# Fifth Circuit Court of Appeal
# State of Louisiana

No. 25-C-515

KENSINGTON CAPITAL ADVISORS, LLC, ET AL.

*versus*

DELOS CAPITAL MANAGEMENT LP, ET AL.

**IN RE** DELOS INVESTMENT FUND II, LLP
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", No. 851-721



August 19, 2026

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

**WRIT GRANTED**

Relator Delos Investment Fund II, LLP, seeks this Court's supervisory review of the August 20, 2025 judgment of the 24th Judicial District Court, denying its Motion to Quash notices of records depositions and subpoenas duces tecum issued to Bank of America, N.A and JP Morgan Chase.[1] The notices and subpoenas duces tecum were issued by respondents, 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.[2] For the reasons stated below, we grant the writ application and reverse the

[1] Bank of America, N.A. will be referred to herein as "BOA;" JP Morgan Chase will be referred to herein as "Chase;" BOA and Chase may be jointly referred to herein as the "Banks;" the notices and subpoenas duces tecum issued to BOA and Chase will be jointly referred to herein as the "Bank Subpoenas."

[2] 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 collectively referred to hereinafter as "Kensington," and, together with John Ohle ("Ohle"), as 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." The Kensington Parties are the plaintiffs and defendants-in-

trial court's judgment ordering Relators to comply with the notices and subpoenas by having BOA and Chase comply with the Bank Subpoenas.

## FACTS AND PROCEDURAL HISTORY

This case is a companion case to Docket No. 25-C-505. It involves the same Bank Subpoenas and the same trial court judgment reviewed by this court in that case, although different non-parties were involved in the companion writ. Relator in this case has *no* connection to the transactions and relationships that are the subject of the underlying action and, as discussed below, the rationale for granting the writ in the companion case more strongly compels that the writ be granted here.

The main demand in the underlying litigation involves various trucking, employment, and consulting agreements among Respondents and the GCCM Parties,[3] related to the operation of two clay borrow pits – the Willow Bend pit and the Big Shake pit, owned by GCCM. After the purchase of the borrow pits, the pits were operated by Respondents until late 2023 – early 2024, pursuant to the agreements at issue in the underlying litigation. Delos funded the capital necessary for the purchase of both pits.[4]

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.[5] Ohle, who controlled Kensington, entered into consulting agreements with GCCM's

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reconvention in the underlying litigation. Herein, the Kensington Parties may be collectively referred to as "Respondents."

[3] The "GCCM Parties" are 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. The GCCM Parties are the defendants in the underlying litigation. The plaintiffs-in-reconvention in the underlying litigation are Gulf Coast Construction & Materials, LLC; Edgard Construction Materials, LLC; St. James Construction Materials, LLC; and River Parishes Construction Materials, LLC; they will be collectively referred to herein as "GCCM." Additionally, Delos Capital Management, LP and Delos Edgard, LP may be jointly referred to herein as "Delos;" Edgard Construction Materials, LLC, may be referred to individually as "Edgard;" St. James Construction Materials, LLC may be referred to individually as "SJCM;" and River Parishes Constriction Materials, LLC may be referred to individually as "RPCM."

[4] Delos, a private equity fund that invests in high-quality, lower middle-market companies, was approached by Kenneth Picache ("Picache"), the managing partner of Chelan KC Edgard, LLC, Chelan KC Edgard GP, and Chelan Advisors, LLC (collectively, "Chelan") about investing in the purchase of the Willow Bend borrow pit in 2018, when the then-owner of the pit was in bankruptcy. River Parishes Dirt & Gravel, LLC ("RPDG"), a wholly owned subsidiary of Kensington, had an agreement to purchase the pit. Picache, who had a long standing relationship with Delos, proposed that Chelan and Delos partner with Kensington to purchase and operate the pit. Delos agreed, and the parties formed Edgard Construction Materials Holdings, LLC ("ECM Holdings") and had RPDG assign the Willow Bend purchase agreement to Edgard Construction Materials, LLC ("ECM"), a wholly owned subsidiary of ECM Holdings. Delos had a controlling interest in ECM Holdings. When ECM Holdings purchased the Big Shake pit in 2021, it changed its name to Gulf Coast Construction & Materials, LLC.

