

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

CASE NO. 3D2024-1318

EARL TAKEFMAN,

Petitioner,

vs.

**THE PICKLEBALL CLUB, LLC and
MATTHEW GORDON,**

Respondents.

On discretionary certiorari review of an order granting a motion for a protective order, entered by the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida

**THE PICKLEBALL CLUB, LLC AND
MATTHEW GORDON'S RESPONSE TO THE
PETITION FOR CERTIORARI**

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INTRODUCTION

This is a petition for discretionary certiorari review of a pre-trial discovery order (i) limiting certain document requests and interrogatories served by Petitioner, Earl Takefman, (ii) precluding the deposition of certain prospective deponents, and (iii) limiting the scope of deposition topics of Respondent, The Pickleball Club LLC's ("TPC") corporate representative, pursuant to Florida Rule of Civil Procedure 1.280(c). The Florida Supreme Court has repeatedly affirmed that "as is always the case" the "scope and limitation of discovery is within the broad discretion of the trial court." *Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003)(internal quotation omitted). Within the trial court's broad discretion, is the ability to limit discovery "for good cause shown . . . to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. 1.280(c).

The trial court, the Honorable Thomas Rebull, Circuit Judge for the Eleventh Judicial Circuit, exercised this discretion to limit discovery and made the requisite findings of good cause. The review of the trial court's discovery order, if the Petition clears the jurisdictional hurdles, is limited to whether the trial court departed from the essential elements of law (i.e., made a determination of good cause). As set forth in this Response, the Appendix,

and Respondents' Appendix,¹ this Court should (i) dismiss the Petition for lack of certiorari jurisdiction to review the trial court's limitations on document requests and interrogatories and should (ii) deny the Petition's request to quash the trial court's order limiting depositions.

STATEMENT OF THE CASE AND FACTS

A. Background.

TPC was founded in 2019 to develop premier private indoor pickleball facilities. (RA. 4). It opened its first pickleball facility in Lakewood Ranch, Florida in May 2023, has several additional facilities under development, and a growth plan to open fifteen facilities. (RA. 4). The funding for TPC is based on private investment by individual accredited investors, and lenders. (RA. 4).

TPC engaged Takefman under an independent contractor agreement dated January 23, 2023 ("Independent Contractor Agreement") to perform services including scouting potential locations for pickleball clubs throughout Florida and assisting with capital investors. (RA. 4). The Independent Contractor Agreement contains a confidentiality restrictive covenant and defines "Confidential Information" as:

¹ Citing references to (A. _) shall refer to Petitioner's Appendix and citing references to (RA. _) shall refer to Respondents' Appendix.

[A]ny Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the Company on whom Consultant called or with whom Consultant became acquainted during the term of my provision of services for the Company), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to Consultant by the Company either directly or indirectly in writing, orally or by drawings or observation...

(RA. 5).

The Independent Contractor Agreement further mandates that Takefman shall use Confidential Information “solely for the Company’s benefit... [and] during the term of Employment and thereafter, all Confidential Information shall be the property of the Company and Consultant shall have no interest in it whatsoever.” (RA. 5).

TPC terminated Takefman on or about July 5-6, 2023. (RA. 5). On July 6, 2023, after his termination, Takefman downloaded confidential information from TPC’s password-protected document management system, including confidential investor memoranda, management presentations, operating agreements, and subscription agreements. (RA. 8). The confidential investor memoranda contain information that includes, but is not limited to, market research, development plans, revenue projections, membership forecasts,

operating expenses, sales and marketing, and TPC's business and growth plan. (RA. 8).

Months later, on September 16, 2023, the parties entered a second agreement titled the Settlement and Release Agreement ("Release Agreement"). (RA. 8). The confidentiality restriction in the Independent Contractor Agreement survived the Release Agreement. (RA. 5). In the Release Agreement, Mr. Takefman agreed to two additional confidentiality obligations. Section 5 of the Release Agreement mandates that Mr. Takefman shall "destroy any TPC confidential information . . . including any proprietary information . . . recordings, software, business plans, videos, and memoranda" and under "no circumstances," "publish or disclose" any of this information." (RA. 5-6). Additionally, Section 8 of the Release Agreement prescribes that Mr. Takefman shall not "participate in or contribute to any public discussion" regarding any of the "allegations and facts of this case," including but not limited to posting on LinkedIn. (RA. 6).

Just two days after receiving the settlement payment, on September 25, 2023, Takefman emailed TPC and its legal counsel:

BTW, the agreement you created was the worst release and discharge agreement I have ever seen drafted by any lawyer. . . [Y]ou left your clients totally vulnerable by eliminating the non-disparagement obligations altogether. Such bad lawyering. Perhaps you should have sought legal advice from others.

(RA. 8).

B. The Litigation and the Temporary Injunction.

In November of 2023, TPC initiated this action with claims for breach of contract, tortious interference with business relations, and preliminary and permanent injunction. (A. 218-233). The crux of the complaint is that following his termination from the company, Takefman began a campaign of misusing proprietary business information and disparaging the company, damaging its relationship with its investors. (A. 218-233).

