IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Aylsworth & Aylsworth LLP as Trustee
of the 198 Avenue Family Trust,
Petitioner/Defendant,

3DCA CASE NO. _____

v.

L.T. CASE NO. 2022-018346-CA-01
Judicial Section: 21
Hon. David C. Miller

JPMORGAN CHASE BANK, N.A.,
Respondent/Plaintiff.
_____/

ON PETITION FOR WRIT OF CERTIORARI
OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUTY, FLORIDA

PETITION FOR WRIT OF CERTIORARI

Vestalia Aylsworth, Esq.
Florida Bar No. 111007
Attorney for Petitioner
12307 SW 143 Lane
Miami, FL 33186
305-282-6020
va@AylsworthLLP.com (Primary)
vestalia@live.com (Secondary)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases ***Page***

Cases cont.

Cases cont.

Other Authorities

JURISDICTIONAL BASIS

On January 30, 2024, the lower court entered two Orders compelling Petitioner, Aylsworth & Aylsworth LLP as Trustee of the 198 Avenue Family Trust ("Petitioner" or "Defendant"), to produce confidential and proprietary financial records in this run-of-the-mill, residential foreclosure case, including ten years of federal income tax returns ("the Orders" or "Discovery Orders").[1] The Discovery Orders also sanctioned Petitioner for objecting to this discovery and not producing these documents during Petitioner's deposition.

The Discovery Orders cause irreparable harm for which no remedy on appeal is available. Petitioner hence files this Petition for Writ of Certiorari pursuant to Florida Rules of Appellate Procedure 9.030(b)(2)(A) and 9.100. Contemporaneous herewith, Petitioner files an Appendix, with the documents cited therein identified as "(A-___)".

[1] The lower court issued two slightly different Discovery Orders on January 30, 2024 pertaining to the same hearing held on January 19, 2024. (A-2 and A-3)

STATEMENT OF THE CASE AND FACTS

This is a run-of-the-mill, residential mortgage foreclosure lawsuit. (A-12) Petitioner is defending the claims of Respondent, JP Morgan Chase Bank, N.A. ("Respondent" or "Plaintiff") with a statute of limitations defense and other defenses that are commonplace in the foreclosure arena. (A-13; -15) Nonetheless, the Orders compel Petitioner to produce legions of proprietary, financial information, including ten years of federal income tax returns, none of which has anything to do with the issues framed by the pleadings. (A-2; -3; -4, Ex. A and Ex. B) The lower court departed from the essential requirements of law, and Petitioner has no adequate remedy on appeal. Following a well-established body of jurisprudence, this Court should grant certiorari.

On November 4, 2009, Respondent filed a lawsuit seeking to foreclose a "WaMu Mortgage Plus™ Agreement and Disclosure" ("HELOC") and WaMu Mortgage Plus™ Mortgage ("HELOC Mortgage") on the real property located at 21101 SW 198th Avenue, Miami, Florida 33187-3929 ("the Property") in Miami-Dade County Case No. 2009-80948-CA-01 ("the First Case"). (A-6, Ex. B) Its one-count Complaint in the First Case accelerated the balance due after Defendants, LUIS SAINZ ("SAINZ") and ENRIQUETA ZALDIVAR ("ZALDIVAR"), the then-owners of the Property and signers of the HELOC Loan, defaulted on installment

payments. (A-6, Ex. B, ¶ 6) However, the First Case ended with a voluntary dismissal. (A-6, Ex. D)

On August 24, 2018, Respondent filed its Complaint in JP Morgan Chase, N.A. v. Aylsworth & Aylsworth, LLP, as Trustee of the 198 Family Trust, Miami-Dade County Case No. 2018-028928-CA-01 ("the Second Case"), its second attempt to foreclose the HELOC and HELOC Mortgage on the Property.[2] Hon. David C. Miller thereafter dismissed Respondent's claims with prejudice due to the passing of the statute of limitations, distinguishing Bartram v. U.S. Bank, N.A., 211 So.3d 1009 (Fla. 2016), because the HELOC Loan at bar lacks a contractual right to reinstate and was accelerated on November 4, 2009, the date of the filing of the First Case. (A-7, Ex. C and Ex. F; -6, Ex. B, ¶ 6)

