Fifth Circuit Court of Appeal
State of Louisiana

No. 25-C-470

KENSINGTON CAPITAL ADVISORS, LLC, ET AL

versus

DELOS CAPITAL MANAGEMENT LP, ET AL

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 851-721, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

July 22, 2026

FREDERICKA HOMBERG WICKER

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT GRANTED, IN PART, FOR LIMITED PURPOSE;
DENIED, IN PART

FHW
MEJ
JJM

TRUE COPY

JALISA WALKER
DEPUTY CLERK

COUNSEL FOR DEFENDANT/RESPONDENT,
DELOS CAPITAL MANAGEMENT LP; DELOS EDGARD, LP; GULF COAST CONSTRUCTION & MATERIALS, LLC; EDGARD CONSTRUCTION MATERIALS, LLC; ST. JAMES CONSTRUCTION MATERIALS, LLC; RIVER PARISHES CONSTRUCTION MATERIALS, LLC; HAWK RDF, L.L.C.; ROBERT D. FIELD; BAK ADVISORS, INC.; AND BERNARD KATZ

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DC TRUCKING AND HAULING, DUAL SERVICE CORPORATION, AND JAMES PERDIGAO

Max M. Chotto

WICKER, J.,

Relators, DC Trucking and Hauling,[1] Dual Service Corporation, and James Perdigao[2], seek this Court's supervisory review of the June 23, 2025 judgment of the 24th Judicial District Court, denying their Motions to Quash notices of records deposition and subpoenas duces tecum issued to Home Bank, N.A and Liberty Bank and Trust Company. The notices and subpoenas duces tecum[3] were issued by Respondents, Gulf Coast Construction & Materials, LLC, Edgard Construction Materials, LLC, St. James Construction Materials, LLC, and River Parishes Construction Materials, LLC.[4] For the reasons stated below, we grant the writ application, in part, for the purpose of narrowing the scope of the Bank Subpoenas; otherwise, the writ application is denied.

FACTS AND PROCEDURAL HISTORY

The plaintiffs and defendants-in-reconvention in this litigation are Kensington Capital Advisors, LLC; Kensington Realty Group, LLC; Allied Transportation of Louisiana, LLC; Pelican Barge and Transportation, LLC; Museum of Sports History, LLC; and John Ohle.[5] Respondents were named as defendants in Kensington's suit. They are also plaintiffs-in-reconvention regarding a reconventional demand they filed against Kensington.[6] Relators, whose bank records have been subpoenaed, are ***not*** parties to the litigation.

The Kensington Parties filed suit against the GCCM Parties alleging breaches of various trucking, employment, and consulting agreements between

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[1] DC Trucking and Hauling is a trade name under which Dixie Capital Corporation does business.

[2] DC Trucking and Hauling will be referred to hereinafter as "DC Trucking;" Dual Service Corporation will be referred to hereinafter as "DSC;" James Perdigao will be referred to hereinafter as "Perdigao;" and, DC Trucking, DSC and Perdigao will be referred to collectively as "Relators."

[3] Home Bank, N.A. will be referred to herein as "Home Bank;" Liberty Bank and Trust Company will be referred to herein as "Liberty;" the notices and subpoenas duces tecum issued to Home Bank and Liberty will be jointly referred to herein as the "Bank Subpoenas;" the individual notice and subpoena duces tecum issued to Home Bank will be referred to herein as the "Home Bank Subpoena;" and the individual notice and subpoena duces tecum issued to Liberty will be referred to herein as the "Liberty Subpoena."

[4] Gulf Coast Construction & Materials, LLC, Edgard Construction materials, LLC, St. James Construction Materials, LLC, and River Parishes Construction Materials, LLC will be collectively referred to herein as "GCCM" or "Respondents."

[5] Kensington Capital Advisors, LLC, Kensington Realty Group, LLC, Allied Transportation of Louisiana, LLC; Pelican Barge and Transportation, LLC, and Museum of Sports History, LLC will be referred to hereinafter as "Kensington" or the "Kensington Parties". Allied Transportation of Louisiana LLC individually will be referred to herein as "Allied." Pelican Barge and Transportation, LLC will be referred to herein as "Pelican." John Ohle will be referred to herein as "Ohle."

