

KENSINGTON CAPITAL ADVISORS, LLC,

NO. 25-C-430

ET AL.

FIFTH CIRCUIT

VERSUS

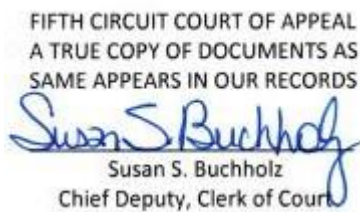
COURT OF APPEAL

DELOS CAPITAL MANAGEMENT LP, ET AL.

STATE OF LOUISIANA

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 DENIED IN PART, GRANTED IN PART, REMANDED WITH INSTRUCTIONS

Relators, Delos Capital Management LP (“Delos”), Delos Edgard, LP, Gulf Coast Construction & Materials, 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 “Defendants”),¹ seek this Court’s supervisory review of the trial court’s August 20, 2025 judgment, denying Defendants’ motion to quash notice of records deposition and subpoenas duces tecum issued to Bank of America (“BOA”) and JP Morgan Chase Bank (“Chase”)

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

by certain of the plaintiffs/respondents, Kensington Capital Advisors, LLC, Kensington Realty Group, LLC, Allied Transportation of Louisiana, LLC (“Allied”), Pelican Barge and Transportation, LLC, and John Ohle (collectively “Plaintiffs”).² The subpoenas sought production of banking records of all Defendants for a seven-year period.³ 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 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 Defendants have breached the trucking agreements, by refusing to refer all trucking contracts to Plaintiff, Allied, as previously agreed, and that they 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 its full-time Chief Operating Officer. Plaintiffs allege that Ohle was terminated by GCCM, and that since his termination, Defendants have “attempted to misconstrue[] Allied’s trucking business as some nefarious enterprise” in an attempt to smear Plaintiffs and misappropriate their entire trucking business.

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

³ The subpoenas duces tecum also sought the records of several non-parties, including: Delos Investment Fund II, Chelan KC Edgard LLC, Chelan KC Edgard GP LLC, Chelan Advisors LLC and Kenneth Picache. These non-parties also moved to quash the subpoenas duces tecum, which motions were denied by the trial court in its August 20, 2025 judgment. Each of these non-parties have moved for suspensive appeals of the trial court’s August 20, 2025 judgment. The subpoenas duces tecum issued to these non-parties are not at issue in the instant writ application.

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.⁴ According to 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” from GCCM, in addition to other property belonging to GCCM.

On February 23, 2024, Plaintiffs filed suit claiming damages resulting from GCCM’s alleged misappropriation of their trucking business, among other claims.⁵ 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 Defendants’ motion to quash notices of records deposition and subpoenas duces tecum issued by Plaintiffs to BOA and Chase, seeking each of the Defendants’ banking records for the past seven years, on grounds that the records are irrelevant to the claims and defenses raised by the parties, and because Plaintiffs have failed to establish good cause for their production. Defendants previously issued identical subpoenas duces tecum seeking all of Plaintiffs’ banking records for the same period of time, which Plaintiffs moved to quash and the trial court denied.

⁴ 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.

⁵ Plaintiffs petition for damages also sought declaratory and injunctive relief.

Defendants' motion to quash was heard on August 20, 2025. After reviewing the pleadings and the subpoenas duces tecum at issue, and considering the briefs filed by the parties (including the deposition testimony of Kenneth Picache, GCCM's former CEO and board member, and Michael Constantino, Delos' managing member), and the argument of counsel, the trial court denied Defendants' motion, stating the following:

Let me just say, Picache, in his deposition, said one thing regarding the \$250,000.00 payment. Constantinos [sic] testimony regarding 250 [sic] is illegal, and what they said because of what they said, one said one thing, one said something else, then the Court is of the opinion that we need the records from the bank. Now, do you? Maybe we need seven? Is it seven years from 2018, yes, seven years of records, especially considering that there was a \$25,000.00 board member payment, allegedly. So, there's some questions. There's some questions as to the money flow from GCCM and Mr., the Plaintiffs are alleging that you're cutting my pay. You have money flow issues. It's just a whole lot of issues going on regarding the and the reconventional demand itself, I think, is more the reason why, if there had not been a reconventional demand, I think, Mr. Stefani, I think your argument would probably win if there was not a reconventional demand. Now, we have a reconventional demand, and [Plaintiffs' counsel] has to defend against that for his clients. So, I think if the reconventional demand was taken away, we'd be in a different posture with all of this. So, now we have both sides accusing each other of inappropriate use of funds and so the only way to figure out if anybody was doing anything illegal would be checks would have to be deposited. Money would have to be, checks would have to be written to take money out of the account. Unfortunately, the only way to resolve all of this is to allow the bank statements to be provided. Of course, there needs to be a protective order in place regards to those bank statements. I'm quite sure I did one for the other parties. If I did not, I should have and there should be a protective order in place regarding these parties, regarding whatever documents are received from the banks. When you file a lawsuit, then you're open to almost anything, and that's what I think a lot of people don't understand. They want to limit the discovery. Once you file that lawsuit, the other party want to know everything, and they're entitled to it, and one thing may lead to another. I don't know, but any requests for interrogatories or requests for production of documents,

or any discovery the statute set which may lead to discoverable evidence is admissible. Yes, it's a lot of years. Yes, the court is of the opinion. I think I may have said this before. A long time ago, the banks would have to go in and take a lot of time to produce certain information, but now, I think the press of a button they could spit out all of this information for the parties. So, I don't think any party is being prejudiced or it's creating extra time for someone to provide something because it's easily produced. ...

Yes. Motion to Quash notice of records deposition and subpoena[s] duces tecum of Bank America and JP Morgan Chase Inc. are all denied. All right.

Defendants timely filed the instant writ application seeking review of the trial court's denial of their motion to quash the notice of records deposition and the subpoenas duces tecum.

DISCUSSION

Appellate courts review a trial court's ruling on a motion to quash concerning a subpoena duces tecum under an abuse of discretion standard.

Jimmy's Discount Meat Market, Inc. v. DiMarco Five, LLC, 21-178 (La. App. 5 Cir. 5/18/22), 362 So.3d 734, 741-42.

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 these rules, however, 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; *Stolzle*, 819 So.2d at 289.

Ordinarily, documents such as bank records and tax returns are confidential documents. In order to require the production of bank records over an objection, a party seeking production must make showings of relevancy and good cause for production. *See Centanni*, 362 So.3d at 687; *Ouachita National Bank in Monroe v. Palowsky*, 554 So.2d 108, 112 (La. App. 2 Cir. 1989).

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.* In short, 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. In *Palowsky*, this Court confirmed 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*, 687 So.2d at 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.

Defendants allege the trial court abused its discretion by denying their motion to quash because Plaintiffs failed to establish that the requests for records is supported by relevancy and good cause. Specifically, Defendants argue that Defendants' banking records are irrelevant to any claims, defenses, or issues in dispute, as the cash flow of GCCM (and the cause of those issues) are simply not relevant to Plaintiffs' breach of contract claims or Defendants' reconventional demand seeking damages for Plaintiffs' theft of company assets and property. Alternatively, Defendants aver that trial court erred in failing to limit the scope of the subpoenas to only the records of Defendant, GCCM. According to Defendants, to the extent Plaintiffs established relevancy and good cause, they did so only as to payments made by one of the ten Defendants—GCCM—and made no effort to show relevancy and good cause for the production of the remaining nine Defendants' bank records. Alternatively, Defendants argue the trial court erred in

failing to limit the scope of production of bank records to only the four Defendants that joined in the reconventional demand; namely, GCCM, Edgard Construction Materials, LLC, St. James Construction Materials, LLC, and River Parishes Construction Materials, LLC (“Plaintiffs-in-Reconvention”).