On September 22, 2022, Respondent initiated the instant lawsuit, its third attempt to foreclose the HELOC and HELOC Mortgage on the Property. ("Third Case") (A-22) Its initial Complaint sounded in just one count, a mortgage foreclosure claim against Petitioner, the owner of the Property. (A-22, ¶ 5) That pleading is unexceptional and non-descript, similar to the many thousands of mortgage foreclosure complaints this Court has seen in recent years. (A-22)

---

[2] Respondent named Petitioner a party defendant because it acquired ownership of the Property in 2013, over ten years ago, after the dismissal of the First Case and before the filing of the Second Case. (A-7, Ex. C, ¶ 5; A-12, ¶ 28; A-13, ¶ 28; A-14; A-22, ¶ 5; and A-27)

In the ensuing months, Petitioner defended this Third Case just as it did the Second Case, with a statute of limitations defense. (A-13; -15) In moving for summary judgment, Petitioner argued Judge Miller should rule the same way His Honor did in the Second Case, particularly since that action and the instant case are exactly the same—the same parties, the same HELOC, the same HELOC Mortgage, and the same Property. (A-15) In Petitioner's view, DCA case law since Judge Miller's ruling in the Second Case cements such a conclusion. (A-15, citing Maki v. NCP Bayou 2, LLC, 368 So. 3d 1081 (Fla. 6th DCA 2023)).

On the eve of Petitioner's summary judgment hearing, Respondent filed an Amended Complaint, effectively thwarting the hearing. (A-12) The Amended Complaint repeated the boilerplate mortgage foreclosure claim in Count One and included an alternative theory of recovery in Count Two, a claim to foreclose an equitable lien.[3] (A-12) Notably, the Amended Complaint affirmatively alleges:

> [Petitioner] has or claims to have an ownership interest in the real property which is the subject of the HELOC Mortgage.

(A-12, ¶ 28) In so alleging, Respondent does not question the circumstances in which the Property was conveyed to Petitioner back in 2013.

[3] The Amended Complaint includes three additional causes of action, but those claims seek monetary relief against SAINZ only, so they have no bearing on the instant Petition. (A-12)

In Count Two, Respondent alleges its predecessor-in-interest, Washington Mutual Bank, FA, paid off an outstanding loan in 2007, precipitating SAINZ's and ZALDIVAR'S entry of the HELOC and HELOC Mortgage. (A-12) Respondent further contends it advanced monies to pay the 2021 property taxes on the Property. (A-12, ¶ 16) However, Respondent does not contend that Petitioner did anything to give rise to that claim.[4] (A-12, ¶¶ 1-5, 13-17) In short, the only reason Petitioner is named a defendant in this case is because it owns the Property since 2013 that Respondent seeks to foreclose. (A-7, Ex. C, ¶ 5; -12, ¶ 28; -13, ¶ 28; -14; -22, ¶ 5; -27)

In its Answer, Petitioner denies the pertinent allegations of the Amended Complaint and alleges various defenses, including the statute of limitations[5],

---

[4] Respondent does not allege any type of mistake, misrepresentation, fraud, affirmative deception, or misconduct by anyone, much less by Petitioner. (A-12, ¶¶ 1-5, 13-17)

[5] At the non-evidentiary hearing and without Respondent's compliance with an affidavit pursuant to Rule 1.510(d) of the Florida Rules of Civil Procedure, the lower court cancelled the hearing on Petitioner's Motion for Summary Judgment pursuant to the statute of limitations which has been pending since October 26, 2023 and was specially set to be heard on March 11, 2024. (A-2; -3; -5, p.32, lines 14-20; -15; -16; -17) There is no evidence in this Third Case with a Rule 1.510(d) affidavit that Petitioner's Private Financial Information is somehow needed to constitute grounds to cancel Petitioner's Motion for Summary Judgment pursuant to the statute of limitations, a motion which is based on the pleadings, prior order of dismissal with prejudice and law. After multiple requests and a Motion for Reconsideration, the lower court continues to refuse to set and hear the Motion (A-15; -16; -17).