[6] Additional defendants are Delos Capital Management, LP and Delos Edgard, LP; Hawk RDF, L.L.C.; Robert D. Field; BAK Advisors, Inc.; and Bernard Katz. These defendants did not join with GCCM in the filing of the reconventional demand. Together with GCCM, these parties may be referred to collectively herein as the "GCCM Parties."

them, related to the operation of two clay pits owned by GCCM, located in the River Parishes.[7] The Kensington Parties allege that pursuant to agreements dated June 8, 2018, and February 21, 2020, they had the exclusive rights to all trucking and transportation contracts related to the operation of GCCM's borrow pits.[8] The Kensington Parties were controlled by or affiliated with, Ohle, who became a co-manager of GCCM's predecessor in June 2018. Ohle became GCCM's full-time Chief Operating Officer in February 2021.

GCCM terminated its business relationship with Kensington/Ohle in July 2024. In its reconventional demand, GCCM has alleged that the Kensington Parties, through Ohle, engaged in schemes to convert, steal, misappropriate, and skim millions of dollars in trucking fees and commissions from GCCM. They further alleged that Kensington/Ohle had converted resources and property belonging to GCCM, including clay and a Komatsu bulldozer (the "Bulldozer").[9]

Relators have no ownership in GCCM nor in any of the Kensington Parties. Further, neither GCCM nor any of the Kensington Parties have any ownership interest in any of the Relators. Ohle is not an officer, director, manager, employee, representative or agent of DC Trucking or DSC. No one associated with DC Trucking or DSC is an officer, director, manager, employee, representative or agent of GCCM or any of the Kensington Parties. Ohle has no signatory authority over the bank accounts of DC Trucking or DSC. Nor does anyone associated with DC Trucking or DSC have any signatory or other authority whatsoever in conjunction with GCCM or any of the Kensington Parties.

Relator DC Trucking maintains a bank account at Home Bank. Relators DSC and Perdigao maintain bank accounts at Liberty. GCCM served the Bank Subpoenas on Home Bank and Liberty, seeking production of more than seven years of Relators' bank account records for depository accounts, certificates of deposit, and any other financial accounts held at the banks in their names.[10] DC Trucking filed a Motion to Quash the Home Bank Subpoena, and DSC and

[7] Louisiana's River Parishes are comprised of St. St. Charles, St. John the Baptist and St. James Parishes (the "River Parishes"). The two clay pits are the "Willow Bend" pit, which was acquired by Edgard Construction Materials Holdings, LLC ("ECMH"), through its wholly owned subsidiary, Edgard Construction Materials, LLC ("ECM") in June 2018, and the "Big Shake" pit, which was acquired by ECMH/ECM in February 2020. Thereafter, ECMH became GCCM.

[8] GCCM's business was selling clay from the Willow Bend and Big Shake borrow pits for government works projects. The clay was taken away from the pits by truck pursuant to contracts with trucking companies.

[9] Respondents claim that the Bulldozer was sold for $47,000 in June 2023, and that the proceeds of the sale were converted by Kensington/Ohle and deposited into DC Trucking's bank account.

[10] For each account (checking, savings, investment, or deposit), the banks were subpoenaed to produce (1) statements; (2) transaction histories; (3) deposit slips; (4) withdrawal slips; (5) checks; (6) wire transfer records; (7) account opening documents, including "know your customer" forms; (8) documents identifying account owners, users, and signatories; (9) signature cards; (10) tax forms; (11) images of cash, canceled, dishonored, or deposited checks, (12) images of deposit tickets/forms; and (13) records of deposits, withdrawals, electronic fund transfers, and wires. As to Perdigao, Liberty was also subpoenaed to produce all documents related to safety deposit boxes.

Perdigao filed a Motion to Quash the Liberty Subpoena.[11] [12] The Motions to Quash were opposed by GCCM.

In the Motions to Quash, Relators contended that their banking records are confidential and not relevant to Respondents' claims. They also claim that Respondents failed to establish good cause for seeking production of these confidential documents in that Respondents did not demonstrate that the information contained in the bank records could not be, or had not been, obtained in another fashion.

