

IN THE DISTRICT COURT OF APPEAL  
FOR THE THIRD DISTRICT OF FLORIDA

STEPHANIE SHOJAE, E,

Appellant,

vs.

CASE NO.: 3D23-805

ANIBAL J. DUARTE-VIERA, P.A.  
as trustee for and on behalf of  
M&M LIFE INSURANCE TRUST  
DATED DECEMBER 18, 2012,  
*et al.*,

LT CASE NO.: 19-30995 CA (11)

Appellees.

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**ANSWER BRIEF**

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ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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Thomas S. Ward, B.C.S. (FBN 28624)

Luis E. Suarez (FBN 390021)

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## **INTRODUCTION**

In April 2021, this Court rejected Appellant, STEPHANIE SHOJAEE's ("**Mrs. Shojaee**"), attempt to quash an order denying her motion for protective order, in which she sought to avoid sitting for deposition and answering questions about her personal financial information. That appellate decision (3D21-733) is the law of this case.

Mrs. Shojaee then appeared for deposition on June 11, 2021 and, over the course of 2-hours, answered questions about her personal finances. But since her counsel lodged a substantial amount of objections and ordered her not to answer other questions, Appellee, ANIBAL J. DUARTE-VIERA, P.A., as trustee for M&M LIFE INSURANCE TRUST DATED DECEMBER 18, 2012 ("**Trustee**"), successfully moved to compel a continued deposition in which Mrs. Shojaee will have to answer the questions she previously refused to answer.

This is Mrs. Shojaee's challenge of that order compelling the resumption of her deposition and the answering of those questions. That order must be affirmed because (i) it is the law of the case that

her personal financial information is relevant, which cannot be re-argued years later in this appeal; (ii) she waived any argument that she should not have to answer questions about her personal financial information by sitting for deposition and actually answering questions about her finances; (iii) it cannot be said that no reasonable jurist would have ordered Mrs. Shojaee to resume her deposition where it only went 2 hours and was substantially interrupted by her counsel; and (iv) her appellate brief concludes by agreeing that this Court ordering her to reappear for deposition to answer some of the questions that she previously refused to answer would be an acceptable result.

## **STATEMENT OF THE CASE AND FACTS**

### **FACTS**

#### **A. Mr. Shojaee's company, Santa Fe.**

Santa Fe Haciendas, LLC ("**Santa Fe**") is a Florida limited liability corporation founded and managed by Masoud Shojaee ("**Mr. Shojaee**"). (R.905 at ¶¶ 7, 10; R.906 at ¶¶12, 14)<sup>1</sup> Santa Fe's principal business is derived from the substantial amount of rents, royalties, and licensing fees ("**Available Cash**") it receives from rock-miners and farmers that have licensed and/or leased portions of the 18+ acres of land that Santa Fe owns in the western corner of Miami-Dade County. (R.905 at ¶ 10)

Mr. Shojaee amended Santa Fe's operating agreement in November 2008 ("**Amended Operating Agreement**"). (R.984-1016) Pursuant to that instrument, any distributions made to Santa Fe members are derived from Santa Fe's Available Cash. (R.905 at ¶ 10; R.985 at ¶ 1.02(e); R.996 at ¶ 4.01; R.997 at ¶ 4.04(e)). The Amended

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<sup>1</sup> "R." shall refer to the July 5, 2023 record on appeal. "A." shall refer to Mrs. Shojaee's July 7, 2023 appendix to her initial brief. "AA." shall refer to Trustee's Appendix, filed simultaneously with this response.

Operating Agreement also puts significant limits on affiliated transactions between Santa Fe and its members and managers (*i.e.*, Mr. Shojaee) with Santa Fe (A.1002 at ¶ 5.07)

**B. Mr. Shojaee forms the Trust for the benefit of his daughters.**

On December 18, 2012, Mr. Shojaee created, and named himself settlor of, the *M&M Life Insurance Trust* (“**Trust**”). (R.925-983) Shojaee’s daughters—Lilibet Shojaee and Anelise Shojaee (collectively, “**Beneficiaries**”)—were the named beneficiaries. (R.905 at ¶ 7) The Northern Trust Company (“**Northern Trust**”) was the initial trustee (“**Initial Trustee**”). (R.943, 979)

**C. The Trust becomes a member of Santa Fe.**

After the Trust was founded, it acquired legal title and the beneficial equitable right to 75% of Santa Fe’s membership interests, while Mr. Shojaee took legal title to the remaining 25% under the name of another trust that he controlled.<sup>2</sup> (R.905-906 at ¶ ¶10-12) The success of Santa Fe is the lifeline of the Trust given that Santa Fe’s revenues are the main revenue stream for the Trust to provide