TPC then filed a motion for temporary injunction and an evidentiary hearing was held on December 5, 2023 where the trial court heard argument of counsel and testimony from the parties. (RA. 3). The trial court granted the motion for temporary injunction and made findings of fact regarding many instances of Takefman's misuse of confidential information and disparaging comments to investors. (RA. 3-19). The trial court enjoined Takefman from possessing or misusing TPC's confidential and proprietary business information, attempting to obtain any new confidential and proprietary business information, and among other things, engaging with TPC's investors and certain other third-parties to discuss confidential or proprietary business information, assist them with seeking to rescind their investments or dissuade future investments, or otherwise disparage TPC. (RA. 19).

The trial court referenced its order granting TPC's motion for temporary injunction and included many of the same findings of fact in its order granting in part TPC's motion for protective order, the order at issue on this Petition. See (A. 6) (Protective Order).

C. The Discovery and Protective Orders.

Takefman served TPC with his First Requests for Documents and First Interrogatories on November 16, 2023. (A. 23). TPC served then timely responses and objections. (A. 29-53) (Responses to Discovery Requests). The discovery seeks documents and information concerning TPC's co-founders' personal finances, the company's current confidential and proprietary financial data, and contact information for all of TPC's investors. See (A. 19); (A. 29-53).

On March 1, 2024, TPC filed a Motion for Protective Order pursuant to Rule 1.280 on certain of Takefman's first requests for documents and first set of interrogatories. (A. 5); (A. 18). Takefman filed a response to the motion and cross-moved for a motion to compel improved discovery. (A. 5); (A. 55). Although not styled as a request for issuance of subpoenas, Takefman's response effectively requests to take depositions of certain parties and non-parties with deposition notice topics. (A. 5); (A. 102) (Takefman's Opp. to Mot. for Protective Order, Proposed Deponent Appendix ("Deponent

Appendix”)). TPC filed a reply in support of its motion and responded to Takefman’s cross-motion, including filing objections to the proposed depositions and moving for a protective order seeking to preclude certain depositions and limit certain deposition topics. (A. 5; 105).

1. The Document Requests at Issue.

TPC moved for a protective order on document requests 1, 3, 4, 5, 6, 7, 8, and 9. (A. 8; 23-24). Following the hearing on May 3, 2024, Takefman withdrew requests 5, 6, 8, and 9. (A. 8). He also amended request 1. (A. 8). The document requests and a summary of the trial court’s findings are as follows:

- RFP No. 1: “A copy of the email sent by Matt Gordon to shareholders relating to Earl Takefman, on September 28, 2023, wherein Matt Gordon indicate that Earl Takefman defamed the company, including all of the email addresses of each of the recipients.”
 - As amended, Takefman requests the names, locations and investment amounts of the recipients but does not seek their email addresses. (A. 8).
- RFP No. 3: “Copies of all solicitation emails” by [TPC] to “potential investors” and “including all the email addresses of each of the recipients.”
- RFP No. 4: “Copies of all financial information, including actual results and forecasts, that shareholders can access in the shareholder portal.”
- RFP No. 7: “Any and all offers, letters of intent, or other communications from any debt lenders of any kind relating to the financing of any of the existing or proposed pickleball clubs and any

loan agreements that have already been signed or have already been agreed to.”

(A.24).

The trial court made specific findings of good cause to limit the document requests, detailed in the Argument below.

2. The Interrogatories at Issue.

TPC moved for a protective order on interrogatories 4, 5, 6, and 7. 9 (A. 10; 25-26). Following the hearing on May 3, 2024, Takefman withdrew interrogatories 4(d) and 6. (A. 11). The interrogatories are as follows:

- Interrogatory No. 4 (a; c): Detail prior “failed” business ventures of TPC’s individual co-founders and “provide details” of alleged “failed real estate projects or businesses,” including “the date of the project, the name of the project, the amount of money that was raised for the project, indicate if the money was repaid or lost by investors, the names of any partners in the project, if the project declared bankruptcy or was dissolved”
- Interrogatory No. 4 (b; d): Provide personal financial information of TPC’s individual co-founders including details of alleged “bankruptcies” and copies of “personal financial statements of Brian, and Matt Gordon, given to any lenders, that were available to investors/lenders in the Company data room.”
- Interrogatory No. 5: Details of meetings of TPC members (club members, not investors).
- Interrogatory No. 7: Detail the investments made by TPC’s co-founders into the company and “indicate where these investments are recorded on the balance sheet of the Company.

(A.26).

The trial court made specific findings of good cause to limit the interrogatories, detailed in the Argument below.

3. The Prospective Deponents.

Takefman requested the depositions of fifteen prospective deponents in his Deponent Appendix and identified the proposed topics of deposition. (A. 102-103). The prospective deponents included: (i) three company officers and employees; (ii) the company's "largest shareholder;" (iii) seven other investors; (iv) two anonymous ex-employees; (v) one anonymous club member; and (vi) the CEO's "ex-partner" (also anonymous). (A. 102-103).

TPC moved for a protective order to limit the three company deponents to one corporate representative deposition and to limit the topics of this deposition consistent with the document requests and interrogatories to preclude Takefman from using depositions to gain access to the same information otherwise protected in the written discovery. (A. 12-13). The trial court granted this request upon good cause shown as detailed in the Argument section below. (A. 13). TPC also moved to preclude the depositions of two anonymous ex-employees; one anonymous club member; and the CEO's "ex-partner." (A. 12-13). The trial court granted this request upon good cause shown as detailed in the Argument section below. (A. 14).