standing, and other, common defenses in the residential foreclosure arena. (A-13) That said, Petitioner admits Respondent's allegation regarding ownership of the Property, as set forth in paragraph 28, as follows:

> [Petitioner] admits paragraph 28 that [Petitioner] has an ownership interest in the real property located at 21101 SW 198th Ave, Miami, FL 33187, the subject property …

(A-13, ¶ 28)

Whether Petitioner has many millions in assets, no assets (besides the Property), or a financial means somewhere in between is not relevant to any of the issues set forth in the pleadings. By way of example, Petitioner does not contend it spent hundreds of thousands of dollars—or, indeed, any money—in improvements on the Property since it acquired ownership, nor does it seek recovery based on *quantum meruit* for the reasonable value of such improvements. The Answer does not include a counterclaim. (A-13) Quite simply, there is nothing in the Amended Complaint or Petitioner's Answer thereto that in any way implicates Petitioner's financial wherewithal. (A-12; -13)

On November 16, 2023, Respondent filed its Notice of Taking Deposition ("Notice"), scheduling a deposition of Petitioner's corporate representative for November 28, 2023, just five business days later.[6] (A-4) The Notice identified the following seven areas of inquiry:

---

[6] Thanksgiving fell in between the Notice and the scheduled deposition date.

1. The creation of the 198 Avenue Family Trust (the "Trust")

2. The administration of the Trust, including the names of the beneficiaries thereof.

3. The Trust's acquisition of the property located at 21101 S.W. 198 Ave, Miami, Florida (Subject Property") pursuant to that certain Quit-Claim Deed attached hereto as Exhibit '1' or however else acquired, including the negotiation of any acquisition, the compensation paid for such acquisition, and/or the terms of such acquisition.

4. The closing pursuant to which the Subject Property was conveyed to the Trust, including all documents signed and/or witnesses in connection therewith.

5. The inhabitation of the Subject Property including, but not limited to, whether the Subject Property is currently rented (or has been since the Subject Property was conveyed to the Trust).

6. The operation, maintenance, upkeep, and improvements to the Subject Property, including monies received by the Trust (or anyone else), and the monies expended by the Trust, its beneficiaries, or anyone else, related to the Subject Property.

7. The mortgage loan that is the subject of this action, including whether it has been deaccelerated in any way.

(A-4, hereinafter aka "Private Financial Information")

As these areas reflect, Respondent was not inquiring about the amounts due under the HELOC, its standing to foreclose, any facts relevant to the statute of limitations, or any of the other issues typically disputed in residential foreclosure lawsuits. Rather, Respondent was trying to pry into Petitioner's personal and confidential information, including the administration of the Trust, the identity of

the Trust beneficiaries, and the circumstances in which Petitioner acquired title to the Property over a decade earlier. (A-4)

In filing the Notice, Respondent scheduled the deposition for November 28, 2023, just fourteen days later. Nonetheless, the Notice included an untimely *duces tecum*, whereby Respondent asked Petitioner to produce a myriad of documents:

> 1. All documents establishing the trust, appointing trustee, designating any beneficiaries thereof, and amending any terms of, the 198 Avenue Family Trust (the "Trust"), including but not limited to:
> a. Trust agreement
> b. Certification of Trust
> c. Assignment of tangible personal property to trust
> d. Revocable living trust;
> e. Any documents demonstrating appointment of trustee, or contingent trustees.
>
> 2. Accounting records for the Trust but not limited to:
> a. Records of any incoming funds received by the Trust relating to the Subject Property including, but not limited, to the property located at 21101 S.W. 198 Avenue, Miami, Florida ("Subject Property"); and
> b. Records of any outgoing funds from the Trust relating to the Subject Property including, but not limited to, payments for maintenance, operation of the Subject Property, repairs, improvements, management of the Subject Property, and/or distributions, dividends, or other disbursements to beneficiaries of the Trust or any other entity.
>
> 3. Notary records relating to the execution of the attached Quit-Claim Deed, attached hereto as Exhibit '1'.
>
> 4. All filed tax returns for the Trust from 2013 to 2023.
>
> 5. Entire closing file for transaction, including any title work generated, settlement statements, disbursements, funds deposited, and funds received.
>
> 6. Any executed contracts between Luis Sainz and the Trust.