Respondents filed a single opposition to the Motions to Quash. In their opposition, Respondents countered that their reconventional demand is based on the allegedly fraudulent activities of Ohle, who used "numerous companies and bank accounts to hide his [wrongful] activities from GCCM." They further alleged that improper trucking commissions and fees for excavating and processing clay had been deposited, at Ohle's instruction, into DC Trucking's account at Home Bank and the DSC and Perdigao accounts at Liberty.

As their rationale in support of the Home Bank Subpoena for DC Trucking's bank account records, Respondents alleged:

> On [Ohle's] instructions, his preferred trucking provider, RNK Construction, LLC ["RNK"], made payments of trucking commissions that had been improperly and surreptitiously charged to GCCM's customers into [DC Trucking's] account at Home Bank. The bank records obtained from Bank of America pursuant to the previously issued subpoena included a $1,500.00 check by DC Trucking to [Ohle] personally dated two days after providing those instructions to RNK. Records provided to GCCM by RNK indicate that starting July 10, 2023, RNK made payments of Ohle's improper brokerage commissions to DC Trucking.
>
> Furthermore, [Ohle] testified at his deposition that he had decided to use [DC Trucking] to perform trucking services and applied to CapitalPlus to factor trucking invoices and had been provided the name of the company by [Perdigao]. . .In fact [Ohle] used [DC Trucking] not to haul materials but instead to receive illicit trucking and brokerage commissions. Additionally, the $47,000 invoice for the sale of the [Bulldozer] was issued by [DC Trucking] and included instructions to remit payment to its Home Bank account.

As support for the foregoing assertions, Respondents attached the following to their opposition with respect to DC Trucking/Home Bank:

1. **Exhibit C**: Text messages that Respondents contend are between Ohle and April Wilke of [RNK] which Respondents assert was Ohle's "preferred trucking provider," dated July 10, 2023. The text messages

[11] The DC Trucking Motion to Quash and the DSC/Perdigao Motion to Quash are referred to collectively herein as the "Motions to Quash."

[12] The Motions to Quash also included a request for a protective order as to Relators' bank records.

relate to a $7.076.00 payment to DC Trucking from RNK, scheduled for July 11, 2023.[13]

2. **Exhibit D**: Text messages from April Wilke of RNK to Robert Gilbert, the President of RNK, dated July 12, 2023, relative to a request by Ohle to be paid commissions for the "Gilchrest Job," with payment to be made to DC Trucking.[14]

3. **Exhibit E**: A check drawn on DC Trucking's Home Bank account, payable to John Ohle, in the amount of $1,500.00. The check contains no notation indicating why DC Trucking was paying Ohle that amount. The check was written in July 2023.

4. **Exhibit F**: A report entitled "Expenses DC Trucking Hauling" purporting to show commissions paid to DC Trucking from July 10, 2023, through October 31, 2024, from RNK.[15]

5. **Exhibits G** and **H**: Excerpts of the Deposition of Ohle, taken on April 28, 2025, and the Crossed-Noticed Deposition of Ohle, taken on April 20, 2025 (Ex. G). In the first excerpt, Ohle was questioned about email communications (Ex. H) that occurred on August 5, 2021.[16] In the second excerpt, Ohle was questioned regarding the Hancock Pit, DC

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[13] The email chain depicts a photograph of a man with the name, "John," written underneath. Below that is a photograph of a note on which appears DC Trucking's address, bank routing number, and bank account number. Beneath that is a conversation bubble that contains the word, "Electronic?" and one beneath that containing the words, "Not mailed right". No name is attached to these communications. Below these communications, another unidentified correspondent wrote back "I can do electronic", "email address?". Below that communication is an email address that appears to be the address of DC Trucking's billing department. Finally, beneath the email address is a memo that states, "Payment scheduled! Your $7,076.00 payment to DC Trucking and Hauling is scheduled for July 11, 2022. We'll notify them once it's on its way."

[14] In those messages, April Wilke writes to Robbie Gilbert: "Remind me to tell you about john wanting all of his commissions from Gilchrest job[.]" "I told him that you were out of town when he called Monday. And I kept our ½. Didn't back down. He said it was never discussed for this job. Discussed for Lemoine." "Oh yeah. And it's not going to Allied. Some new company DC Trucking and Hauling." The email does not contain any reference to GCCM.

[15] There is nothing in the report identifying it as being an RNK record or identifying any commissions as being related to services rendered to GCCM.