[5] 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.

predecessor and was involved with the management of the companies that owned the borrow pits. He also oversaw the trucking agreements. These agreements were negotiated by and among Delos, Ohle and Picache, who represented Chelan. The relationships among the parties apparently began to deteriorate in 2020 when Delos' Matt Constintino resigned from GCCM's Board and Bernard Katz was appointed by Delos as an "independent" Board member. In 2022, Delos/GCCM began to experience financial difficulties. In April 2023, Delos/GCCM advised Picache and Ohle that their salaries would be deferred for a period of time. Delos terminated Picache's employment in May 2023 and Ohle's in February 2024. GCCM began using trucking companies other than Allied to haul clay from the pits in mid-2023 or early 2024.

On February 23, 2024, the Kensington Parties filed suit against the GCCM Parties alleging breaches of the trucking and employment contracts. They asserted causes of action for breach of the trucking contracts; breach of the employment/consulting agreements; tortious interference with the trucking contracts; tortious interference with the employment contracts; breach of implied covenants of good faith and fair dealing; negligent misrepresentation; fraud; violation of the Louisiana Unfair Trade Practices Act ("LUTPA"); violation of the Louisiana Wage Payment Act; and conversion and deprivation of intellectual property. The Petition also includes a request for summary proceedings as to unpaid wages and seeks injunctive relief and declaratory judgment.

GCCM filed a reconventional demand, wherein they alleged that from late 2022 through the beginning of 2024, 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 converted resources and property belonging to GCCM. They have asserted causes of action for breach of contract and bad faith breach of contract; fraud and conspiracy to commit fraud; breach of fiduciary duties; tortious interference with business relationships; violations of the Louisiana Unfair Trade Practices Act; conversion and misappropriation; misappropriation of trade secrets and confidential information; violation of the Computer Fraud and Abuse Act; detrimental reliance; and unjust enrichment. They also sought injunctive relief.

Relator maintains bank accounts at BOA and Chase. On June 24, 2025, the Kensington Parties served the Bank Subpoenas on these Banks, seeking production of more than seven years (2018 to the present) of Relator's bank account records for depository accounts, certificates of deposit, and any other financial accounts held at the banks in its name. 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; (13) documents concerning safety deposit boxes; (14) records of transfers sent or received, including deposits, withdrawals, electronic fund transfers, and wires. Respondents also subpoenaed bank records from these Banks for accounts held in the names of each of the GCCM Parties, as well as non-parties Chelan and Picache; however, those Bank Subpoenas are not at issue here.

The GCCM Parties and Relator filed a Motion to Quash the Bank Subpoenas. This matter concerns the Motion to Quash solely as it relates to Relator. Therein, Relator contended the Bank Subpoenas were overly broad, that its banking records are not relevant to Respondents' claims, and that Respondents failed to establish good cause for seeking production of its bank records.

Respondents filed a single opposition to the Motions to Quash filed by all parties and non-parties whose banking records were subpoenaed. Lumping the GCCM Parties and the non-parties together, Respondents argued that the requested banking records were relevant to "dispute GCCM Defendants' allegation in their Reconventional Demand which accuses Plaintiffs of being the cause of GCCM's cash flow issues and provide veracity to the truthfulness of Kenneth Picache's and Matt Constantino's testimony regarding an illegal $250,000 cross-investment payment from GCCM to the Chelan Entities." They further argued "good cause" was established by Picache's testimony that a single payment of $250,000 from GCCM was made to him in February 2020 that was related, not to GCCM's business, but to United Flea Markets, an unrelated Delos investment. They alleged that United Flea Markets is an investment of Relator. They also pointed to Mr. Constantino's testimony that if such a payment were made, it would have been "illegal" and unethical; Mr. Constantino's testimony that quarterly payments of $20,000 - 25,000 had been made from GCCM to "outside" – non-Delos – GCCM Board members for attendance at board meetings; and Mr. Katz's testimony that he informed Ohle that his consulting payments would not be made due to cash flow issues. In support of their opposition, Respondents attached excerpts from the depositions of Picache, Mr. Constantino, and Katz.

A hearing was conducted on August 20, 2025. After lengthy arguments, the trial court denied the Motion to Quash as to the GCCM Parties. Upon a request for clarification of the court's ruling as it related to Relator, the trial court asked Respondents' counsel as to "remind me one more time why you need that party's bank statements, the non-party?" Respondents' counsel then stated:

> Delos Investment Fund II is the Delos entity that would be involved with United Flea Market Investment. So, that's the entity that would be that should have paid Mr. Picache for his other services. Instead, it was paid out of GCCM. That's where their involvement comes in, as a third party.