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<sup>2</sup> Mrs. Shojaee concedes these are the correct percentages. See Initial Brief at p.3.

for the needs of the Beneficiaries during their life as envisioned under the terms of the Trust. *Id.*

**D. The Current Trustee discovers Mr. Shojaee's self-dealing after replacing the Initial Trustee.**

On or about February 15, 2018, Trustee replaced Northern Trust as trustee of the Trust. (R.905 at ¶ 7) In 2019, Trustee discovered that Mr. Shojaee was taking millions of dollars of Santa Fe's Available Cash for his own personal use without notifying or obtaining permission from the Trust or the Trustee. (R.907 at ¶ 16; R.908 at ¶ 17)

Mrs. Shojaee posted on her social media accounts pictures of her and Mr. Shojaee with luxury cars and purses, among other things. (A.407-410) This gave the Trust concerns that Mrs. Shojaee was also benefitting from the millions of dollars that Mr. Shojaee took from Santa Fe for his own personal use. (A.384-385)

**LOWER COURT PROCEEDINGS AND DISPOSITION**

**A. Trustee commenced this direct suit against Mr. Shojaee.**

Trustee commenced this suit against Mr. Shojaee on October 18, 2019, which was assigned case number 2019-30995 CA. (R.35-36) Trustee's current pleading is its *Corrected Fourth Amended*

*Complaint* (“**Complaint**”). (R.903-1016; A.140-254) In that Complaint, Trustee asserted five claims against Mr. Shojaee: (i) breach of fiduciary duty of care; (ii) breach of duty of loyalty; (iii) breach of contract (*i.e.*, Amended Operating Agreement); and (iv) two separate counts for breach of fiduciary duty. (R.908-912, 916-920)

**B. Trustee subpoenaed Mrs. Shojaee for deposition and documents.**

On January 22, 2021, Trustee filed a subpoena directed to Mrs. Shojaee (the “**Mrs. Shojaee Subpoena**”), which demanded that she produce various financial documents and appear for deposition on March 15, 2021. (AA.0059-0064)

On January 26, 2021, Mr. Shojaee filed a motion for a protective order directed to the Mrs. Shojaee Subpoena (the “**Protective Order Motion**”). (AA.0027-0049) On February 17, 2021, Mrs. Shojaee filed a 2-page “joinder in, and adoption of” her husband’s Protective Order Motion (“**Joinder**”). (AA.0052-0053) The Shojaees expressly argued in writing that Mrs. Shojaee should not be required to answer questions about her personal finances. (AA.0027-0030, 0052)

**C. The lower court denied Mrs. Shojaee's motion for protective order and ordered her to appear for deposition.**

On March 9, 2021, the lower court presided over a hearing on Mr. Shojaee's Protective Order Motion and Mrs. Shojaee's Joinder. (R.677-698; AA.0050-0051) The Shojaees expressly orally argued that Mrs. Shojaee should not be required to answer questions about her personal finances. (R.681-687, 693-694; AA.050-0051)

At the conclusion of the March 9, 2021 hearing, the lower court denied the Shojaees' motions and ordered Mrs. Shojaee to appear for deposition (the "**Initial Deposition Order**"). (R.696; AA.0065-0067) The lower court did, however, grant the Shojaee's *ore tenus* motion for a 30-day stay of Mrs. Shojaee's deposition so the ruling could be appealed. (R.696-697; AA.0065-0067)

**D. This Court denied Mrs. Shojaee's attempt to avoid being deposed (3D21-733).**

On March 12, 2021, Mr. Shojaee and Mrs. Shojaee jointly filed in this Court a petition for writ of certiorari challenging the Initial Deposition Order. (AA.0069 at ¶ 2) This Court assigned that original appellate proceeding the case number 3D21-733 and, on March 16, 2021, ordered the Trust to brief the matter. (AA.0076)

On March 17, 2021, the Shojaees filed a motion in the lower court seeking to extend the 30-day stay so that it would remain in place while their appeal was pending. (AA. 0068-0076) On April 15, 2021—after the issue was fully briefed by the Shojaees and the Trust—this Court dismissed the Shojaee's certiorari petition and refused to quash the Initial Deposition Order. (AA. 0080)

**E. Mrs. Shojaee appears at her court-ordered deposition on June 11, 2021, but was only deposed for two hours after her counsel made many objections and instructed her not to answer many questions.**

Although the Initial Deposition Order remained intact following the Shojaees' unsuccessful appellate attack, Mrs. Shojaee still refused to appear for deposition. (A.19) Therefore, Trustee had to file another post-appeal motion to compel Mrs. Shojaee to appear for deposition in accordance with the Initial Deposition Order and this Court's ruling in 3D21-733. (A.7-22; AA.0080) Trustee's motion to compel was granted and Mrs. Shojaee was, again, ordered to appear for deposition. (A.23-25)