In response, Plaintiffs aver that the subpoenas duces tecum they issued to BOA and Chase are identical in both scope and verbiage to the subpoenas duces tecum previously issued by Defendants against Plaintiffs. Moreover, Plaintiffs contend the records sought directly relate to the conflicting testimony of Defendants’ witnesses and the damages claimed by Plaintiffs. Specifically, Plaintiffs aver they are entitled to discover records related to the alleged financial fraud or financial misconduct that allegedly occurred, as evidenced by the illegal cross-investment payments by GCCM regarding other Defendant Delos investments, which GCCM’s former CEO, Kenneth Picache, admits occurred, and Delos’ managing member, Matt Constantino, admits were illegal. According to Plaintiffs, records regarding the illegal cross-investment payments are relevant to show that GCCM experienced cash flow issues because of Defendants’ own alleged financial misconduct, which would contradict Defendants’ allegations accusing Plaintiffs of causing GCCM’s cash flow issues.⁶

Further, Plaintiffs aver the bank records of GCCM’s consultants, who are also board members, relate to consulting payments and \$25,000 board meeting fees “paid to selective GCCM board members,” are relevant to confirm the payments were made, and because these defendants have testified in this litigation against Plaintiffs. Plaintiffs aver they are entitled to discover whether these witnesses

⁶ This Court has affirmed the trial court’s denial of a motion to quash a subpoena duces tecum where there were allegations of financial misconduct involving a domestic matter, and allowed the production of the personal bank records of the husband’s friend, where the husband had forwarded money to the friend for deposit and other monetary transactions for purposes of concealing community assets. *Greathouse v. Greathouse*, 517 So.2d 380, 381 (La. App. 5 Cir. 1087). This Court found that the wife had the right to search for community funds even though the third party had the right to banking privacy. *Id.*

were provided compensation and indemnification regarding the disputes at issue in this case. Plaintiffs argue the credibility of these witnesses could be affected by any agreements and/or compensation provided by GCCM to these defendants.

Lastly, Plaintiffs argue they are entitled to discover banking records related to Defendants' revenue from clay sales and trucking following termination of Ohle as GCCM's chief operating officer. Specifically, Plaintiffs aver these records would be relevant to show the material sold, the trucking fees lost, and the damages Plaintiffs allege they incurred as a result of Defendants' breach of the trucking agreements and misappropriation of Plaintiffs' trucking business.

After reviewing the designated record, and 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 discretion in denying Defendants' motion to quash the subpoenas. We recognize that in cases involving banking records, because of their confidential nature and the highly personal character of their content, courts have required a showing of relevancy and good cause before permitting discovery. *See Ouachita National Bank*, 554 So.2d at 112. Nevertheless, we find that Plaintiffs have adequately explained the relevance and established good cause for production of the records sought by the subpoenas duces tecum issued to BOA and Chase—*i.e.*, to prove or refute Defendants' allegations that their cash flow issues were a result of Plaintiffs' actions and not their own financial misconduct; to refute the credibility of certain Defendants' testimony against him; and to prove their claims for damages resulting from the alleged misappropriation of Plaintiffs' trucking business. To the extent that the subpoenas require production of confidential or personal information, a protective order—which the trial court referenced, but did not specifically order in the August 20, 2025 judgment—will afford Defendants sufficient protection from public disclosure.

Accordingly, on the showing made, to the extent the August 20, 2025 judgment denied Defendants' motion to quash notice of records deposition and subpoenas duces tecum issued to BOA and Chase, Defendant's writ application is denied. However, 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 Defendants' banking records from public disclosure.

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

SMC
FHW
SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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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-430

E-NOTIFIED

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

Robert J. Stefani, Jr. (Relator)
W. Spencer King (Relator)
Matthew W. McDade (Relator)

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