KENSINGTON CAPITAL ADVISORS, LLC, ET AL

VERSUS

DELOS CAPITAL MANAGEMENT LP, ET AL

NO. 25-C-429

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS
Susan S Buchholz
Susan S. Buchholz
Chief Deputy, Clerk of Court

October 31, 2025

Susan Buchholz
Chief Deputy Clerk

IN RE 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 A. KATZ

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JUNE B. DARENSBURG, DIVISION "C", NUMBER 851-721

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Stephen J. Windhorst

WRIT GRANTED IN PART, DENIED IN PART, AND REMANDED WITH INSTRUCTIONS

Relators, Delos Capital Management LP ("Delos"), Delos Edgard, LP, Gulf Coast Construction & Materials, LLC, f/k/a Edgard Construction Materials Holdings, LLC ("GCCM"), 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 A. Katz (collectively "GCCM Defendants"),[1] seek this Court's supervisory review of the trial court's August 20, 2025 judgment, granting the motion of certain

[1] Defendants that are not a part of this writ application include Grayson Data Services, LLC, and Kenneth Grayson.

plaintiffs/respondents, Kensington Capital Advisors, LLC, Kensington Realty Group, LLC, Allied Transportation of Louisiana, LLC ("Allied"), Pelican Barge and Transportation, LLC ("Pelican"), and John Ohle (collectively "Plaintiffs"),[2] to compel responses to Plaintiffs' second and fourth requests for production of documents from the GCCM Defendants. For the following reasons, we grant the writ in part, deny the writ in part, and remand the matter with instructions.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The underlying lawsuit in this matter arises out of a dispute over alleged trucking agreements involving two clay pits owned and operated by GCCM. Plaintiffs allege—and GCCM Defendants deny—that, pursuant to their June 8, 2018 and February 21, 2020 agreements with GCCM, Plaintiffs have the exclusive rights to all trucking and transportation contracts related to the operation of GCCM's Willow Bend and Big Shake borrow pits. Plaintiffs aver that GCCM Defendants have breached the trucking agreements, by refusing to refer all trucking contracts to Plaintiff, Allied, as previously agreed, and subsequently misappropriated the trucking business, resulting in significant damages to Plaintiffs.

According to Plaintiffs, on February 1, 2020, Plaintiff, John Ohle, entered into an employment/consulting agreement with GCCM to be the full-time Chief Operating Officer of GCCM. Plaintiffs allege that Ohle was terminated by GCCM, and that since his termination, the GCCM Defendants have "attempted to misconstrue[] Allied's trucking business as some nefarious enterprise" in an attempt to smear Plaintiffs and misappropriate the entire trucking business from Plaintiffs.

[2] Plaintiff, Museum of Sports History, LLC, is not a part of this writ application.

GCCM Defendants aver that they engaged Ohle, and several companies he claims to own and control, to serve as "outside consultants" for GCCM's business, which involves the sale of clay mined from the Willow Bend and Big Shake borrow pits that are owned and operated by GCCM.[3] According to GCCM Defendants, in February 2024, after having terminated their business relationship with Plaintiffs on April 30, 2023, they learned that Plaintiffs had "engaged in several schemes to convert, steal, misappropriate, and skim millions of dollars in revenues" and other property belonging to GCCM.

On February 23, 2024, Plaintiffs filed suit claiming damages resulting from GCCM's alleged misappropriation of the trucking business, among other claims.[4] GCCM Defendants filed a reconventional demand seeking damages from Plaintiffs, including amounts that Plaintiffs improperly collected for themselves as "commissions" and fees, as well as losses due to Ohle's alleged theft of company property and resources.

The discovery dispute at issue involves a motion to compel responses to requests for production of documents served by Plaintiffs on GCCM Defendants seeking to "discover[] documents involving the damages resulting from [GCCM Defendants' alleged] misappropriation of the trucking business, as well as the veracity and truthfulness of GCCM Defendants' witnesses." Specifically, in its second and fourth requests for production of documents propounded by Plaintiffs request the following:

> (a) All documents and communication related to the $250,000 payment to Kenneth Picache, including emails, contracts, bank statements, invoices, checks, and wire confirmations (Requests Nos. 90 and 121-122).

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[3] According to GCCM, it acquired the Willow Bend borrow pit in St. John the Baptist Parish on June 28, 2018, and the Big Shake borrow pit on December 22, 2020. GCCM contends the two borrow pits are certified for supplying earthen material for U.S. Army Corps of Engineers levee projects, including the West Shore Lake Pontchartrain levee project, and public road construction and commercial industrial projects in South Louisiana.

[4] Plaintiffs petition for damages also sought declaratory and injunctive relief.