Mrs. Shojaee appeared on June 11, 2021 at which time she was deposed for two hours. (A.27-139) During that contentious deposition, Mrs. Shojaee answered many questions about her

personal finances. *See, e.g.*, A.44, 63, 96, 106, etc. In the meantime, the Shojaees' counsel raised many objections and even instructed Mrs. Shojaee not to answer questions on numerous occasions. *See, e.g.*, A.28, 49, 52, 63, 94, 95, 97, 98, 108, etc. As a result, the deposition could not be completed as Trustee desired and ultimately a list of questions were certified. (A.31)

**F. Trustee asked the lower court for some discovery rulings that would guide the parties during the continuation of Mrs. Shojaee's court-ordered deposition.**

The Trust moved to compel the continuation of Mrs. Shojaee's deposition—which this Court in 3D21-733 already ordered her to appear for—and for sanctions stemming from Mrs. Shojaee's refusal to answer deposition questions (the "**Depo Continuation Motion**"). (A.382-432) The Shojaees jointly filed a written opposition to the Depo Continuation Motion. (A.433-561)

The Shojaees' opposition began by acknowledging that Trustee was seeking a "continued deposition" of Mrs. Shojaee. (A.433) It went on to suggest that Mrs. Shojaee subsequently *did* answer a number of the questions that she was accused of not answering,

thereby leaving only three questions from the deposition unanswered:

Q. When were the his and her Rolls-Royce purchase? Wasn't it purchased in 2018 when all this money started increasing in borrowing allegedly? (S. Shojaee Dep. Tr. 67:15).

Q. Do you remember when the his and her Rolls-Royce came to your life? (S. Shojaee Dep. Tr. 67:20).

Q. Do you want to know whether any of that money was used improperly to buy a Jag or leather seats or a Rolls-Royce? (S. Shojaee Dep. Tr. 81:5).

(the "**Three Unanswered Questions**") (A.94, 108, 440)

**G. The lower court denied Mrs. Shojaee's attempt to avoid finishing her court-ordered deposition.**

The lower court presided over a 30-minute hearing on the Depo Continuation Motion. (A.595-626) The lower court concluded by ruling that the Trustee "is entitled to finish his deposition" of Mrs. Shojaee. (A.624) Accordingly, the lower court granted the portion of the motion that sought the continuation of Mrs. Shojaee's deposition, but denied the portion that sought sanctions ("**Depo Continuation Order**"). (A.562-564)

**H. This Court denied Mrs. Shojaee's husband's attempt to disqualify the lower court judge (3D23-805).**

Two weeks after the lower court entered the Depo Continuation Order, Mr. Shojaee moved to disqualify the lower court judge.

(R.1245-1258; A.589-627) The lower court denied that motion.  
(R.1307-1309)

Mr. Shojaee then commenced a prohibition action in this Court, which was assigned case number 3D23-805, and the Trust was ordered to file a response. (AA.0082) On June 14, 2023—after the issue was fully briefed by Mr. Shojaee and the Trust—this Court denied Mr. Shojaee's prohibition petition and refused to disqualify the lower court judge. (AA.0084)

**I. Mrs. Shojaee now appeals the Depo Continuation Order (3D23-805).**

Mrs. Shojaee has now appealed the Depo Continuation Order. (R.1310-1316) This Court has assigned this appeal case number 3D23-805.

## **SUMMARY OF THE ARGUMENT**

1. Discovery rulings are reviewed for an abuse of the trial court's discretion and it cannot be said that no reasonable jurist would have ordered Mrs. Shojaee to resume her 2-hour deposition that was substantially interrupted by her counsel's objections and instructions not to answer questions.

2. Since Mrs. Shojaee already answered many questions about her personal finances during her June 11, 2021 deposition, she waived the right to refuse to answer other questions about her financials or otherwise argue that her finances are not relevant to this dispute.

3. Since this Court already ruled in April 2021 (3D21-733) that Mrs. Shojaee's personal finances are relevant to this dispute and had to sit for deposition on those issues, the law of this case doctrine prohibits her from re-arguing that issue years later in this appeal.

4. This Court's June 2023 rulings in her husband, Mr. Shojaee's, unrelated discovery appeals (3D22-2000, 3D22-2026) to which Mrs. Shojaee was not a party have no applicability here because (i) they did not exist in March 2023 when the lower court

ordered the continuation of her deposition and (ii) they do not supersede the application of the law of the case doctrine stemming from this Court's April 2021 discovery ruling in the 3D21-733 appeal that she was a party to.

5. It cannot be said that no reasonable jurist would have ordered Mrs. Shojaee to resume her deposition where her own brief concludes by agreeing an acceptable resolution of this appeal would be for this Court to order her to return for a deposition and answer three questions about her finances that she refused to answer when she initially sat for deposition.

