distracted court and counsel from the merits of the controversy.

* * *

In short, there is only one case that squarely decides the discovery issue presented here in precisely the same factual and procedural circumstances, and that case is *Elsner*, 126 So. 3d at 1262-63 (denying defendants' petition for writ of certiorari from discovery order that required prejudgment production of financial information). The trial court expressly relied on *Elsner*, and this Court should follow it as well. Accordingly, the trial court did not depart from the essential requirements of law.

D. The Court Should Also Deny Ms. Page's Petition For Writ Of Certiorari Because It Is Futile

Even if the Court issued a writ of certiorari, Ms. Page's victory on this issue would be futile and short-lived. Because Ms. Page's conduct subjects her to a claim for punitive damages, and because such a claim would support financial discovery, *see Elsner*, 126 So. 3d at 1264, AAN will again be entitled to the financial discovery regardless of the outcome of her petition. *See State v. I.B.*, 366 So. 2d 186, 187 (Fla. 1st DCA 1979) (Smith, J., dissenting) ("The court's writ is therefore futile except as a lecture, which is not the purpose of common law

certiorari. I would dismiss the appeal."). The Court should deny Ms. Page's petition for that reason as well.

II. THE TRIAL COURT DID NOT DEPART FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN IT ALLOWED AAN TO SUBPOENA MS. PAGE'S FINANCIAL INFORMATION AFTER AAN HAD FIRED HER

Without authority, Ms. Page contends her financial information from after AAN fired her is "not relevant." Petition at 10. This argument is silly. Although inventory records show losses of over $250,000 attributable to Ms. Page, AAN does not know the full extent of what Ms. Page stole, when she sold it, and whether she still owns it. For instance, if Ms. Page engaged in large transactions after she was fired, this would further indicate that, while she was employed with AAN, she had stolen jewelry, gemstones, and precious metals. The trial court therefore had discretion to determine such financial information was relevant, and Ms. Page does not point to any contrary authority. Accordingly, Ms. Page cannot demonstrate any departure from the essential requirements of law, and this Court should not modify the subpoenas.

III. THE COURT SHOULD DENY MS. PAGE'S PETITION FOR WRIT OF CERTIORARI WITH PREJUDICE AND ON THE MERITS

Finally, the Court's denial of the petition for writ of certiorari should be with prejudice and on the merits. "When a court intends to deny an extraordinary writ petition on the merits, the court need only include in its order a simple phrase such as 'with prejudice' or 'on the merits' to indicate that the merits of the case have

been considered and determined that the denial is on the merits." *Topps v. State*, 865 So. 2d 1253, 1258 (Fla. 2004).

CONCLUSION

For the foregoing reasons, the Court should deny Ms. Page's petition for writ of certiorari with prejudice and on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 6, 2015, I electronically served the following via the Florida e-portal and e-mail: Charles A. Samarkos (charles@jpfirm.com and kailag@jpfirm.com), Johnson, Pope, Bokor, Ruppel & Burns, LLP, 911 Chestnut Street, Clearwater, FL 33757-1368.

July 6, 2015

/s/ Michael P. Beltran
Michael P. Beltran

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

July 6, 2015

/s/ Michael P. Beltran
Michael P. Beltran