However, TPC also moved for a protective order to preclude the depositions of its investors and the trial court denied this motion. (RA. 28)(First Order Denying Mot. for Protective Order); (RA. 31)(Second Order Denying Mot. for Protective Order).

4. The Trial Court's Protective Orders and Summary of Findings.

The trial court held an in-person, specially set hearing on TPC's motion for a protective order on May 3, 2024. See (RA. 26)(Notice of Hearing); (A. 5)(Protective Order)("This action came before the Court on May 3, 2024 . . . The Court, having considered the motions, heard argument of counsel and Mr. Takefman (who is self-represented), rules as follows:"). Takefman confusingly and incorrectly states that the trial court "seemingly" issued the protective order based upon the papers. (Pet. 9, fn. 7). Takefman also confusingly omits that the trial court did not grant the motion for protective order entirely, it issued three separate orders, two of them favorable to Takefman. (RA. 28)(First Order Denying Mot. for Protective Order); (RA. 31)(Second Order Denying Mot. for Protective Order). The third order on TPC's motion for protective order, which the trial court granted in part, is the order at issue on this petition (the "Protective Order"). (A. 5).

In the Protective Order, the trial court explained that the claims are based on "specific statements that [Takefman] made between September

and November of 2023 regarding TPC's business." (A. 6)(citing paragraphs of complaint attaching communications with investors). Takefman's post-termination conduct included repeated attempts to gain access to additional confidential and proprietary business information, which TPC alleges was in further breach of contractual restrictions. (A. 6) As one example, the trial court found that Mr. Takefman admitted at the temporary injunction hearing that in October 2023 he set up a Zoom call with an investor to review the "latest interim financial results from the shareholder portal"—documents which were accessible only to investors. (A. 6)(citing to Takefman testimony). The post-termination conduct was not limited to investors whom he personally solicited, but also complete strangers. By November 14, 2023, Takefman sent an email 'bcc' to several investors in which he stated his purpose was to "cause you to reconsider [his] warnings," and purported to share quotes from twelve anonymous investors and ex-employees of TPC that Takefman had allegedly collected. (A. 6)(citing Takefman email). Upon learning that Mr. Takefman was contacting its investors, on October 31, 2024, TPC sent an internal email that stating that it learned Takefman was disseminating, false, misleading, and defamatory information to investors and wanted to harm the company. (A. 6).

Takefman argued that his actions were justified and denies the information he used was confidential. (A. 6-7). He argues that his conduct was justified because he was motivated to contact investors to share his “good faith belief” that investment materials, namely forward looking financial forecasts, were incorrect. (A. 7). He also brought a common law defamation claim based on the October 31 email. (A. 6).

The trial court summarized the requested discovery as an improper ‘fishing expedition’ before addressing each of the discovery requests and making even more specific findings of good cause:

In discovery, Mr. Takefman seeks disclosure of additional confidential and proprietary business information of TPC that is not already in his possession, e.g. financial reports and operational data. Whether Mr. Takefman was justified in his conduct or whether certain information is confidential does not require the disclosure of new business information—information which Mr. Takefman necessarily did not possess and could not have relied upon for justification. The discovery requests are best described as a request to audit the books and records of the company. This type of fishing expedition is prohibited in the discovery process and the trial court is within its discretion to issue a protective order to prevent this disclosure.

(A.7).

The specific findings of good cause for the document requests, interrogatories, and depositions are detailed in the Argument.

ARGUMENT IN OPPOSITION TO PETITION FOR CERTIORARI

A. The Petition seeks relief beyond the scope of certiorari review and must be denied.

On certiorari review of a lower court's order, an appellate court is limited to quashing the order. *Reina v. State*, 2024 WL 2789847, at *2 (Fla. 6th DCA 2024) (“Because this case comes to us on certiorari review, our jurisdiction is limited to quashing the subject orders.”). “As an appellate court granting a petition for certiorari, the circuit court could only quash the special magistrate's findings, conclusions, and order. A direction to the administrative agency to dismiss the enforcement action exceeds that authority.” *Monroe Cnty. v. Carter*, 41 So. 3d 954, 958 n.6 (Fla. 3d DCA 2010).

Here, Petitioner asks the Court to do more than quash the trial court's protective order. He also asks the Court to “clarify in [its] ruling, that (a) broad discovery is ordered to allow Petitioner to prove that the alleged incidents of fraud he communicated to shareholders were truthful and honest, and (b) any witnesses or evidence he seeks to defend the damage to reputation charges against him, and provide a jury with the ‘best evidence’ available to prove that the Petitioner was truthful and honest in his communications, is justified.” (Pet. 17-18). Because certiorari review is limited to quashing the lower court's order, this Court cannot order “broad discovery” nor can it order

that Petitioner is entitled to the “best evidence” to defend against claims against him. Thus, the Petition should be denied.