## **STANDARD OF REVIEW**

Trustee agrees with Mrs. Shojaee that this Court must review the Depo Continuation Order (R.1310-1316) for an abuse of discretion. See Initial Brief at pp.9-10. That is the established standard of reviewing trial court orders controlling discovery, including depositions. *Estrada v. Chirinos*, 317 So. 3d 216, 219 (Fla. 3d DCA 2021) (holding that “a trial court has broad discretion in controlling discovery” and that a “trial court’s discretion in this regard is not limited by specific rules or formulas.”); *SCI Funeral Servs. of Fla., Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002) (“the scope and limitation of discovery is within the broad discretion of the trial court”); *Accord Gelco Corp. v. Escambia Cnty.*, 649 So. 2d 333, 333 (Fla. 1st DCA 1995) (“The petition is denied, however, as to that portion of the order requiring petitioner Flood to submit to a second deposition, because we find no abuse of discretion in the trial court’s decision and, hence, no departure from the essential requirements of law.”).

## ARGUMENT

### **I. THE LOWER COURT WAS WELL WITHIN ITS “BROAD DISCRETION” TO COMPEL MRS. SHOJAEЕ TO RESUME HER TWO-HOUR DEPOSITION DURING WHICH SHE WAS INSTRUCTED NOT TO ANSWER MULTIPLE QUESTIONS.**

Following briefing and a hearing, the lower court ruled that the Trustee “is entitled to finish his deposition” of Mrs. Shojaee (A.624), which began on June 11, 2021 (A.28), but was routinely interrupted by Mrs. Shojaee’s counsel’s objections and instructions not to answer Trustee’s counsel’s questions. *See, e.g.*, A.28, 49, 52, 63, 94, 95, 97, 98, 108, etc. Mrs. Shojaee has now appealed the Depo Continuation Order that compels her to appear for her continued deposition. (R.1310-1316)

This Court must review that Depo Continuation Order for an abuse of the lower court’s discretion. *Estrada v. Chirinos*, 317 So. 3d 216, 219 (Fla. 3d DCA 2021); *SCI Funeral Servs. of Fla., Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002); *Gelco Corp. v. Escambia Cnty.*, 649 So. 2d 333, 333 (Fla. 1st DCA 1995). Under this standard, the lower court’s ruling may only be reversed if “no reasonable man would take the view adopted by trial court.” *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). But “if reasonable men could

differ as to the propriety of the action taken by trial court, then it cannot be said that trial court abused its discretion.” *Id.*

Mrs. Shojaee cannot satisfy her heavy burden under *Canakaris* because this Court has routinely held that trial courts possess “broad discretion” in controlling discovery. *See, e.g., Estrada v. Chirinos*, 317 So. 3d 216, 219 (Fla. 3d DCA 2021) (denying certiorari petition because “a trial court has broad discretion in controlling discovery”); *Racetrac Petroleum, Inc. v. Sewell*, 150 So. 3d 1247, 1251 (Fla. 3d DCA 2014) (denying certiorari petition because “trial courts are accorded broad discretion in the treatment of discovery problems”).

In exercising that broad discretion, this Court has acknowledged that it is not unreasonable for trial courts to look to federal courts when determining how to address a discovery issue. *Royal Caribbean Cruises, Ltd. v. Cox*, 974 So. 2d 462, n.1 (Fla. 3d DCA 2008) (“Because the Florida Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal decisions are highly persuasive in ascertaining the intent and operative effect of various provisions of the [Florida] rules.”); *Swearingen v. Pretzer*, 310 So. 3d 1084, n.1 (Fla. 1st DCA 2020) (“In general, Florida courts

follow the lead of federal courts in interpreting their powers under similar discovery provisions.”).

With that in mind, litigants in federal courts are entitled to depose witnesses for at least 7 hours. *Fed. R. Civ. P. 30(d)(1)* (“Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.”).

Thus far, Mrs. Shojaee has only been deposed for 2 hours, during which her counsel repeatedly interrupted by repeatedly instructing her not to answer questions. *See, e.g.*, A.28, 49, 52, 63, 94, 95, 97, 98, 108, etc. Since a 2-hour deposition is well within the recognized 7-hour limitation, it cannot seriously be said that no judge would have ordered the continuation of Mrs. Shojaee’s deposition under these circumstances.

On appeal, Mrs. Shojaee suggests this is not a “continued deposition,” but a “second” deposition. *See* Initial Brief at p.1. While Trustee vehemently disagrees with that characterization, it is

ultimately a distinction without a difference because “nothing in the Florida Rules of Civil Procedure forbids a second discovery deposition.” *Medina v. Yoder Auto Sales, Inc.*, 743 So. 2d 621, 623 (Fla. 2d DCA 1999).