[16] At the top of Exhibit H, about which Ohle was questioned, appears "RE: Formal name of Company." This appears to have been sent to Ohle from Perdigao. There is no accompanying text. The next email is from Ohle and states: "Dixie Capital Corporation d/b/a DC Trucking and Hauling[.]" No recipient is listed. The final email in this chain is from Brent Chambers, the Executive Vice President of CapitalPlus to Ohle and states: "Hi John I want to send you the template Application for the Trucking Services. I need to (sic) formal name as registered agent with the SOS. I want to get this moving so we are ready when the time comes." In his excerpted deposition testimony, Ohle stated that he had been working with CapitalPlus to establish a factoring arrangement for trucking invoices "so that we would get cash and be able to pay the truckers prior to being paid." Respondents claim that Perdigao introduced Ohle to CapitalPlus but in the deposition excerpt attached in support of this claim, Ohle did not so state.

Trucking's relationship to/with the Hancock Pit and/or its owner; and the "LNG job."[17]

6. **Exhibit I**: Invoice from DC Trucking to Deanco Auction Company relating to the Bulldozer. The invoice is in the amount of $47,000.00. It was issued in June 2023 and contains a notation that payment is to be made into DC Trucking's account at Home Bank.

7. **Exhibit J**: Louisiana Secretary of State registration of trade name of DC Trucking, showing that the application for registration of trade name was filed on July 19, 2021, by Earl Schmidt, as the authorized representative for the applicant, Dixie Capital Corporation, representing that the trade name was first used by the applicant and first used in Louisiana on March 5, 1986.

As their rationale in support of the Liberty Subpoena for DSC's and Perdigao's bank records, Respondents alleged in their opposition that:

> Documents produced in discovery have also revealed a connection between DC Trucking. . .and Movants [DSC] and [Perdigao]. . .[DSC was formed by [Perdigao], a long-time associate of [Ohle]. . .The online records of [DSC] and Dixie Capital Corporation show that they share the same mailing address which is P.O. Box 4245, New Orleans, LA 70178. That is the same mailing address that appears on [DC Trucking's] invoice of the [Bulldozer], and which a Westlaw PeopleMap reports belongs to [Perdigao]. [DSC's bank account at [Liberty] was used to draw a check for $35,000.00 payable to RNK and signed by [Perdigao], which also reflects that same mailing address.

As support for the foregoing assertions related to DSC/Perdigao/Liberty, Respondents attached the following exhibits to their opposition:

1. **Exhibit K**: Louisiana Secretary of State transcript of DSC. The transcript shows that DSC was incorporated on January 19, 2022, by Perdigao who was also the registered agent and the initial director.[18] The transcript also shows that DSC, through Marc Garcia, filed a Statement of Change on February 22, 2022.[19] The final document in the transcript is DSC's Annual Report filed January 19, 2025.[20]

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[17] The Hancock Pit and the "LNG job" do not appear to be subjects of the instant litigation.

[18] The initial registered office was 60502 Dixie Ranch Road, Slidell, LA 70460. Its initial principal office was listed as 4121-½ State Street Drive, New Orleans, LA 70125, which was also the address provided for Perdigao. Its mailing address was listed as P.O. Box 4245, New Orleans, LA 70178-4245, as it continues to be in the annual report included in this exhibit.

[19] The Statement of Change provided a new address of 365 Canal Street, New Orleans, LA 70130, for DSC's principal and registered offices. It also changed the registered agent and director to Marc Garcia. The mailing address remained the same.

[20] The Annual Report shows DSC's mailing address as being the same as that initially filed and continues to show Marc Garcia as the registered agent and director. The address of the

2. **Exhibit L**: A check drawn on DSC's account at Liberty, payable to RNK, dated June 9, 2023, in the amount of $35,000. The check was signed by Perdigao. There is no notation on the check indicating why DCS paid RNK $35,000.

Based on the foregoing allegations and documents, Respondents asserted that Relators' "financial records at Home Bank and Liberty are highly relevant to this case and are necessary to determine the full extent of the fraud perpetrated by Ohle." They asserted that the subpoenas were not overly expansive in seeking more than seven years of banking records because they only sought records dating back to June 2018, when GCCM retained Ohle as a consultant.[21] Finally, Respondents contended that Relators' privacy rights were adequately protected by a Consent Protective Order (the "Protective Order") entered in the case that prevented disclosure of Relators' banking records, except for purposes of the litigation.