B. The standard for common law certiorari review.

Florida disfavors certiorari review of pre-trial discovery orders. “The judicial policy in favor of limited certiorari review is based on the notion that piecemeal review of nonfinal trial court orders will impede the orderly administration of justice and serve only to delay and harass.” *Am. Prime Title Servs., LLC v. Wang*, 317 So. 3d 1183, 1185 (Fla. 3d DCA 2021).(quoting *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214, 215 (Fla. 1998)(internal citations omitted).

We agree with the Petitioner that review of a pretrial protective order limiting discovery is by certiorari (rather than by appeal) and the standard for discretionary certiorari review as set forth in the Petition (Pet. 2-3).

That rigorous standard, requiring a showing of irreparable harm, material injury, and a “departure from the essential requirements of law,” was clearly articulated by Florida Supreme Court in *Board of Trustees of Internal Improvement Trust Fund v. American Educational Enterprises, LLC*, 99 So. 3d 450, 454–55 (Fla. 2012):

A non-final order for which no appeal is provided by rule 9.130 may be reviewable by petition for a writ of certiorari, but only in very limited circumstances. The petitioning party must demonstrate that the contested order constitutes “(1)

a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case[,] (3) that cannot be corrected on postjudgment appeal.” . . .

Id., *Bd. of Trustees*, 99 So. 3d at 454-55 (citations omitted).

The second and third elements are jurisdictional, and the court must first analyze the jurisdictional elements before it can consider whether the lower tribunal departed from the essential requirements of law. *Plantz v. John*, 170 So. 3d 822, 824 (Fla. 2d DCA 2015). If the petitioner fails to satisfy the jurisdictional elements, the court dismisses the petition rather than denying it. *Id.* (citing *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So.2d 646, 649 (Fla. 2d DCA 1995)).

C. The record does not demonstrate irreparable harm for certiorari review of the Protective Order’s limitations on document requests and interrogatories, the jurisdictional prerequisite.

Certiorari review of discovery orders is unusual “[b]ecause the scope, sequence, and timing of discovery are conducted under the able supervision of the lower tribunal,” and thus, “a great deal must, of necessity, be left to its sound discretion.” *Am. Prime Title Servs., LLC v. Wang*, 317 So. 3d 1183, 1185 (Fla. 3d DCA 2021) (citing *Friedman*, 863 So. 2d at 193). The appellate courts generally lack jurisdiction to review trial court orders merely denying discovery requests because any resulting harm can be remedied on appeal. *See Eutsay v. State*, 103 So.3d 181, 182 (Fla. 1d DCA 2012) (“Unlike

situations where a trial court erroneously compels the exchange of information (the proverbial 'cat out of the bag' orders), the harm done by the failure to provide information can be corrected on appeal in most cases.”); *Boyd v. Pheo, Inc.*, 664 So.2d 294, 295 (Fla. 1d DCA 1995) (“[T]his court has adhered to the view that orders having the effect of denying discovery are almost invariably not reviewable by certiorari because of the absence of irreparable harm.”). Compare *Beekie v. Morgan*, 751 So. 2d 694, 698 (Fla. 5th DCA 2000) (noting: “Ordinarily, trial court orders refusing to compel discovery are not reviewed by certiorari because it is believed any harm caused by the denial can be adequately remedied on appeal from the final order”, but that “[t]he failure to permit a deposition, or allow a party to answer questions during a deposition, has been held to be subject to certiorari relief.”) (citing *Medero v. Florida Power and Light Co.*, 658 So. 2d 566 (Fla. 3d DCA 1995) and *Sabol v. Bennett*, 672 So. 2d 93 (Fla. 3d DCA 1996)). Accordingly, TPC does not dispute the jurisdictional aspect of the Petition seeking review of the Protective Order’s limitations on depositions (but does dispute that the trial court departed from the essential requirements of law).

In a rare exception, certiorari review may be appropriate when the requested discovery is relevant and the order denying it “effectively eviscerates a party’s claim, defense, or counterclaim.” *Westerbeke Corp. v.*

Atherton, 224 So. 3d 816, 821 (Fla. 2d DCA 2017)(quoting *Giacalone v. Helen Ellis Mem'l Hosp. Found., Inc.*, 8 So.3d 1232, 1234-1235 (Fla. 2d DCA 2009). But critically, a petitioner has the burden of establishing all of the elements of certiorari relief, including jurisdiction. See *Damsky v. Univ. of Miami*, 152 So. 3d. 789, 792 (Fla. 3d DCA 2014) (explaining that a party seeking certiorari relief “must demonstrate” all three elements: (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case, (3) that cannot be corrected on post-judgment appeal” [the second and third prongs together are often referred to as “irreparable harm”]). This is echoed by Rule 9.100(g)(1), Fla. R. App. P., requiring that a petition affirmatively state the “basis for invoking the jurisdiction of this court.” Applied here, Petitioner must carry the burden of establishing that the limitations on document requests and interrogatories cause irreparable harm before this court considers whether the trial court order “departs from the essential elements of law.”