In sum, Mrs. Shojaee is not entitled to relief from the Depo Continuation Order because the lower court possessed broad discretion to control discovery. This prevents her from establishing on these facts that no reasonable jurist would have ordered Mrs. Shojaee to resume her 2-hour deposition that was substantially interrupted by her counsel's objections and instructions not to answer questions.

**II. SINCE MRS. SHOJAEЕ HAS ALREADY ANSWERED NUMEROUS QUESTIONS ABOUT HER FINANCIALS, SHE HAS WAIVED ANY RIGHT TO REFUSE TO ANSWER QUESTIONS ABOUT HER FINANCIALS.**

Mrs. Shojaee has already answered many questions about her financials during her June 11, 2021 deposition. *See, e.g.*, A.61-66, 92-96, 98, 106-108, 436-440, etc. Moreover, her brief concludes by agreeing to answer three more questions about her financials: *i.e.*, the Three Unanswered Questions. *See* Initial Brief at p.20.

By answering deposition questions about her financials despite being represented by counsel, Mrs. Shojaee waived any right she may have had to object to answering other financial questions. *Cf. Se. Power Corp. v. Brady*, No. 6:23-CV-49-PGB-EJK, 2023 WL 3791466 at \*1 (M.D. Fla. June 2, 2023) (“Defendant has answered despite the objections, so the objections preserve nothing.”); *Ellis v. Pilot Travel Centers LLC*, No. 4:19CV219-MW/CAS, 2019 WL 13198255, at \*2 (N.D. Fla. Sept. 26, 2019) (“Importantly, Defendant's practice of providing discovery responses ‘subject to’ or ‘without waiving’ its objections is improper. Such a response preserves nothing.”).

**III. THIS COURT’S APRIL 2021 RULING IN MRS. SHOJAEЕ’S PRIOR DISCOVERY APPEAL IN THIS CASE (3D21-733) OBLIGATED HER TO ANSWER QUESTIONS ABOUT HER FINANCIALS. THE “LAW OF THE CASE” DOCTRINE THEREFORE REQUIRED THE LOWER COURT RULE IN MARCH 2023 THAT MRS. SHOJAEЕ MUST ANSWER QUESTIONS ABOUT HER FINANCIALS.**

Noticeably absent from Mrs. Shojaee’s appellate brief was any mention of this Court’s April 15, 2021 ruling in case number 3D21-733. Her silence is deafening. That appellate ruling is directly relevant here because it involved the same party (*i.e.*, Mrs. Shojaee) and the same issue (*i.e.*, whether Mrs. Shojaee could be compelled to

appear for deposition and answer questions about her finances) at issue here.

That original appellate proceeding was precipitated by a subpoena on Mrs. Shojaee, which led to her husband and her moving for a protective order. (AA.0027-0049, 0052-0053; 0059-0064) In those motions, the Shojaees expressly argued (i) that Mrs. Shojaee should not be deposed and (ii) that Mrs. Shojaee should not be forced to answer questions about her personal finances:

Thus, there are no claims against which to weigh the relevancy of the discovery sought pursuant to the subpoena, and ***no basis to compel the deposition of Mr. Shojaee's wife – a third party – regarding her personal finances.***

(AA.0029, 0052) (emphasis added).

***Mrs. Shojaee's personal financial information is not even remotely relevant*** to the facts previously alleged or issues presented in the dismissed complaint, and any discovery seeking such information cannot possibly be reasonably calculated to lead to the discovery of admissible evidence in this case.

(AA.0030, 0052) (emphasis added). The lower court rejected both of those arguments by denying the requested protective order and

entering the March 9, 2021 Initial Deposition Order that compelled Mrs. Shojaee to appear for deposition without imposing the Shojaee-requested prohibition against financial questions. (R.696; AA.0065)

Mrs. Shojaee then sought review of that discovery ruling in this Court (3D21-733). This Court ordered the full briefing of those issues. (AA.0068-0069 at ¶ 2; AA.0076) Mrs. Shojaee raised the relevance of her financials in that appellate proceeding, which was implicitly and necessary considered by this Court in resolving that proceeding. *See, e.g.*, AA.0068-0069 at ¶¶ 1, 2, 3). Then this Court, with the full benefit of that briefing, rejected Mrs. Shojaee's request to quash the Initial Deposition Order. (AA.0080)

This Court's April 15, 2021 ruling in 3D21-733 is binding on the lower court and the parties to that original appellate proceeding, which included both Mr. Shojaee and Mrs. Shojaee. *Id.* As the Florida Supreme Court has held, "if the district court of the district in which the trial court is located has decided the issue, the trial court is bound to follow it." *Pardo v. State*, 596 So. 2d 665, 667 (Fla. 1992) (citing *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976)).