7. Copy of any document stamp taxes paid for transfers related to the Subject Property.

8. Copy of any intangible taxes paid for transfers relating to the Subject Property.

9. Tax payment records for the Subject Property.

10. Leases or rental agreements from 2013 to date for the Subject Property.

11. Rental payment records from 2013 to date for the Subject Property.

12. Any correspondence to or from tenants or occupants related to the Subject Property.

13. Utility records for the Subject Property including, but not limited to, water, sewer, electricity, and cable utilities.

14. All documents you intend to introduce as evidence in this matter.

15. Any correspondence relating to the management of the Subject Property.

(A-4; -23, hereinafter aka "Private Financial Information")

On its face, it is unclear what most of these documents had to do with the claims and defenses framed by the pleadings. (A-12; -13) For example, Respondent did not explain how Petitioner's previous ten years of federal income tax returns had anything to do with this case. Moreover, Respondent did not advise why it was seeking these documents in a *duces tecum* without giving Petitioner 30 days to comply.

On November 28, 2023, the corporate representative deposition of Petitioner ("the Deposition") took place as scheduled. (A-1) Ernesto Abreu ("Ernesto")

appeared as the corporate representative for Petitioner. The undersigned represented Petitioner during the Deposition, as she has done since the beginning of this case. (A-1)

At the outset of the Deposition, Petitioner's undersigned counsel made clear that Petitioner was not producing any documents pursuant to the *duces tecum* because Respondent had not provided 30-days' notice pursuant to Fla.R.Civ.P. 1.350. (A-1, p. 17, lines 12-19) In response, Respondent's counsel expressed his frustration at not receiving any documents yet cited no legal authority supporting Respondent's position that it could circumvent the 30-day requirement of Fla.R.Civ.P. 1.350 and procure documents by noticing a deposition with less than 30-days' notice and including a *duces tecum*. (A-1)

At that point, Respondent could have rescheduled the Deposition, waited the requisite 30 days, and reconvened. It did not. Instead, Respondent proceeded with the Deposition, questioning Ernesto for nearly three hours. During this time, Ernesto answered most of the questions asked of Petitioner. (A-1) Periodically, however, Petitioner's undersigned counsel voiced objections, including some with instructions not to answer the question. (A-1)

For example, the undersigned instructed Petitioner not to answer questions directed to Petitioner's personal/confidential financial information, including its financial wherewithal and other financial information that would be gleaned from

ten years' worth of federal income tax returns. (A-1, p.73, lines 7-12) In support, the undersigned objected based on long standing caselaw which stands for the proposition that a party in civil litigation is not entitled to prejudgment discovery about an opponent's finances unless that party's financial wherewithal is relevant to the issues framed by the pleadings. (A-1, p. 17, lines 20-25)

Once again, Respondent's counsel was frustrated by Petitioner's position in this regard. (A-1) Once again, however, Respondent cited no case law supporting its position that it should be permitted to dig into Petitioner's finances merely because Petitioner owns the Property and is defending this foreclosure lawsuit. (A-1) As such, Petitioner maintained that position throughout the Deposition. (A-1)

During the Deposition, Petitioner also objected to questions that it believed to be confidential, propriety, and serving no legitimate purpose in the case. For instance, Petitioner did not answer questions seeking to identify the beneficiaries of the Trust or how the Trust is administered. (A-1) As Petitioner's undersigned counsel explained during the Deposition, case law prohibits a borrower from procuring such discovery from a lender in the foreclosure arena, so Petitioner saw no reason why this law would be any different where the trust is defending such an action. (A-1, p. 18, lines 1-12, pp. 110-111) Once again, Respondent did not like Petitioner's position but cited no case law showing it to be incorrect. (A-1) Hence, Petitioner maintained that position throughout the Deposition. (A-1)