A hearing was conducted on the Motions to Quash on June 23, 2025. At the hearing, Respondents' counsel stated:

> If Your Honor is inclined to limit that, I do believe you have a right to limit the scope of [Respondents'] requests, really what we are looking for is the bank records that show the transactions in and out. That's what we got from Regents (sic) Bank. That's what we got from BMO Harris, that's what we got from Bank of America.

Immediately prior to the district court's ruling, the court read into the record the list of documents that were being subpoenaed from the Banks and inquired of Respondents' counsel whether those were the same documents subpoenaed from "the other banks." Upon being informed that the records listed in the Bank Subpoenas were the same records that had been requested from the "other banks," the court stated that it was "going to be consistent." At that point, Relator's counsel reminded the court that the Bank Subpoenas in this case were directed to "non-party individuals." The district court stated that the "other banks" were non-parties and that there was "nothing different from these two banks than from the other banks that were non-parties." Relator's counsel responded that: "[t]hose other subpoenas, Judge, were for party account holders, not just a general subpoena for non-parties. That's a big difference." Without further discussion, the court denied both Motions to Quash, finding that:

> The GCC Defendants are entitled to receive any relevant non-privileged and necessary information according to the subpoena duces tecum from Home Bank, N.A., and Liberty Bank and Trust from June 18th (sic) through present.

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registered office is listed as 4245 S. Carrollton Avenue, New Orleans, LA 70118. Marc Garcia does not appear to be involved in this litigation. He is not mentioned in the Motions to Quash or in the opposition to the Motions to Quash.

[21] Ohle's relationship with GCCM was terminated in February 2024. The Bank Subpoenas sought financial records from 2018 to "the present." The Home Bank Subpoena was issued in May 2025, and the Liberty Subpoena was issued in June 2025.

> And there is a protective order in place and so – and the Court is of the opinion that the protective order that was a consent protective order issued by this Court on April 26, 2024, sufficiently protects the interest of all parties involved and non-parties because the parties are involved are requesting information. And so that protective order will protect any information that is received by those parties regarding anyone.

The district court declined the request by Relators' counsel for an in-camera inspection of the returns on the Bank Subpoenas. Relators' counsel noted their objections to the district court's ruling. A written Judgment was entered immediately after the hearing. No written reasons were entered.

On July 9, 2025, Relators filed a Motion for Suspensive Appeal. The matter was docketed under No. 25-CA-470. An appeal timely followed. On January 6, 2026, after the parties had filed their appeal briefs, the appeal was converted to an application for supervisory writs and was reassigned Docket No. 25-C-470.

DISCUSSION

The sole issue presented by Relators is whether the district court abused its discretion in denying the Motions to Quash when GCCM purportedly failed to show relevancy and good cause for the production of the subpoenaed records and/or that the requested information could not be obtained in a less intrusive manner.

A party may obtain discovery of any information, not privileged, which is relevant to the subject involved in the pending action. La. C.C.P. 1422. Discovery statutes are to be liberally and broadly construed to achieve certain basic objectives of the discovery process: (1) to afford all parties a fair opportunity to obtain facts pertinent to pending litigation; (2) to discover the true facts and compel disclosure of these facts wherever they may be found; (3) to assist litigants in preparing for trial; (4) to narrow and clarify the issues between the parties; and (5) to facilitate and expedite the legal process by encouraging settlement or abandonment of less than meritorious claims. *Centanni v. Centanni*, 21-30 (La. App. 5 Cir. 10/19/21), 362 So.3d 682, 687, *writ denied*, 21-1851 (La. 21522), 332 So.3d 1184, *citing Hodges v. Southern Farm Bureau Cas. Ins. Co.*, 433 So.2d 125, 129 (La.1983).