This Court's April 15, 2021 ruling in 3D21-733 also triggered the application of the "law of the case" doctrine:

"The doctrine of the law of the case is ... a principle of judicial estoppel." It applies when "successive appeals are taken in the same case." It requires that questions of law actually decided on appeal must govern the case in the appellate court and in the lower tribunal in all subsequent stages of the proceeding. Its purpose is "to lend stability to judicial decisions and the jurisprudence of the state, as well as to avoid 'piecemeal' appeals and to bring litigation to an end as expeditiously as possible."

*Parker Fam. Tr. I v. City of Jacksonville*, 804 So. 2d 493, 497-498 (Fla. 1st DCA 2001) (internal citations omitted). This doctrine applies to bind parties to the result of an earlier certiorari proceeding even if that result later appears to be erroneous. *Id.* 498.

These well-established concepts of binding authority and the law of the case doctrine legally precluded the lower court from granting Mrs. Shojaee's June 27, 2022 request to impose on Trustee a prohibition against asking Mrs. Shojaee about her finances. (A.433-561; AA.0080) Mrs. Shojaee therefore cannot successfully argue that no judge would have entered the Depo Continuation Order on March 31, 2023 where those concepts and doctrines legally

required all judges to enter the Depo Continuation Order. (R.1310-1316)

Mrs. Shojaee has not asked this Court in this proceeding to reconsider the effect of the law of the case doctrine that the ruling in 3D21-733 has on her. Therefore, it is binding on her and this Court cannot relieve her from its effects where she has not requested that relief either in the lower court or in her initial appellate brief. *Musi v. Credo, LLC*, 273 So. 3d 93, 96 (Fla. 3d DCA 2019) (“It is well established that a trial court cannot award relief where it has not been pled.”); *Jahnke v. Jahnke*, 804 So. 2d 513, 516 (Fla. 3d DCA 2001) (“We agree ... that a court cannot award relief that was not requested in the pleadings.”); *Wise v. Wise*, 834 So. 2d 887, 888 (Fla. 1st DCA 2002) (“After *Wise I* was decided, the former husband had two options: move for rehearing or petition the Florida Supreme Court for discretionary review. He did neither, and *Wise I* became the law of the case.”).

#### **IV. MRS. SHOJAEЕ’S FINANCIALS REMAIN REASONABLY CALCULATED TO LEAD TO DISCOVERABLE EVIDENCE.**

Thus far, Trustee has established that (i) this Court has already ordered Mrs. Shojaee to answer questions about her financials (*i.e.*,

the April 15, 2021 ruling in 3D21-733), which remains the law of the case; (ii) Mrs. Shojaee has actually answered questions about her financials, thereby waiving the right to refuse to answer more financial questions; (iii) and the lower court possesses the broad discretion to control discovery. That alone is sufficient to entitle Trustee to an affirmance of the lower court's ruling. It is nevertheless useful to remind this Court why it previously ruled her financials are relevant to the underlying lawsuit.

Santa Fe is governed by an Operating Agreement that is part of the pleadings. The improprieties alleged are against Mr. Shojaee whose two (2) daughters—Lilibet Shojaee and Anelise Shojaee—are the sole beneficiaries of the *M&M Life Insurance Trust* that Mr. Shojaee and his ex-wife, Maria Lamas, formed for their daughters. A.142-143; *see also* Initial Brief at p.3. The Trust owns 75% of Santa Fe, and Mr. Shojaee controls the remaining 25%. *Id.*

The Operating Agreement expressly addresses affiliated transactions. (R.1176 at ¶ 5.07) In pertinent part, it provides that if a Member or Manager transacts with Santa Fe, then the transaction terms must “be on the same or similar terms available to the

Company [Santa Fe] if it was to contract with an unaffiliated third party similarly situated.” *Id.*

The Trust Beneficiaries (through the Trustee) allege that their father (*i.e.*, Mr. Shojaee), as Manager, improperly distributed millions of dollars from Santa Fe to himself. (R.1021 at ¶ 16) It is alleged that if these cash transfers are “loans,” then the alleged sham revolving credit agreement, hurriedly created in response to Trustee’s inquiries, are not on terms that are commercially reasonable that would arise were Santa Fe to lend money to an unaffiliated third-party. (R.1022 at ¶ 17)

If these cash transfers in the millions of dollars depleting Santa Fe of its cash are not “loans,” then the cash withdrawals are distributions to Members that must be made based on each member’s percentage ownership. In other words, Mr. Shojaee cannot distribute 100% of the distributable cash to himself when he only controls 25% of Santa Fe. But there is more to know in this controversy.