On November 29, 2023, Respondent served its First Request for Production ("the Request"), asking Petitioner to produce the same documents sought in the *duces tecum* portion of the Notice. (A-25; -4) On January 2, 2024, Petitioner responded to the Request ("RTP Response") with a myriad of objections, including that the requested documents were overbroad, confidential, propriety, irrelevant, and pre-judgment financial information not relevant to the issues framed by the pleadings. (A-24)

On January 12, 2024, Respondent filed a Motion to Overrule Defendant's Discovery Objections, Compel Deposition Responses, and for Sanctions ("Motion to Compel" or "the Motion"). (A-8) In so moving, Respondent sought an order overruling all of Petitioner's objections to the questions posed during the Deposition, compelling a second deposition, requiring production of all documents requested in the *duces tecum* (the same as in the Request), and imposing sanctions against Petitioner for interposing the objections described herein. (A-4, -8, -25)

The Motion to Compel was broken into different categories. First, Respondent complained that Ernesto was not employed by Aylsworth & Aylsworth, LLP, the Trustee for Petitioner. (A-8) In so moving, Respondent cited no legal authority supporting the proposition that the person who testifies as the corporate representative in a corporate representative deposition needs to be employed by the

corporation to so testify. (A-8) Nonetheless, Respondent insisted that Ernesto was somehow unqualified to act as Petitioner's corporate representative. (A-8)

Second, Respondent bemoaned Petitioner's failure to produce any documents at the deposition. (A-8) In moving to compel on this basis, Respondent articulated Petitioner's position that it provided less than 30 days' notice to produce the documents sought in the *duces tecum* yet presented no legal authorities showing that position was incorrect. (A-8)

Third, Respondent complained about Petitioner's refusal to answer questions directed to its financial wherewithal, the administration of the Trust, and the identity of the Trust beneficiaries. (A-8) Indeed, attached to the Motion are highlighted excerpts of the Deposition, which show Petitioner refusing to answer questions directed to this information. (A-8)

Fourth, Respondent complained about Ernesto's clarification of an earlier answer after discussing the issue with the undersigned during a break. (A-8)

For all that the Motion contained, the more glaring problem is all that it lacked. (A-8) Perhaps most notably, the Motion lacked any explanation whatsoever on how the requested information was relevant to the issues framed by the pleadings. (A-8) For example, Respondent never explained how the 17 categories of documents identified in its *duces tecum* were in any way relevant to the issues set forth in the Amended Complaint or the Answer thereto. (A-8) Again, this run-of-the-mill

foreclosure lawsuit that Petitioner is defending via the statute of limitations. Respondent did not show how any of the requested discovery had anything to do with that issue or any other claim or defense contained in the pleadings. (A-8)

In this same vein, the Motion to Compel failed to even mention the RTP Response, much less the many objections contained therein. Indeed, instead of addressing the documents it sought in the *duces tecum* and the Request, one by one, and explaining why Petitioner's objections to those documents were somehow improper, the Motion was Respondent's *carte blanche* attempt to overrule every objection and obtain every document all at once. (A-8)

Also missing from the Motion to Compel was any certification by Respondent's counsel that he had attempted to resolve the discovery disputes at bar with the undersigned before filing the Motion. (A-8) Indeed, the Motion lacked anything that could possibly be deemed the good-faith certification required by Rule 1.380. (A-8) Hence, for all of its pontificating about sanctions and bad-faith by Petitioner, Respondent made no effort to resolve the discovery disputes set forth in the Motion to Compel before going to court.