However, there are limitations on discovery, particularly when justice requires that a party or other person be protected from annoyance, embarrassment, oppression, or undue burden or expense. La. C.C.P. art. 1426; *Kensington Capital Advisors, LLC, et al. v. Delos Capital Management LP, et al*., 25-C-430 (La. App. 5 Cir. 10/31/25), 423 So.3d 1159, 1163, citing *Stolzle v. Safety & Systems Assur. Consultants, Inc*., 02-1197 (La. 5/24/02), 819 So.2d 287, 289. A subpoena duces tecum request is limited to information that is relevant or necessary to the case before the court. *In Re Kohn*, 357 So.2d 279 (La. App. 4th Cir. 1979); *Keiffe v. La Salle Realty Co*., 112 So. 799, 163 La. 824 (1927).

Additionally, where a party is seeking production of records from a non-party, Louisiana jurisprudence requires both a showing of relevancy and good cause. *Stolze,* 819 So.2d at 289 (*citing Ouachita Nat'l Bank in Monroe v. Palowsky,* 554 So.2d 108 (La. App. 2d Cir. 1989)); *see also St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., L.L.C.,* 14-286 (La. App. 4 Cir.

8/27/14), 147 So.3d 1266, 1268. La. C.E. 401 The standard of relevancy is a liberal one, but it is not so liberal as to allow a party "to roam in shadow zones of relevancy and to explore matters which do not presently appear germane on the theory that it might conceivably become so." *Palowsky*, 554 So.2d at 112, *quoting In re Fontaine,* 402 F. Supp. 1219 (E.D.N.Y. 1975). "Good cause exists when a party shows that the court's intervention is justified and that an undue burden will not fall on the party who must produce the documents." *Dupre v. Our lady of Lourdes Regional Medical Center, Inc.*, 25-126, 25-147 (La. App. 3 Cir. 9/24/25), 422 So.3d 353, *citing Stolzle,* 819 So.2d at 289; *LaBarre v. Texas Brine Co., LLC*, 17-309 (La. App. 1 Cir. 2/7/18), 347 So.3d 949. Stated another way, good cause may be demonstrated where the party shows "the unavailability of the information from other sources, and further, by relating its need [for the discovery] to the issues in dispute." *Bianchi v. Pattison Pontiac Co., Inc.*, 258 So.2d 388, 390 (La. App. 4th Cir. 1972).

Ordinarily, documents such as bank records and tax returns are confidential documents due to the "highly personal character of their content." *Palowsky,* 554 So.2d at 112; *see also Kensington Capital Advisors, LLC, et al. v. Delos Capital Management, LP*, *et al*., 25-430 (La. App. 5 Cir. 10/31/25), 423 So.3d 1159, 1163, *citing Centanni,* 362 So.3d at 687. To discover these records, the party must make a significant showing of relevancy. The court should be very cautious in permitting inspection and copying of such records. Such action should be authorized only after the court is convinced both of its relevancy and necessity for the prosecution of the litigation. *Palowsky,* 554 So.2d at 112, citing *Bianchi,* 258 So.2d at 390.

LSA-C.C.P. Art. 1354 permits the trial court to vacate or modify a subpoena duces tecum request if it is unreasonable or oppressive. That article states in pertinent part:

> A subpoena may order a person to appear and/or produce at the trial or hearing, books, papers, documents, or any other tangible things in his possession or under his control, if a reasonably accurate description thereof is given. . . The court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive.

A trial court is afforded broad discretion in its consideration of discovery matters. *Sercovich v. Sercovich*, 11-1780 (La. App. 4 Cir. 6/13/12), 96 So. 3d 600, 603. The test for discoverability is not whether the information will be admissible at trial, but whether the information appears reasonably calculated to lead to the discovery of admissible evidence. La. C.C.P. art. 4122. On appellate review, this Court will not disturb the trial court's ruling on a motion to quash concerning a subpoena duces tecum in the absence of an abuse of discretion. An appellate court must balance the information sought considering the factual issues involved and the hardships that would be caused by the court's order when determining whether the trial court erred in ruling on a discovery order. *Kensington Capital Partners, LLC*, 423 So.3d at 1163, citing *Sercovich*, 96 So.3d at 603. This balancing approach allows courts to fashion appropriate relief through protective orders, as provided in La. C.C.P. art. 1426.[22] *Kensington Capital Partners, LLC.* 423 So.3d at 1163. The granting of a protective order, and the extent of the protection, are within the discretion of the district court. *Palowsky v. Campbell*, 21-279 (La. App. 5 Cir. 8/26/21), 327 So.3d 589, 598, *writ denied*, 21-1428 (La. 11/23/21), 328 So.3d 74.