Mrs. Shojaee witnessed the sham loan. (R.252; A.92-93) The schedule of payments that Mr. Shojaee made as part of the sham

loan reflects more frequent and larger cash withdrawals during the same period when Mr. Shojaee and Mrs. Shojaee were incrementally acquiring lavish personal items from his and her Rolls Royce's, exclusive designer handbags, watches, etc. (R.253-254; A.577-583). Mrs. Shojaee admitted as much before her counsel interrupted the questioning by instructing her not to answer. (A.94-96, 384, 576).

How the proceeds are being used is highly relevant to the determination of whether the terms of the sham affiliated loan were commercially reasonable because that determination is dependent upon the finding of whether the sham loan(s) is a personal versus a business or commercial loan. Different loan products or purposes for the credit command different terms in the marketplace and are treated differently for a myriad of other reasons. *See e.g., Maddox v. St. Joe Papermakers*, 572 So.2d 961, 963 (Fla. 1st DCA 1990); *In re Dawson*, 411 B.R. 1, 37-38 (Bankr. D.C. 2008).

The use of the cash proceeds remains highly relevant even if the fact finder concludes that the millions of dollars in cash outlay were distributions (not loans) to the Santa Fe members. In that case, the Trustee for the Beneficiaries would have the right to impress a

constructive trust and enforce equitable lien over the luxury properties that were improperly acquired with money belonging to the 75% Member.

In light of the foregoing, it is critical that Trustee meaningfully examine Mrs. Shojaee (i) concerning the issues she was improperly instructed not to answer and (ii) about the inconsistent public statements she made concerning her true role and her decision-making authority that the witness she previously testified was virtually nonexistent.

**V. THIS COURT'S JULY 2023 RULINGS IN MR. SHOJAEЕ'S DISCOVERY APPEALS (3D22-2000, 3D22-2026) INVOLVING OTHER NON-PARTIES DO NOT APPLY TO MRS. SHOJAEЕ'S APPEAL OF THE MARCH 2023 DEPO CONTINUATION ORDER.**

**A. The Unrelated July 2023 Rulings Involve Materially Different Issues.**

Mrs. Shojaee improperly places dispositive weight on unrelated decisions that this Court rendered in June 2023 stemming from appeals commenced by her husband concerning discovery rulings that do not involve Mrs. Shojaee. *Shojaee v. Anibal J. Duarte-Viera, P.A.*, 365 So. 3d 1184, 1188 (Fla. 3d DCA 2023) ("**Shojaee I**"); *Shojaee*

*v. Duarte-Viera*, 365 So. 3d 1190, 1194 (Fla. 3d DCA 2023) (“**Shojaee II**”).

Those June 2023 decisions resolved Mr. Shojaee’s petitions for certiorari, which challenged orders denying his opposition to subpoenas seeking financial information from various non-parties (*i.e.*, not Mrs. Shojaee). *Id.* The issue in those unrelated appeals was whether the Trustee could demonstrate the relevance of the financial information sought by presenting documents informally at a non-evidentiary hearing or whether, procedurally, those documents needed to be presented at a duly noticed evidentiary hearing.<sup>3</sup>

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<sup>3</sup> *Shojaee I* at n.1 (“The hearing was not noticed as an evidentiary hearing. Nevertheless, Duarte-Viera read from Shojaee’s deposition transcript and presented copies of Santa Fe checks made out to Shojaee at the hearing. However, the trial court could not rely on these materials in its relevancy determination because Duarte-Viera did not formally submit the materials as evidence.”); *Shojaee II* at 1194 (“In an apparent attempt to show relevancy outside of the pleadings, Duarte-Viera read from Shojaee's deposition transcript and presented copies of Santa Fe checks made out to Shoma Alliance Management Corporation and Aneli Artwork, LLC. However, the trial court could not rely on these materials in its relevancy determination because Duarte-Viera never formally submitted them as evidence. We thus disregard all materials outside the complaint presented at the hearing.”) (internal citations omitted).

Those issues are completely different from the issues presented in this appeal, which involve (i) a lawyer improperly instructing a material witness not to answer questions on subject matters that the lower court and this Court has already authorized questioning on and (ii) the post-deposition discovery of public statements made by that material witness, which call into question the veracity of that witnesses' testimony.

**B. The Lower Court Could Not Have Abused Its Discretion in March 2023 By Not Applying Rulings That Did Not Exist Until July 2023.**

The lower court entered the Depo Continuation Order on March 31, 2023. (R.1310-1316) The *Shojaee I* and *II* decisions were not rendered until June 2023 (*i.e.*, 2.5-months later). In this appeal, Mrs. Shojaee argues that abused its discretion by not applying the *Shojaee I* and *II* decisions. See Initial Brief at pp.2, 4-6, 12, 14. That is neither logically nor legally correct.

