

Case No. 3D24-0006

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

ORBIS INSURANCE GROUP, LLC,

Petitioner,

v.

**ORLANDO T. LLANES, SOUTHWESTERN INSURANCE, LLC, AND
SOUTHWESTERN INSURANCE SERVICES, INC.**

Respondents.

ON CERTIORARI REVIEW FROM THE ELEVENTH JUDICIAL CIRCUIT
COURT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA
L.T. Case No. 21-013326 CA 01

REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

ALAN G. GEFFIN, ESQ.
FLORIDA BAR NO. 780006

CHRISTOPHER PEREZ-GURRI, ESQ.
FLORIDA BAR NO. 31405

GPG LAW
1326 SE 3RD AVENUE
FORT LAUDERDALE, FL 33316
TELEPHONE: (954) 533-5530
FACSIMILE: (954) 374-6588
E-MAIL: alan@gpplawfirm.com
chris@gpplawfirm.com
gpgservice@gpplawfirm.com

Counsel for Petitioner

Table of Contents

I. Overview..... 1

II. Orbis Established The Accountant-Client Privilege 2

Respondents’ Superficial Analysis Regarding Confidential
Communications 2

The Operating Agreement 4

Respondents’ Irreconcilable Arguments..... 4

III. Respondents And The Trial Court Disregard Elements Of The
Common Interest Exception..... 5

The Communications Were Not Relevant To A Matter Of Common
Interest 5

Reasonable Expectation of Privacy 7

IV. Conclusion..... 7

Table of Authorities

Statutes

Florida Statute, Section 90.5055..... 1, 2, 7

I. Overview

1. Respondents, Orlando Llanes (“Mr. Llanes”) and Southwestern Insurance, LLC (“Southwestern”), argue two main points. First, they argue that Petitioner, Orbis Insurance Group, LLC (“Orbis”) did not establish the existence of the accountant-client privilege with Orbis’ accountant, Arnold Ledesma (“Mr. Ledesma”). Second, they argue that the trial court correctly applied the “common interest exception” to the accountant-client privilege [even though, according to Respondents, no such privilege exists].

2. In both points, Respondents conveniently disregard the details set forth in Florida Statute, Section 90.5055 and, instead, adopt casual definitions to terms and concepts set forth therein. As demonstrated below, Respondents likely disregard them because “the devil is in the details.”

II. Orbis Established The Accountant-Client Privilege¹

Respondents' Superficial Analysis Regarding Confidential Communications

3. Respondents' argument, as more fully described below, does not comport with the meaning ascribed to "confidential" in Florida Statute, Section 90.5055(1)(c). Indeed, that section provides that:

[a] communication between an accountant and the accountant's client is 'confidential' if it is not intended to be disclosed to third persons ***other than***: 1. *Those to whom disclosure is in furtherance of the rendition of accounting services to the client*. 2. *Those reasonably necessary for the transmission of the communication.*

Fla. Stat. §90.5055(1)(c) (emphasis added).

4. As this Court knows, companies act through individuals. Indeed, the only way that a company can communicate with its accountant, or its lawyer for that matter, is through individuals employed by or working for the company. Therefore, when accountants communicate with those individuals "*in furtherance of the accounting services being provided to the client,*" those communications are confidential. Respondents argue otherwise and

¹ Respondents baldly argue that Orbis failed to shoulder its burden of establishing the existence of an accountant-client privilege between it and its accountant, Mr. Ledesma. As revealed by the Initial Brief, however, the record clearly and unambiguously reveals that Mr. Ledesma did, in fact, serve as Orbis' accountant. Rather than repeat those records citations herein, Orbis simply refers this Court to Orbis' Petition for Writ of Certiorari.

impermissibly seek to use Mr. Llanes' managerial role as a sword to pierce Orbis' accountant-client privilege.

5. Specifically, Respondents argue that Orbis' communications with Mr. Ledesma are not confidential because, *as Orbis' manager*, Mr. Llanes (who indirectly owns only a minority interest in Orbis) regularly consulted with Mr. Ledesma *on Orbis' behalf* regarding *its* financial affairs:

Clearly, Mr. Llanes and Southwestern were part of Orbis; Mr. Llanes was a manager and Southwestern owns 49% of the membership interests of Orbis. In such capacity, they consulted with Mr. Ledesma.

(Resp. at 9-10).²

6. In other words, and in direct conflict with Section 90.5055(1)(c), Respondents argue that communications to Mr. Llanes, a third person “*to whom disclosure is [made] in furtherance of the rendition of accounting services to [Orbis,] the client[,]*” are not privileged.

7. In effect, Respondents seek to create a new exception to the statutory accountant-client privilege, the “Manager/Member Exception.” The creation of such an exception, in the corporate setting, would significantly vitiate the accountant-client privilege and, for that matter, the attorney-client privilege

² References to Respondents' Response Brief appear as Resp. at page #. Citations to the Appendix that accompanied the Initial Brief appear as APP. [PDF Page #].

as well. Never again can a company assert either of those privileges in an action against someone who was exposed to privileged information because such exposure was *made in furtherance of rendition of accounting services to the client*.

The Operating Agreement

8. Respondents argue that the operating agreement somehow bars Orbis from asserting the accountant-client privilege in this case. This argument is a red herring. The Operating Agreement does not in any way mention or address the accountant-client privilege. The Operating Agreement likewise does not provide that either of the Respondents is entitled to unfettered access to confidential communications between Orbis and its accountant. The Operating Agreement simply affords Southwestern the right to inspect the company's financial records.