(b) All engagement letters, agreements, indemnification agreements, and billing records between GCCM Defendants and Bernard Katz, BAK Advisors, Inc., Robert D. Field, and Hawk RDF, L.L.C., as well as indemnification agreements between GCCM Defendants and Kenneth Picache and/or his affiliates (Requests Nos. 94-100);

(c) All cash flow forecasts, financial statements, audit reports, business plans, and documents regarding board fees (Requests Nos. 88-89 and 123-124); and

(d) All documents regarding the clay prices, trucking prices, scale logs, cubic yard tickets, purchase orders, invoices, and payments from the Willow Bend pit and Big Shake pit (Requests Nos. 84-86).

GCCM Defendants opposed Plaintiffs' motion to compel, arguing that the discovery propounded by Plaintiffs seek "wide-ranging and essentially unrestricted access to records related to the internal management, finances, and operations of GCCM after the termination of Ohle's consultancy," that are unrelated to the claims asserted by Plaintiffs, or to the claims made by GCCM Defendants against Plaintiffs in their reconventional demand.

Plaintiffs' motion to compel was heard on August 20, 2025. Plaintiffs argued that the records sought from GCCM Defendants directly relate to the conflicting testimony of Defendants' witnesses and the damages Plaintiffs claim. Plaintiffs further argued that the records they seek to discover relate to alleged illegal cross-investment payments by GCCM regarding other defendant Delos investments, which GCCM's former CEO, Kenneth Picache, admits occurred and Delos' management partner, Matt Constantino, admits were illegal. Plaintiffs also claimed that they are entitled to discover agreements and payments made to GCCM Defendants' other consultants and board members, including the $25,000 fees per board meeting, who now seek to testify against Plaintiffs. Lastly, Plaintiffs averred they are entitled to discover clay prices, trucking prices, scale logs, cubic yard tickets, purchase orders, invoices, and payments of GCCM

Defendants, which would be indicative of the material sold, the trucking fees lost, and damages Plaintiffs contend they incurred as a result of GCCM Defendants' breach of the trucking agreements and conversion of Plaintiffs' trucking business.

In contrast, GCCM Defendants argued that none of the discovery requests at issue are relevant to any parties' claims or defenses in the litigation. Specifically, GCCM Defendants argued that they reconvened against Plaintiffs seeking to recover the amount Plaintiffs' allegedly "stole from GCCM through charging and pocketing markups and other fees to which Plaintiffs were not entitled, as well as through their outright theft of company assets." GCCM Defendants claimed the amounts GCCM seeks to recover through its claims-in-reconvention against Plaintiffs do not require consideration of GCCM's cash flow or other financial issues of the company. Consequently, GCCM Defendants argued that Plaintiffs' attempt to rewrite GCCM's claims and allegations to justify their request for financial and operational information about the company that purportedly has no bearing on any parties' claims or defenses in this case should be rejected. GCCM Defendants further claimed that production of the documents is unduly burdensome and irrelevant to the subject matter of the litigation, and constitutes nothing more than a "fishing expedition."

After reviewing the pleadings, memorandum, and the law, and considering the arguments from counsel, the trial court granted Plaintiffs' motion to compel, finding that the documentation sought is relevant to the claims made by the parties and that Plaintiffs had established good cause for their production. In addition, the trial court noted that damages are a proper subject of discovery and the information sought is relevant for the purposes of determining the damages. GCCM timely filed the instant writ application seeking review of the trial court's ruling.

DISCUSSION

In its writ applications, GCCM Defendants allege the trial court erred in granting Plaintiffs' motion to compel as the documents Plaintiffs request are not relevant to any of the issues pending between the parties. GCCM Defendants argue that Plaintiffs have received all of the relevant documents they need to prove their pending claims and defend against the claims made by GCCM Defendants in reconvention.

In response, Plaintiffs aver the GCCM Defendants assert no new arguments in their writ application that were not presented to the trial court. Plaintiffs reiterate the arguments made in the trial court below, and assert that the records sought from GCCM Defendants are relevant because they directly relate to the conflicting testimony of GCCM Defendants' witnesses, the claims asserted by GCCM Defendants in their reconventional demand, as well as the damages Plaintiffs claim.

In ruling on discovery matters, the trial court is vested with broad discretion, and, upon review, an appellate court should not disturb such rulings absent a clear abuse of discretion. *Khoobehi Props., LLC v. Baronne Dev. No. 2, L.L.C.*, 16-506 (La. App. 5 Cir. 3/29/17), 216 So.3d 287, 303, *writ denied*, 17-893 (La. 9/29/17), 227 So.3d 288. A party to litigation may apply to a court for an order compelling discovery when another party fails to answer properly propounded interrogatories or requests for production. *Id*. The discovery articles grant the trial court the power to compel discovery, and the decision whether to grant relief rests with the discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Id*.