The trial court then stated: "Got it, got it, to connect those two. So, the motion is, is to all the ruling [denying the Motion to Quash] is as to all parties, Mr. Stefani." A written judgment was entered the same day of the hearing, denying the Motion to Quash as to Relator. Relator filed a Motion for New Trial on August 27, 2025. Relator filed a Motion for Suspensive Appeal on September 25, 2025, which was granted on September 26, 2025.[6]

The matter was docketed in this Court under No. 25-CA-515. An appeal timely followed. On January 6, 2026, after the parties had filed their appeal briefs,

[6] The Motion for Suspensive Appeal recites that the trial court denied the Motion for New Trial on September 19, 2025, and that Notice of Judgment was mailed on September 21, 2025. Relator designated the record on appeal. It did not designate the trial court's judgment on the Motion for New Trial; however, this Court converted this matter from an appeal to an application for supervisory writs from an interlocutory judgment, that being the judgment of August 20, 2025. We, therefore, proceed to address the merits of this writ application.

the appeal was converted to an application for supervisory writs and was reassigned Docket No. 25-C-515.

**DISCUSSION**

Relator's sole assignment of error is that the trial court erred in upholding the Bank Subpoenas as to Relator, a non-party, where the Plaintiffs-Respondents failed to make the required showings of relevancy and good cause necessary to order the production of the bank records over Relator's objection.

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. 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.[7] *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 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. Because Relator, a non-party, is an affiliate of Delos, which *is* a party, the trial court put them into the same category for purposes of ruling on the Motion to Quash the Bank Subpoenas; however, there is a legal distinction. The

[7] 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.

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 Relators' Motion to Quash. 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 Relator is a non-party, Respondents were required to demonstrate that the subpoenaed 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 observe that, in each instance, Respondents failed to meet their burden of proof.

Relator whose bank records have been subpoenaed is ***not*** a party to the underlying litigation. Although Relator is an affiliate of defendant, Delos, it was not involved in Delos' investment in GCCM and was not in any way involved with the contracts, agreements, or the operations of the Willow Bend or Big Shake clay borrow pits, that are at issue in this litigation. Respondents have not alleged that Relator misappropriated or conspired with others to misappropriate funds from GCCM. Nor have they alleged or demonstrated that any actions by or on the part of Relator prompted or gave rise to Respondents' claims in this litigation or to the claims asserted by GCCM in its reconventional demand, or that any action taken or not taken by Relator caused damage to any of the parties in this litigation.

The sole allegation made in support of the Respondent's claim of relevance is that a payment of $250,000 was made in February 2020 by GCCM to Picache that should have been made by Relator because the payment was related to United Flea Markets, an unrelated Delos investment in which Picache was involved. GCCM has unequivocably admitted that this payment was made. Respondents have not demonstrated, however, that Relator even had knowledge of the payment, or that it or its bank accounts are implicated in this transaction in any way.

Respondents have introduced no evidence that they have not already obtained or cannot obtain the information related to this payment from other sources, such as GCCM's own banking records. They have not shown that the Bank Subpoenas were narrowly tailored to obtain evidence that could lead to the discovery of admissible evidence. Importantly, Respondents have not offered any evidence that funds belonging to GCCM, which should have been paid to them, were diverted and deposited into any bank account owned by Relator at BOA or Chase. They have utterly failed to tie these bank accounts to any funds that may have been misappropriated, or misapplied.

Respondents simply have not made a sufficient showing of relevance and good cause to support the enforcement of the broad and expansive Bank Subpoenas served on Relator's Banks. Relator did not file this lawsuit and is not a defendant in this action. It is questionable whether Relator would even be a *witness* in the underlying litigation. Relator is not a party which would or should expect to be required to open some seven years of its banking records to the parties in this action without some evidence that its bank accounts at BOA and Chase were actually used by GCCM to avoid its obligations to Respondents.

Accordingly, for the reasons stated above the writ application is granted and the judgment of the trial court ordering Relator to comply with the Bank Subpoenas by having BOA and Chase produce the subpoenaed bank records is reversed.

Gretna, Louisiana, this 19th day of August, 2026.

**FHW**
**MEJ**
**JJM**

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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 **08/19/2026** 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

CURTIS B. PURSELL
CLERK OF COURT

# 25-C-515

**E-NOTIFIED**

24th Judicial District Court (Clerk)
Honorable June B. Darensburg (DISTRICT JUDGE)
James H. Gilbert (Respondent)
Robert J. Stefani, Jr. (Relator)
Thomas M. Flanagan (Respondent)
Corey E. Dunbar (Respondent)
W. Spencer King (Relator)
Matthew W. McDade (Relator)

**MAILED**

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