On January 19, 2024, the lower court conducted a non-evidentiary hearing on the Motion to Compel ("the Hearing"). (A-5; -26) Respondent's entire supporting argument was just six pages of hearing transcript. (A-5, pp. 3-8) In advancing its position, Respondent made no effort to address the RTP Response, the specific

objections advanced by Petitioner, why those objections were improper, and how the discovery it sought was necessary to the adjudication of its case. (A-5, pp. 3-8) Essentially, Respondent categorically asserted that every objection was improper, every document needed to be provided, and that Petitioner should be sanctioned for interposing these objections. (A-5, pp. 3-8)

During its argument, Respondent alleged Petitioner paid SAINZ just $2,000 for the Property, as if that justified the dragnet discovery it had interposed. (A-5, p. 7) Even if that were the amount paid,[7] however, Respondent did not articulate how Petitioner's payment of $2,000 for title to the Property in 2013 (as opposed to $20,000, $200,000, or some other amount), impacted Respondent's standing to foreclose, application of the statute of limitations, or any other issues framed by the pleadings. (A-5 and A-8)

In anticipation of the Hearing, Petitioner filed a written Response to the Motion ("the Response"), explaining in detail the basis of Petitioner's objections with case law. (A-9) Petitioner's arguments at the Hearing mirrored those in its Response. (A-5, pp. 9-26, 28-30, 32; -9)

Petitioner began with three procedural arguments. First, Petitioner explained—both in the Response and at the Hearing—that sanctions for discovery

[7] Ernesto's deposition testimony did not support this argument. (A-1, p. 41, lines 24-25, p.42, line 1, p. 43, lines 10-14, p.44, lines 16-17, p.47, lines 9-25, p.48, lines 1-6, p.63, lines 14-25, p.80, lines 8-15)

non-compliance are authorized under Rule 1.380, Fla.R.Civ.P., only after non-compliance with an order compelling discovery. (A-5, pp. 9-11; -9) Here, there was no order compelling discovery of any kind, so there was no basis for sanctions.

Second, Petitioner noted—both in the Response and at the Hearing—that opposing counsel failed to make any effort whatsoever to resolve these discovery disputes before filing the Motion to Compel. (A-5, p. 10; -9) As Petitioner explained, Respondent's lack of good-faith and the absence of a good-faith certification in the Motion precluded the relief sought. (A-5, p. 10; -9)

Third, Petitioner explained—both in the Response and at the Hearing—how attorney's fees (not sanctions) are authorized upon the prosecution of a motion to compel under Fla.R.Civ.P. 1.380 only where opposition to the motion is "not substantially justified." (A-5, p. 11; -9) Here, Respondent made no effort to explain, either in its Motion to Compel or at the Hearing, why Petitioner's arguments were not "substantially justified." (A-5; -8) In Petitioner's view, even if the lower court ultimately disagreed with the objections, they were certainly "substantially justified," precluding any award of attorney's fees.

As for the merits, Petitioner reiterated its position—both in its Response and at the Hearing—that it was not required to produce any documents at the Deposition because Respondent did not give the 30-days' notice required by Fla.R.Civ.P. 1.350. (A-5, p. 11; -9) Petitioner even cited case law supporting this position. (A-5, p. 11;

-9; -17, p. 17). Respondent argued otherwise yet never cited any legal authority supporting its contrary position. (A-1; -5; -8)

In its Response and at the Hearing, Petitioner explained that Ernesto did not need to be an employee of Petitioner to testify as its corporate representative under Fla.R.Civ.P. 1.310(b)(6). (A-5, pp. 13-16; -9) Petitioner even cited case law supporting this proposition, including Chiquita Int'l Ltd. v. Fresh Del Monte Produce N.V., 705 So.2d 112, 113 (Fla. 3d DCA 1998). (A-5, pp. 14-16; -9) Tellingly, Respondent never cited any case law otherwise. (A-1; -5; -8)

In its Response and at the Hearing, Petitioner apprised the lower court that Respondent did not file the Notice or the areas of inquiry set forth therein until five business days before the Deposition, inhibiting Petitioner's preparation and testimony. (A-5, pp. 12-14, p. 17, p.26; -9) Respondent never disputed this untimely filing and never identified any reason for same. (A-1; -5; -8)

In its Response and at the Hearing, Petitioner cited case law supporting its position that the personal finances of a civil litigant are not subject to prejudgment discovery unless relevant to the issues framed by the pleadings. (A-5, pp. 18-21, p.28, lines 6-8; -9) Here, the Amended Complaint and the Answer thereto do not implicate Petitioner's financial wherewithal in any way, so Petitioner argued it was entitled to withhold testimony and documentation directed to this issue. (A-12; -13) Tellingly, Respondent never cited any contrary case law, nor did it explain how