Petitioner has not met this burden. Although the Petition includes a jurisdictional statement (Pet. 2-4, ‘Basis for Invoking Jurisdiction’), it discusses only depositions—not discovery requests. (“The Order . . . will cause irreparable injury to the Petitioner . . . since there would be no practical way to determine, after a final judgment, what the disallowed testimony

would be or how it would affect the result.”). (Pet. 2). And although the Petition ultimately devotes one section to discovery requests, it doesn’t address the ‘irreparable harm’ legal standard, it doesn’t cite any case law, and it only conceivably addresses two document requests (requests 4 and 7).² See (Pet. 29-31). The two document requests seek production of the company’s current financial statements, operating data, and loan commitments. (A. 10). In the Protective Order, the trial court determined that disclosure of new confidential and proprietary business information that Petitioner did not possess at the time of the alleged offenses was a “fishing expedition” and could not be used to manufacture a ‘justification’ defense *ex post facto*. (A. 10).

Petitioner seeks certiorari review of this decision by arguing the company’s current financial statements, operating data, and loan commitments are “crucial and relevant to [Petitioner’s] defense and counterclaim.” (Pet. 29). But “relevant” is a metric for determining the scope of discovery at the trial court level, not the standard for demonstrating

² TPC believes the Petition addresses these two document requests because it states that “the Judge has ignored the valid, relevant and crucial reason that Petitioner requires certain specific information that ‘he did not previously have access to,’ which was NOT a ‘fishing expedition,’ as he noted in this Order.” (Pet. 29). Petitioner then quoted a portion of the protective order addressing document requests 4 and 7.

irreparable harm on certiorari. See Fla. R. Civ. P. 1.280(b)(1) (governing discovery standards, “parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action.”); *Westerbeke Corp.*, 224 So. 3d at 821 (Fla. 2d DCA 2017) (explaining rare exception to certiorari review may exist where limitation “eviscerates a party’s claim, defense, or counterclaim.”). He argues that these new financial records are “crucial” to defend against TPC’s tortious interference claim and to prove his counterclaim for defamation because they could show his “communications”³ with TPC’s investors were “made in good faith and were truthful and honest” and thus, there “cannot be any tortious interference damages awarded.” (Pet. 30-31). s As a matter of law, this is incorrect because ‘truth’ is not an affirmative defense to a tortious interference claim.⁴

³ In fact, Petitioner does not cite to evidence of his “communications.” Instead, he cites to Appendix F, a self-created summary document which does not include the alleged communications cited in the Petition. (Pet. 30); (A. 194-204). Because these “communications” are not supported by record evidence, they cannot support the Petition.

⁴ Although TPC disputes the merits of this contention, the argument in this Response is limited to the correct legal standard, not the merits of the contention. The concept of ‘justification’ is different than truth. For example, there are many instances where interference is ‘true’ yet not ‘justified.’ See *e.g.*, *Azar v. Lehigh Corp.*, 364 So. 2d 860, 861-852 (Fla. 2d DCA 1978)(upholding temporary injunction in favor of a real estate developer and motel operator against a former employee on tortious interference theory where former employee knew of business model and approached customers and tried to convince them to rescind their agreements with the developer).

Instead, tortious interference requires an “intentional and unjustified interference with the relationship by the defendant.” *GNB, Inc. v. United Danco Batteries, Inc.*, 627 So. 2d 492, 494 (Fla. 2d DCA 1993)(dissenting opinion discussing Florida law on justification in detail).⁵

But in any event, Petitioner has failed to establish how the trial court’s order precluding him from obtaining current financial and operating data would irreparably harm his defense. As the trial court explained, whether Petitioner was ‘justified’ in his conduct, cannot be established *ex-post facto* by auditing the company’s records. (A. 10). Likewise, he makes no argument explaining how the trial court’s order precluding him from obtaining current financial and operating data would irreparably harm his ability to prove his defamation counterclaim. See Pet. 29-31.

Because Petitioner has not met his burden to establish jurisdiction, the Petition seeking review of the Protective Order’s limitations on the Discovery Requests should be dismissed. See *Plantz*, 170 So. 3d at 824 (explaining dismissal is the appropriate remedy where certiorari jurisdiction is absent).

⁵ The Florida Standard Jury Instructions in Civil Cases § 408.6 cites to *GNB, Inc. v. United Danco Batteries, Inc.* in footnote 5 for a discussion on the “unjustifiably” element of the claim.

D. Petitioner has not shown a departure from the essential requirements of law.

1. The document requests and interrogatories were limited for good cause shown.

If the Court crosses the ‘irreparable harm’ jurisdictional barrier, Petitioner must show that the trial court departed from the essential requirements of law. This test is met when the trial court applies the wrong law or legal standard. See *State v. Veilleux*, 859 So.2d 1224, 1227–28 (Fla. 2d DCA 2003) (recognizing that the trial court's misapplication of the correct law does not warrant certiorari relief but that the focus should be on whether the trial court applied the correct law (quoting *Ivey v. Allstate Ins. Co.*, 774 So.2d 679, 682 (Fla. 2000)); *City of Hialeah Gardens v. Miami–Dade Charter Found., Inc.*, 857 So.2d 202, 203 (Fla. 3d DCA 2003) (“Our scope of review of the circuit court's decision is limited to determining whether the circuit court applied the correct law or legal standard, that is, whether it departed from the essential requirements of the law.”). A trial court applies the correct legal standard in granting a motion for protective order when the order is issued “for good cause shown . . . to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires.” Fla. R. Civ. P. 1.280(c). The Protective Order made findings of good cause and thus, applied the correct legal standard.