When an appellate court finds the trial court made a reversible error of law, it is required, whenever the state of the record on appeal allows, to redetermine the facts *de novo* and render a judgment on the merits. *Dileo v. Horn*, 15-684 (La. App. 5 Cir. 3/16/16), 189 So.3d 1189, 1207. Nevertheless, an appellate court may remand a case to the trial court for proper consideration, where it is necessary to reach a just decision and to prevent a miscarriage of justice. La. C.C.P. art. 2164; *Wegener v. Lafayette Ins. Co.*, 10-810 (La. 3/15/11), 60 So.3d 1220, 1233-34. Whether a case should be remanded is a matter which is vested within the court's discretion and depends upon the circumstances of the case." *Id.*, 323 So.3d at 939 (citation omitted).

As they did in the district court, Relators claim here that the subpoenas were not narrowly tailored, that Respondents did not demonstrate that they were unable to obtain the subpoenaed information from sources other than these non-parties, and that Respondents failed to meet their burden to demonstrate relevancy and good cause. On the other hand, as they did below, Respondents assert that Ohle, through several companies under his control, including the Kensington Parties, and particularly, Pelican Barge and Transportation, LLC ("Pelican") and Allied Transportation of Louisiana, LLC ("Allied"), engaged in schemes to divert and misappropriate revenues and property belonging to GCCM. They assert that Ohle used bank accounts at Home Bank and Liberty in furtherance of these schemes.

The Bank Subpoenas

As discussed above, when discovery is sought from a *non-party*, the party seeking production must demonstrate relevancy and good cause, particularly where the records that are the subject of a subpoena are confidential, such as the banking records here. The district court, apparently, believed that it should maintain consistency in its prior rulings relative to bank subpoenas, but the prior subpoenas sought banking records of parties, not non-parties, such as Relators. There is a distinction. The burden of showing relevancy and good cause is heightened when the records sought are those of non-parties, such as Relators. *Palowsky,* 554 So.2d at 111-12. The district court erred in failing to take this distinction into account and denying the Motions to Quash on the basis of maintaining consistency. A motion to quash tests whether the party seeking production from the non-party has convincingly established relevancy and good cause. Relevancy and good cause must be shown as to each non-party and the non-party's subpoenaed records. We accordingly review the district court's decision *de novo* in accordance with the authorities discussed above and render judgment on the merits.

Because Relators are non-parties, Respondents were required to demonstrate that the records are unavailable from other sources, that they are necessary for the prosecution of the litigation and that they relate to the issues in dispute. We

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[22] Article 1426 provides various protective mechanisms, and authorizes courts to seal documents, restrict the disclosure of confidential information or order that information not be disclosed or be disclosed in a designated way.

observe that in each instance, the exhibits attached to Respondents' opposition demonstrate that they have apparently been able to obtain at least some of the information that they seek by the Bank Subpoenas from banking and other records that they have already subpoenaed and received from banks for Ohle and/or the Kensington Parties. Those bank subpoenas, to which the district court referred, and which formed the basis of its ruling, sought the production of the identical records sought from the banks of the non-party Relators here.[23] While the scope of the records subpoenaed from the banks of the Kensington Parties and Ohle may have been appropriate, we find that the Bank Subpoenas issued for the banking records of the non-party Relators are overly broad and should be narrowed to protect the confidentiality of records that are not demonstrably related to this litigation.

The Home Bank (DC Trucking) Subpoena

With regard to DC Trucking/Home Bank, Respondents' allegations and their supporting exhibits offered to show relevancy and good cause primarily relate to purported transactions occurring between June 2023 through October 31, 2024,[24] and involve trucking and brokerage commissions allegedly improperly charged to GCCM's customers, which were paid to RNK, and deposited into DC Trucking's Home Bank account, as well as the proceeds of the sale of the Bulldozer. Respondents have not identified any transactions that they allege occurred prior to June 2023, although they alleged that Ohle entered into a factoring arrangement with CapitalPlus in 2021.