Petitioner's financial wherewithal was somehow relevant to the issues framed by the pleadings. (A-5; -8) In fact, at one point during the Hearing, Respondent's counsel conceded it was not. (A-5, p. 8, lines 8-9)

While Petitioner was advancing these arguments, the lower court interjected, asserted the Hearing was almost out of time and that the undersigned was "wrong in most everything [she] said." (A-5, p. 24) The court then overruled all of Petitioner's objections, directed a second deposition, required Petitioner to produce all of the documents requested in the *duces tecum*, and stated "I'm going to award fees and costs for the first deposition to [counsel for Respondent, JPMorgan Chase Bank]". (A-5, p.31, lines 11-13). The written Orders followed.[8] (A-2; -3)

At no point in the Hearing or in the Motion did Respondent argue that the discovery sought by Respondent was somehow relevant to Petitioner's equitable lien claim, much less explain how that was so. Nonetheless, the court advanced such a position when announcing its ruling:

> Count 2 of the amended complaint is foreclosure of an equitable lien, and so he gets to inquire about things that may be funky on your side of the equation, which means he gets to find out everything he's been inquiring into. What was paid. See what was paid by the trust may be a ruse. In other words, they might not really be the owner. It's very funky. … I overrule all these privacy concerns because I think it's important to know what's really going on. Follow the money. …

[8] One of the Orders awards attorney's fees and costs "in the preparing for and attending" the Deposition, (A-3), while the other awards "fees and costs for the first deposition." (A-2).

(A-5, pp. 28-29) In the process, the court even indicated that SAINZ's conveyance of the Property to Petitioner in 2013 might have been some type of "ruse" to avoid an equitable lien foreclosure:

> Yes, ma'am, because it may be completely righteous, but it may be all a way to avoid an equitable lien foreclosure, an attempt to avoid it. I have no way of knowing at this point. Like I said, it could be innocent, but it could be a ruse.

(A-5, p. 29, lines 21-25 and p. 30, line 1)

Upon hearing this rationale, Petitioner responded that its ownership of the Property was admitted in the pleadings and established via public record more than ten years earlier. (A-5, p.28, lines 24-25 and p.29, lines 1-2; see also, -7, Ex. C, ¶ 5; -12, ¶ 28; -13, ¶ 28; -14; -22, ¶ 5; -27) Nonetheless, the court compelled all of the discovery Respondent sought and awarded attorney's fees and costs against Petitioner for its objections. (A-2; -3; -5, pp. 29-32)

It is unclear how the court could have believed that SAINZ's transfer of title to Petitioner was a "ruse" to avoid an equitable lien foreclosure where that conveyance occurred in 2013, before the Second Case and ten years before Respondent filed its equitable lien claim in this Third Case. (A-5, p, 29, lines 21-25 and p. 30, line 1; see also, A-7, Ex. C, ¶ 5; -12, ¶ 28; -13, ¶ 28; -14; -22, ¶ 5; and -27) In announcing its ruling, the lower court likewise did not address: (i) the absence of any allegation in Respondent's pleadings advancing such a theory; (ii) that Petitioner's ownership of the Property was conclusively established by the

pleadings; (iii) how Respondent had standing to pry into the details of Petitioner's acquisition of the Property more than ten years earlier, particularly where that issue was not set forth in the pleadings; and (iv) how the details of this title transfer were in any way relevant to the discovery Respondent sought in this action, a run-of-the-mill, residential foreclosure lawsuit. (A-5)

Notwithstanding these problems, the lower court compelled Respondent's dragnet discovery requests and permitted a wholesale intrusion into Petitioner's personal financial affairs. Notably, a fair reading of the Hearing transcript shows the court believed this discovery was justified because Respondent had sued for an "equitable lien," putting the court in the position of making a subjective determination of what His Honor believed to be "fair." (A-5, pp. 27-31) Yet neither Respondent nor the court cited any case law supporting that position. (A-5)

On February 8, 2024, Petitioner filed its Motion for Reconsideration of the Discovery Orders at bar, highlighting the many problems set forth herein. (A-20) In the process, Petitioner argued that there was no basis to impose sanctions against Petitioner even if the court ultimately disagreed with its objections. (A-20) Unfortunately, on February 18, 2024, the lower court denied the Motion for Reconsideration without a hearing. (A-11) Based on the court's ruling, Respondent now seeks more than $10,000.00 in attorney's fees and costs arising from this discovery dispute. (A-19) This timely Petition follows.