Petitioner argues that the trial court did not apply the correct legal standard because it limited discovery on relevance alone. (Pet. 35, 40-41). But this is incorrect as shown by the trial court's findings on each of the Discovery Requests:

The trial court limited document request 1 for good cause to prevent "harass[ment]" and prevent "impermissible contact" with TPC's investors who are "strangers" to Takefman. Document request 1 seeks "[a] copy of the email sent by Matt Gordon to shareholders relating to Earl Takefman, on September 28, 2023, wherein Matt Gordon indicate that Earl Takefman defamed the company, including all of the email addresses of each of the recipients." (A. 8). "As amended, Takefman requests the names, locations and investment amounts of the recipients but does not seek their email addresses." (A. 8). Takefman argued he required the "names, locations, and investment amounts of the recipients" (i.e., TPC's entire customer list) because he was allegedly defamed by this email. (A. 8). The trial court noted that Takefman (i) was already in possession of the substance of the email and (ii) TPC agreed to produce all correspondence between it and investors that referenced Takefman specifically. (A. 9). The trial court held that the "evidence shows that Mr. Takefman already possesses the identity of those investors with whom he had any personal relationship with or with whom he

contacted following his termination. . . . the remainder of TPC’s investors are strangers.” (A. 9). The trial court agreed with TPC that “disclosing its entire investor list, their locations, and their investment amounts is designed to harass TPC” and “lead to impermissible contact with all of these investors with whom Mr. Takefman has no connection.” (A. 9).⁶ This is good cause.

Document request 3 seeks “all solicitation emails” by Chris Foster [TPC] to “potential investors” and “including all the email addresses of each of the recipients.” (A. 9). This request seeks not only the identity of investors, but the identity of potential investors. (A. 9). The trial court did not grant TPC’s motion for protective order on document request 3. Noting the same considerations as document request No. 1, the trial court ordered that Takefman was entitled to document production of ‘bulk solicitation emails’ while holding that “identification and contact information of all potential investors is protected information.” (A. 9-10).

⁶ TPC also argued that “Florida courts routinely recognize customer lists and their related information as protectable trade secrets.” See *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Silcox*, 2001 WL 1200656, at *4–5 (S.D. Fla. Oct. 4, 2001) (Florida law protects customer lists and information from misappropriation and conversion through injunctive relief). The trial court cited this argument but the Protective Order is not clear one way or the other whether it relies on this argument.

The trial court limited document requests 4 and 7 because the requests seeking disclosure of TPC's current financial data, operational data, and loan documents was a "fishing expedition." This is a proper showing of good cause for a protective order. *See Travelers Indem. Co. v. Salida*, 358 So.2d 963 (Fla. 3d DCA 1978)("Discovery is not a fishing expedition and cannot be utilized to explore all minute details of controversy or delve into inconsequential matters, nor can discovery be so unduly burdensome upon a party as to be oppressive."). In reaching this decision, the trial court explained: "Through these requests, Mr. Takefman seeks disclosure of new confidential and proprietary business information that he did not previously have access to. The claims in this action relate to specific allegations that he breached confidentiality obligations and interfered with TPC's business relationships in specific communications to investors made between September and November of 2023. (Compl. ¶¶ 28-54). Whether Mr. Takefman was "justified" in making those statements is dependent on the information which he possessed at that time and actually relied on." (A. 10). Accordingly, the trial court held that discovery of new confidential information was an impermissible fishing expedition. (A. 9).

The trial court limited interrogatories 4(a)-4(c) because these interrogatories are designed to cause "annoyance" and "embarrassment."

(A. 11). Interrogatories 4(a)-4(c) ask TPC to “detail prior business ventures of its chief executive officer, including the amounts of money raised and the returns to investors, and to detail any personal bankruptcies of its chief executive officer, including creditor claims and resolutions.” (A. 11). While it is correct that the trial court determined that these interrogatories were not relevant, this determination was only part of the reasoning leading to the conclusion of annoyance” and “embarrassment.” (A. 11).

The trial court limited interrogatory 5 because it “views this interrogatory as an additional attempt to obtain information about club operations and membership numbers,” and “current operational data is not discoverable in this action.” (A. 11). Although the trial court did not use the words, this is a reference to the improper ‘fishing expedition.’

Finally, the trial court limited interrogatory 7 because “as with interrogatory 4” (which the trial court concluded was designed to annoy and embarrass), “Florida courts regularly protect against the disclosure of personal financial information, especially of non-parties, when it is not essential to the claims of the litigation.” (A. 11-12). Interrogatory 7 asked TPC to disclose “the dates and amounts invested by TPC’s co-founders in the company.” (A. 11). Although the trial court discussed the relevance of this

information in the Protective Order, the good cause determination was based on protecting the privacy of personal financial information.

Accordingly, the Discovery Requests were limited for “good cause” under Rule 1.280(c) and therefore, the trial court applied the correct legal standard and did not depart from the essential requirements of law.

2. The depositions were limited for good cause shown.

When a party is denied the right to depose an alleged material witness without a finding of good cause, the lower tribunal departs from the essential requirements of law. *Hepco Data, LLC v. Hepco Med., LLC*, 301 So. 3d 406, 412 (Fla. 2d DCA 2020)(emphasis added). But the trial court may limit depositions upon a showing of good cause.