Based on the allegations made by Respondents in support of the Home Bank Subpoena and the supporting exhibits introduced by them, we find that the Home Bank Subpoena for the banking records of non-party DC Trucking, should be limited to the time period January 1, 2023 (five months prior to the first identified transaction), through December 31, 2024 (two months after the last identified transaction), and should include only DC Trucking's checking account statements for that period, including images of cancelled checks and wire transfer information. The production of records during this timeframe should capture any and all deposits by Ohle and/or RNK into DC Trucking's account and any withdrawals by Ohle and/or other Kensington parties prior to, during, and after the occurrence of the identified transactions. These records will be and remain subject to the existing Protective Order. If these records reveal the need for additional discovery of DC Trucking's records, Respondents may request such additional discovery in the appropriate manner.

The Liberty (DSC, Perdigao) Subpoena

Respondents' claims of relevancy and good cause for requesting the banking records of DSC and Perdigao from Liberty is that they are "connected" in that DSC was incorporated by Perdigao, "a longtime associate of Ohle," and shares the same mailing address with Dixie Capital and Perdigao. They further allege that DSC's and Perdigao's mailing address appears on DC Trucking's invoice for the Bulldozer, which was issued June 2023. The single transaction that Respondents

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[23] Those banks include Bank of America, JP Morgan Chase, Regions, and BMO Harris.

[24] Respondents had already terminated their relationship with Ohle in July 2024.

identify is a check in the amount of $35,000, drawn on DSC's account at Liberty on June 9, 2023, payable to RNK. There is no notation on the check identifying the reason for the payment.

In fact, although Perdigao was the incorporator of DSC in January 2022, as of February 22, 2022, Perdigao's name has not been associated with DSC in the records of the Louisiana Secretary of State. Although its mailing address has remained the same throughout its existence, its director and registered agent for service of process is Marc Garcia, who was not identified by Respondents in their opposition or this writ application as having any connection to Ohle or the Kensington Parties. The address of its principal and registered office has not been linked to Perdigao's address since February 22, 2022.

Respondents' allegations and supporting exhibits, without more, are insufficient to entitle them "to roam in shadow zones of relevancy and to explore matters which do not presently appear germane on the theory that it might conceivably become so." *Palowsky,* 554 So.2d at 112. Accordingly, we find that the Liberty Bank Subpoena should be limited to the period January 1, 2023, through December 31, 2023, and should include only DSC's and Perdigao's checking account statements for that period, including images of cancelled checks and wire transfer information. The production of records during this timeframe should capture any and all deposits into DSC's and/or Perdigao's accounts and any withdrawals by RNK, Ohle and/or other Kensington parties prior to, during, and after the occurrence of the identified transactions. These records shall be and shall remain subject to the existing Protective Order. If these records reveal the need for additional discovery of DSC's and/or Perdigao's records, Respondents may request such additional discovery in the appropriate manner.

Accordingly, for the reasons, the writ application is granted, in part, to limit the production pursuant to the Bank Subpoenas as follows:

Home Bank, N.A. is ordered to produce checking account statements, including images of cancelled checks and wire transfers for DC Trucking's Home Bank account identified in the Home Bank Subpoena, for the period beginning January 1, 2023, through December 31, 2024.

Liberty Bank and Trust Company is ordered to produce checking account statements, including images of cancelled checks and wire transfers, for DCS's and Perdigao's Liberty bank accounts identified in the Liberty Subpoena, for the period beginning January 1, 2023, through December 31, 2023.

The records produced by Home Bank and Liberty shall be designated as confidential and remain subject to the Consent Protective Order entered by the district court on April 26, 2025.

With the exception of the modification to the Bank Subpoenas made herein, the writ application is denied.

WRIT GRANTED, IN PART, FOR LIMITED PURPOSE; DENIED, IN PART

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JULY 22, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-C-470

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JUNE B. DARENSBURG (DISTRICT JUDGE)
COREY E. DUNBAR (RESPONDENT)
W. SPENCER KING (RESPONDENT)
DANIEL J. DORNER, JR. (RELATOR)
MATTHEW W. MCDADE (RESPONDENT)
A. BRUCE NETTERVILLE (RELATOR)
JAILYN J. HEISSER (RESPONDENT)
ROBERT J. STEFANI, JR. (RESPONDENT)
MAX M. CHOTTO (RELATOR)

MAILED

NO ATTORNEYS WERE MAILED