First, temporally, the lower court could not have abused its discretion by making a March 2023 discovery ruling (*i.e.*, entering the Depo Continuation Order) without applying *Shojaee I* or *II* since

neither existed at the time of the March 2023 discovery ruling. Neither were rendered until June 2023.

Second, Mrs. Shojaee was not a party to *Shojaee I* or *II*. Nor was she the subject of the underlying non-party discovery addressed in those decisions (*i.e.*, those subpoenas did not seek any information, documents, or testimony from Mrs. Shojaee). *Shojaee I* and *II* therefore have zero relevance to Mrs. Shojaee.

Third, the appellate decision that binds Mrs. Shojaee was generated from the earlier appeal that she was a party to: 3D21-733. (AA.0080) In 3D21-733, both Mrs. Shojaee and her husband had the opportunity to—and did—argue against her testifying and producing documents concerning Mrs. Shojaee's financials, but they lost. The relevance of her financials has already been determined. Mrs. Shojaee does not get a second bite at the apple in this appeal.

Fourth, *Shojaee I* and *II* are also both procedurally distinguishable from the circumstances leading to the Depo Continuation Order that Mrs. Shojaee now appeals. In *Shojaee I*, Mr. Shojaee challenged the subpoenaed non-party financial discovery on non-party City National Bank by filing a motion for protective order.

*Shojaee I* at 1186-1187. In *Shojaee II*, he challenged the subpoenaed non-party financial discovery on non-parties Aneli Artwork, LLC, Shoma Alliance Management Corp., and Mr. Shojaee's ex-wife by asserting objections. *Shojaee II* at 1192-1193.

But here, the Depo Continuation Order was not the resolution of a Mrs. Shojaee-filed motion for protective order or a Mrs. Shojaee-asserted objection to a non-party subpoena. Rather it was an order granting a Trustee-filed motion to compel the continuation of Mrs. Shojaee's deposition. (A.382-432) Therefore, the discussion in *Shojaee I* and *II* requiring an evidentiary hearing to determine the relevance of the requested financial information before ordering non-parties to produce it is procedurally inapplicable. This Court already determined in 3D21-733 that Mrs. Shojaee's financial information is relevant.

**VI. THE LOWER COURT DID NOT ABUSE ITS DISCRETION BY ORDERING THE CONTINUATION OF MRS. SHOJAEES DEPOSITION AND ALLOWING HER TO BE QUESTIONED ABOUT HER FINANCIALS. HER OWN BRIEF CONCLUDES BY CONCEDED THAT WOULD BE AN ACCEPTABLE RESOLUTION TO THIS APPEAL.**

Mrs. Shojaee cannot satisfy her heavy burden under *Canakaris* that no reasonable jurist would have ordered the resumption of her

deposition under these circumstances for many reasons. One is derived from her own appellate brief, which she concludes by announcing that, in her mind, an acceptable resolution of this appeal would be for this Court to affirm the portion of the Depo Continuation Order that compels her to appear for deposition to answer the Three Unanswered Questions (A.94, 108, 440) from her June 11, 2021 deposition:

**CONCLUSION**

For the reasons stated above, this Court should reverse the order compelling a second deposition of Stephanie Shojaee. In the alternative, this Court should limit the deposition to answering the three outstanding questions from her first deposition.

See Initial Brief at p.20. It cannot be said that no reasonable jurist would have compelled her to appear for a continued deposition to answer the Three Unanswered Questions about her finances where Mrs. Shojaee, herself, is amenable to the three-judge panel on this Court ordering her to do those very things.

## **CONCLUSION**

Trustee respectfully requests this Court:

- (i)** affirm the Depo Continuation Order (R.1310-1316)
  - a.** in its entirety so Mrs. Shojaee's continued deposition can resume as ordered by the lower court—and as this Court approved in 3D21-733 (AA.0080)—or, at the very least,
  - b.** in part, in accordance with the alternative relief Mrs. Shojaee seeks in the “Conclusion” section of her Initial Brief (*i.e.*, require her to appear for deposition “to answer[] the three outstanding questions from her first deposition.” *See* Initial Brief at p.20.); and
- (ii)** grant Trustee such other and further relief as this Court deems just and proper.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the above and foregoing was served *via* e-mail through the Florida Court's E-Filing Portal this 15th day of September 2023 upon:

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**CERTIFICATE OF COMPLIANCE**

**WE FURTHER CERTIFY** that this brief complies with *Fla. R. App. P.* 9.045(b), (e) because **(i)** it is submitted in Bookman Old Style, 14-point font and **(ii)** it contains 5,692 words (including footnotes), which complies with the 13,000-word count limit articulated in *Fla. R. App. P.* 9.210(a)(2)(B).

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