Pursuant to Rule 1.280, the trial court may order that a deposition may not be had or that a deposition may be had only on limited topics. Fla. R. Civ. P. 1.280(c)(the court may order “(1) that the discovery not be had; . . . (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters”). In particular, depositions may not be conducted in “bad faith or in such manner as unreasonably to annoy, embarrass, or oppress,” a party or deponent. Fla. R. Civ. P. 1.310(d). The trial court may limit depositions to prevent harm through the discovery process. “In exercising its discretion to prevent injury through abuse of the

action or the discovery process within the action, trial courts are guided by the principles of relevancy and practicality.” *Friedman*, 863 So. 2d at 194. This extends to non-parties. See *Perez v. Alan*, 2010 WL 6537173, at * 1 (Fla. Cir. Ct. Oct. 29, 2010) (limiting time and scope of deposition of non-parties).

Takefman requested the depositions of fifteen prospective deponents in his Deponent Appendix and identified the proposed topics of deposition. (A. 102-103). The prospective deponents included: (i) three company officers and employees; (ii) the company’s “largest shareholder;” (iii) seven other investors; (iv) two anonymous ex-employees; (v) one anonymous club member; and (vi) the CEO’s “ex-partner” (also anonymous). (A. 102-103).

a. The depositions of corporate witnesses were properly limited for good cause shown.

Takefman sought to depose three corporate witnesses: Chief Executive Officer Brian McCarthy, Vice President of Business Development Chris Foster, and Chief Financial Officer Matthew Gordon. (A. 102)(Deponent Appendix). TPC moved for a protective order to limit depositions to a corporate designee instead of several depositions. (A. 120). TPC also asked to limit the scope of depositions consistent with the limitations imposed on the Discovery Requests to prevent Takefman from

using depositions to go on a “fishing expedition” and circumvent the discovery restrictions. (A. 121).

The trial court granted this motion based on a finding of good cause balancing the relevance of the expected testimony with other sources of information, the likelihood of harassment, and the improper weaponizing of the discovery process. The trial court stressed its discretion to limit depositions between parties in contentious cases with pro se parties:

It is within the trial court’s discretion to give special consideration to the contentious relationship between the parties, the likelihood of annoyance or embarrassment resulting from depositions, the relevancy of the requested deposition testimony, and the abhorrent risk of weaponization of the discovery process. In *Waite v. Wellington Boats, Inc.*, the First District Court of Appeal upheld a trial court’s protective order precluding the defendant, an unrepresented litigant, from personally deposing the plaintiff corporation or its officers because of “an extremely antagonistic relationship which has developed between Waite and such officers.” 459 So. 2d 425, 426 (Fla. Dist. Ct. App. 1984).

(A. 12). The trial court made a finding of good cause, concluding that it had personally observed examples of this type of animus between the parties warranting a limitation on depositions. (A. 13). The trial court cited a specific example of this animus “from September 2023 after the parties entered a release agreement following Mr. Takefman’s termination as an example.” Mr. Takefman emailed TPC and its legal counsel:

BTW, the agreement you created was the worst release and discharge agreement I have ever seen drafted by any lawyer. . . [Y]ou left your

clients totally vulnerable by eliminating the non-disparagement obligations altogether. Such bad lawyering. Perhaps you should have sought legal advice from others.

(A.13).

Petitioner argues that the trial court departed from the essential requirements of law, in reliance on *Hepco Data, LLC v. Hepco Med., LLC*, 301 So. 3d 406, 412 (Fla. 2d DCA 2020), because when a party is denied the right to depose an alleged material witness without a finding of good cause, the lower tribunal departs from the essential requirements of law. See Pet. 43 (“As luck would have it, the above captioned case seems to ‘mirror’ the instant case in many respects and as such is included, in its entirety, in Appendix J.”). In *Hepco Data, LLC*, the Second District Court of Appeal granted certiorari and quashed the trial court’s order denying a motion to compel and granting a motion for protective order barring the depositions of eighteen prospective deponents because the trial court’s “blanket order . . . without explanation” departed from the essential elements of law. *Id.* The trial court accepted respondents’ objection to the numerous depositions as overly burdensome and expensive but made no findings of “immateriality or good cause because there was simply no substantive support for the objections argued at the hearing or in Respondents’ filings.” *Id.* at 411.

But Petitioner’s heavy reliance on *Hepco Data, LLC* is misplaced because in this case, the trial court made findings of good cause, it did not issue a “blanket order.” Although a finding of good cause is sufficient, the trial court also made findings addressing immateriality, holding that “the deposition of multiple executives is needlessly cumulative. Based on the topics proposed in Mr. Takefman’s response, the company may adequately testify to each.” (A. 13). With respect to Brian McCarthy, the company’s CEO, Petitioner argues that the request to depose him “was mostly related to his past business history which he chose to hide from investors.” (Pet. 24). Notably, there is no record evidence of a “past business history which” the CEO has hidden. But in any event, this direct admission affirms that the purpose of the deposition was to harass and embarrass the witness. With respect to Chris Foster, the Vice President of Business Development, Petitioner argues that he requires his deposition because he “has knowledge that no other executive at TPC can testify to as it relates to his interactions with potential investors and his efforts to properly protect the confidential nature of the documents.” (Pet. 27). But the trial court made a finding to the contrary—it found that a corporate representative can testify to the company’s solicitation of potential investors and treatment of confidential documents. More than that, the Protective Order also directs the parties to