9. Additionally, there is nothing in the record reflecting that the trial court relied upon the Operating Agreement in reaching its conclusion. Indeed, as demonstrated in Petitioner's Initial Brief, the trial court's ruling was limited to the "common interest exception."

Respondents' Irreconcilable Arguments

10. Despite arguing that the trial court correctly applied the "common interest exception" to the accountant-client privilege, Respondents also

argue that Orbis failed to establish that such privilege even applies. Those arguments are irreconcilable because, for the “common interest exception” to apply, the privilege must exist. In other words, the “common interest exception” *only* comes into play if and after the privilege has been established.

11. It is also worth noting that, when Respondents address the “common interest exception,” they concede that the trial court’s ruling is premised on this exception. Resp. at 8. Consequently, Orbis -- and Mr. Ledesma, himself -- did establish that Orbis enjoyed an accountant-client relationship with Mr. Ledesma and Orbis is, therefore, entitled to assert the accountant-client privilege.

III. Respondents And The Trial Court Disregard Elements Of The “Common Interest Exception”

The Communications Were Not Relevant To A Matter Of Common Interest

12. Respondents superficially address the statutorily codified “common interest exception” while arguing that the trial court correctly applied the exception. Specifically, Respondents simply focus on the trial court’s conclusion that: “[t]he communications were relevant to a matter of common interests, and there was no expectation of confidentiality here.” (Resp. at 9.)

13. While the foregoing conclusion was, indeed, articulated by the trial court, the two sentences that preceded that conclusion are critical:

But Mr. Ledesma represented them jointly. He was an accountant to both of them. The communications were[, therefore,] relevant to a matter of common interests and there was no expectation of confidentiality here.

(App. #347) (emphasis added). Those preceding sentences are critical because those factual findings are necessary to apply the “common interest exception” to the accountant-client privilege.

14. However, as revealed by the Initial Brief, and unrefuted in Respondents’ Response Brief, neither of the Respondents had an accountant-client relationship with Mr. Ledesma. He, therefore, did not represent Mr. Llanes/Southwestern and Orbis, jointly. He was not an accountant to “both” of them. He only provided accounting services to Orbis and the *disclosure of the subject privileged communications were made to Mr. Llanes in furtherance of the rendition of accounting services to Orbis, Mr. Ledesma’s client.*

15. Considering the foregoing and the additional reasons set forth in in the Initial Brief, the trial court’s conclusion (that the communications were “relevant to a matter of common interests”), which is championed by Respondents, departed from the essential requirements of law.

Reasonable Expectation of Confidentiality

16. Respondents argue, and the trial court effectively agreed, that Orbis had no expectation of confidentiality because *privileged communications were disclosed to Mr. Llanes in furtherance of the rendition of accounting services to Oribis*. Such argument is, however, wholly belied by Florida Statute, Section 90.5055(1)(c).

17. As revealed above, accountant-client communications retain their confidential status when they are disclosed to an individual in furtherance of the rendition of accounting service to the client. Therefore, Section 90.5055(1)(c) renders reasonable Orbis' expectation that its communications with its accountant were and remain privileged.

IV. Conclusion

Based upon the foregoing, Orbis asks that this Court grant this petition; quash the trial court's Order; find that Orbis, on the one hand, and Mr. Ledesma, on the other, shared an accountant-client relationship; and direct the trial court to implement a procedure to enable Orbis to effectively assert and preserve its accountant-client privilege with respect to the communications, documents, and information that Southwestern and Mr. Llanes seek from Mr. Ledesma.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that, on March 12, 2024, a true and correct copy of the foregoing document was served by E-mail upon the following: Juan C. Martinez, Esq. (juan.martinez@gray-robinson.com; ecianella@gray-robinson.com) and Veronica Meza (veronica.meza@gray-robinson.com; rosana.dominguez@gray-robinson.com; amador.ruiz-baliu@gray-robinson.com); of Gray Robinson, P.A., 333 S.E. 2nd Avenue, Suite 3200, Miami, Florida 33131 and Daniel Zumpano, Esq. and Antonio Castro, Esq. (daniel.zumpano@zumpanocastro.com; antonio.castro@zumpanocastro.com; nikki.marrero@zumpanocastro.com) of Zumpano Castro, 500 S. Dixie Highway, Suite 302, Coral Gables, FL 33146.

GPG Law
1326 SE 3rd Avenue
Ft. Lauderdale, FL. 33316
Telephone: (954) 533-5530
Facsimile: (954) 374-6588
chris@gpplawfirm.com
alan@gpplawfirm.com
gpgservice@gpplawfirm.com

s/ Christopher Perez-Gurri

Alan G. Geffin
Florida Bar No. 780006
Christopher Perez-Gurri
Florida Bar No. 31405

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that that the foregoing petition complies with the applicable font and word count limitations set forth in the Florida Rules of Civil Procedure.

GPG Law
1326 SE 3rd Avenue
Ft. Lauderdale, FL. 33316
Telephone: (954) 533-5530
Facsimile: (954) 374-6588
chris@gpplawfirm.com
alan@gpplawfirm.com
gpgservice@gpplawfirm.com

s/ Alan G. Geffin

Alan G. Geffin
Florida Bar No. 780006
Christopher Perez-Gurri
Florida Bar No. 31405