The discovery statutes are to be liberally construed to achieve their intended objectives. *Stolzle v. Safety & Systems Assur. Consultants, Inc.*, 02-1197 (La. 5/24/02), 819 So.2d 287, 289. A party generally may obtain discovery of any information, not privileged, which is relevant to the subject involved in the pending action. *Id.*; La. C.C.P. art. 1422. The basic objectives of the Louisiana discovery process are (1) to afford all parties a fair opportunity to obtain facts pertinent to the litigation; (2) to discover the true facts and compel disclosure of these facts wherever they may be found; (3) to assist litigants in preparing their cases for trial; (4) to narrow and clarify the basic issues between the parties; and (5) to facilitate and expedite the legal process by encouraging settlement or abandonment of less than meritorious claims. *Hodges v. Southern Farm Bureau Cas. Ins. Co.*, 433 So.2d 125, 129 (La. 1983); *Centanni v. Centanni*, 21-30 (La. App. 5 Cir. 10/19/21), 362 So.3d 682, 687, *writ denied*, 21-1851 (La. 2/15/22), 332 So.3d 1184. The test of discoverability is not the admissibility of the particular information sought, but whether the information appears reasonably calculated to lead to the discovery of admissible evidence. La. C.C.P. art. 1422. There are limitations to this rule, however, when justice requires that a party or other person be protected from annoyance, embarrassment, oppression, or undue burden or expense. *Stolzle*, 819 So.2d at 289.

In determining whether the trial court erred in ordering discovery, courts must balance the information sought in light of the factual issues involved and the hardships that would be caused by the court's order. *Sercovich v. Sercovich*, 11-1780 (La. App. 4 Cir. 6/13/12), 96 So.3d 600, 603. This balancing approach allows courts to fashion appropriate relief through protective orders. Courts frequently employ protective measures to allow discovery of relevant financial information while protecting confidential business data. The protective order statute, La. C.C.P. art. 1426, provides various protective mechanisms, and specifically authorizes courts to seal documents, restrict the disclosure of confidential information, including the power to order that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way. *Id*. This broad authority allows courts to fashion protective measures that balance discovery needs with confidentiality concerns. *Id*. A protective order may be fashioned to preserve the confidentiality of the information disclosed. *See Palowsky v. Campbell*, 21-279 (La. App. 5 Cir. 8/26/21), 327 So.3d 589, 595, 21-1428 (La. 11/23/21), 328 So.3d 74; *Cerre v. Cerre*, 96-2328 (La. App. 4 Cir. 1/15/97), 687 So.2d 601, 603. This Court confirmed in *Palowsky v. Campbell,* that the fashioning of a protective order applying to pre-trial discovery is within the broad discretion of the trial court, and is not limited by the particular relief affirmatively requested by the parties. *Palowsky*, 327 So.3d at 598. The granting of a protective order, and the extent of the protection, are within the discretion of the trial court. *See Cerre v. Cerre*, 96-2328 (La. App. 4 Cir. 1/15/97), 687 So.2d 601, 603. Moreover, in *Acadiana Renal Physicians v. Our Lady of Lourdes Regional Medical Center, Inc.*, 21-586 (La. App. 3 Cir. /21), 329 So.3d 418, the appellate court found that trial courts can properly issue protective orders while allowing underlying discovery to proceed, emphasizing that protective orders can restrict the use of information while permitting necessary discovery for case prosecution. *Id.* at 429.

Upon review of the designated record, and after considering the parties' arguments in support and opposition of the writ application and the protections afforded by a protective order, on the showing made, we find no clear abuse of the trial court's vast discretion in granting Plaintiffs' motion to compel production of the documents requested in their second and fourth requests for production of documents. Specifically, we find the trial court did not err in its determination that Plaintiffs established that relevancy existed between the documents requested from GCCM Defendants to the claims at issue between the parties so as to allow production of all of the documents sought in its second and fourth requests for production of documents.

Due to the confidential nature of the documents requested, however, we grant this writ application in part for the limited purpose of ordering the trial court to issue a protective order for the production of these documents, fashioned to preserve and safeguard the confidentiality of the information disclosed, at the same time insuring the rights of each party to a fair trial. Protective orders serve as an effective safeguard to preserve confidentiality while allowing discovery. In particular, the documents ordered to be produced pursuant to Plaintiffs' discovery requests are to be protected and should not be released to the general public during the discovery phase of this case.

Accordingly, on the showing made, we deny GCCM's writ application, in part, to the extent that we find no abuse of the trial court's vast discretion in granting Plaintiffs' motion to compel, but we grant the writ application, in part, for the sole purpose of remanding the matter to the trial court with instructions to issue a protective order pursuant to La. C.C.P. art. 1426, to keep the records produced by GCCM Defendants out of the public's eye while discovery is pending.

Gretna, Louisiana, this 31st day of October, 2025.

SMC
FHW
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/31/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-C-429

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable June B. Darensburg (DISTRICT JUDGE)
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Mark R. Beebe (Respondent)
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