meet and confer regarding the production of Chris Foster's emails (although Petitioner has moved to quash that order, frustrating that purpose). This Court has previously upheld protective orders precluding depositions in similar scenarios where document production would cure a perceived injury. See *Adkins v. Sotolongo*, 337 So. 3d 110, 111 (Fla. 3d DCA 2021) (finding that party seeking relief failed to demonstrate how a protective order, which prevented the party from taking a deposition of a doctor because all the medical records were turned over to the party, inflicted a material injury that could not be remedied on appeal). With respect to Chief Financial Officer, Matthew Gordon, TPC does not object, it only requests that his deposition be taken at the same time as the corporate representative because he will likely serve in that capacity.

Finally, the trial court limited the scope of depositions consistent with the restrictions on the Document Requests. "The Court limits the scope of the deposition topics to be consistent with this protective order as applicable to document requests 1 and 3-9, as well as interrogatories 4-7." (A. 13). The trial court is within its discretion to limit the scope of depositions consistent with limitations on topics of discovery. See Fla. R. Civ. P. 1.280(c)(4)(the court may order "(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters").

Because the trial court applied the correct legal standard of good cause it did not depart from the essential requirements of law when it limited depositions in number and scope.

b. The depositions of unidentified ex-employees, customers, and former business partners were properly limited for good cause.

Takefman also sought to depose (i) two ex-employees, (ii) one TPC club member, and (iii) the CEO's former business partner. (A. 102-103). He did not identify the proposed deponents, maintaining their anonymity. (A. 14). Petitioner argues that he should be entitled to take these depositions to question ex-employees, club members, and the CEO's former business partner about the reputation of TPC. (Pet. 27-29). However, the deposition topics he provided are actually aimed at the co-founders of TPC. See e.g., (A. 14)(Two ex-employees "regarding their perceptions of the reputations of the co-founders;" One club member regarding "discussion of their perception of TPC and management;" and McCarthy ex-partner regarding "relationship with Brian and his wife;" "opinions of Brian and Valerie and their honesty."). Petitioner incorrectly argues that the trial court precluded these depositions based on relevance—the incorrect legal standard.

But the Protective Order shows the trial court made a decision based on a finding of good cause. It held that based on the topics provided it

appears “the purpose of the depositions is to embarrass, annoy, or harass TPC, not to obtain relevant information to the claims or defenses.” (A. 14). While relevance is considered, the trial court makes a finding of good cause as required by Rule 1.280. Accordingly, the trial court has not departed from the essential requirements of law.

c. Any deficiency in the record evidence supporting the trial court’s ‘good cause’ determination is presumed to be cured based on the evidence adduced at the hearing.

Petitioner challenges the sufficiency of the evidence to support the lower tribunal’s conclusion that the protected discovery requests and depositions of non-party witnesses was for “good cause” and not “relevance.” (A. 12). However, the findings of good cause are well-supported by the Protective Order as detailed in this Response, *supra*. And although the trial court held a hearing on the motion for protective order, Petitioner did not provide a transcript of this hearing for the record. (RA. 26)(Notice of hearing). Accordingly, this Court is required to presume any deficiency in the documentary evidence to support the lower tribunal’s decision was “cured based on evidence adduced at the hearing.” *Ferrandino v. Riley*, 236 So. 3d 493, 494–95 (Fla. 1st DCA. 2018)(quoting *Snowden v. Wells Fargo Bank*, 172 So.3d 506, 508 (Fla. 1st DCA 2015); see also *J P Morgan Chase Bank v. Combee*, 883 So. 2d 330, 332 (Fla. 1st DCA 2004)(“In essence, we are

left with only one question: Could anything that would justify the dismissal with prejudice have occurred in any of the case management conferences or during rehearing? The answer to that question is ‘Yes.’ Because the trial court’s order of dismissal comes with a presumption of correctness . . .”). For this additional reason, the trial court did not depart from the essential requirements of law.

CONCLUSION

For the foregoing reasons, the Court should (i) dismiss the Petition seeking certiorari review of the trial court’s order limiting document requests and interrogatories for lack of jurisdiction; (ii) to the extent it crosses the jurisdictional hurdle, deny the Petition seeking certiorari review of the trial court’s order limiting document requests and interrogatories; and (iii) deny the Petition seeking certiorari review of the trial court’s order limiting depositions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I filed the foregoing The Pickleball Club, LLC And Matthew Gordon's Response To The Petition For Certiorari with the Court through the Florida Statewide e-Filing Portal, which will serve the below-named pro se litigant of record by e-mail service this 26th day of August 2024.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing The Pickleball Club, LLC And Matthew Gordon's Response To The Petition For Certiorari is Arial 14-point font and includes fewer than 7,800 words in compliance with requirements of Rule 9.100, Florida Rules of Appellate Procedure.

/s/ Josh Lewin

Joshua R. Lewin, Esq.