SUMMARY OF ARGUMENT

The instant Petition follows two Orders from the lower court which give Respondent *carte blanche* discovery into Petitioner's confidential, financial affairs, trust administration, taxes and related issues, pre-judgment, even though none of these issues are implicated by the facts set forth in the pleadings in any way

This is a run-of-the-mill, residential mortgage foreclosure lawsuit. Petitioner, a non-borrower, is defending based upon a statute of limitations. Its ownership of the Property is undisputed, having been established via public records and the parties' own pleadings. Suffice it to say Respondent's dragnet discovery efforts are wholly unjustified on the facts at bar.

The fact that Respondent is suing to foreclose an equitable lien does not change this result. An equitable lien claim does not give the lower court free reign to adjudicate this case based upon His Honor's own, subjective notions of equity. Rather, the court is constrained to fixed principles of law, just like any other claim. The discovery at issue falls well outside the parameters of an equitable lien claim.

Under a long line of cases, the lower court's Discovery Orders requiring production of ten years of federal income tax returns and other such information was a departure from the essential requirements of law for which Petitioner has no adequate remedy on appeal. As such, this Court should grant certiorari and quash the Orders at bar.

STANDARD OF REVIEW

Certiorari requires: (1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law." ESJ JI Leasehold, LLC v. PJGWI, Inc., 337 So. 3d 115, 116 (Fla. 3d DCA 2021) (citing Fla. Power & Light Co. v. Cook, 277 So.3d 263, 264 (Fla. 3d DCA 2019) (quoting Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So. 3d 712, 721 (Fla. 2012)).

ARGUMENT

I. THE ORDERS ARE A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW AND CAUSE INJURY WHICH CANNOT BE REMEDIED ON APPEAL.

This Court routinely grants certiorari where a trial court compels prejudgment disclosure of a party's confidential, financial information that has no relevance to the issues framed by the pleadings. Shojaee v. Anibal J. Duarte-Viera, P.A., 365 So.3d 1184 (Fla. 3d DCA 2023); Shojaee v. Anibal J. Duarte-Viera, P.A., 365 So.3d 1190 (Fla. 3d DCA 2023); ESJ JI Leasehold, LLC v. PJGWI, Inc., 337 So.3d 115 (Fla. 3d DCA 2022); Bank of New York Mellon v. Fugueroa, 299 So.3d 430 (Fla. 3d DCA 2019); Mana v. Cho, 147 So. 3d 1098 (Fla. 3d DCA 2014); Rousso v. Hannon, 146 So.3d 66, 69 (Fla. 3d DCA 2014). After all, this "cat out of the bag" discovery causes material injury that cannot be remedied on appeal. ESJ JI Leasehold, 337 So.3d at 116-117; Mana, 147 So.3d at 1100. Following these authorities, this Court should grant certiorari and quash the Orders at bar.

A. The Orders Erroneously Require Petitioner To Provide Discovery That Is Confidential, Proprietary, And Not Permitted Pre-Judgment.

Well-established precedent precludes prejudgment discovery into an opponent's financial affairs in a civil lawsuit where the issue of finances is not relevant to the issues set forth in the pleadings. In this Court's words:

> "Discovery is limited to those matters relevant to the litigation **as framed by the parties' pleadings**." Rousso v. Hannon, 146 So.3d at 69 (Fla. 3d DCA 2014). "Generally, private individual information is

> not discoverable when there is no financial issue pending in the case to which the discovery applies." Bd. Of Trs. Of Internal Improvement Trust Fund v. Am. Educ. Enters., LLC, 99 So. 3d 450 (Fla. 2012); see also Aspex Eyewear, Inc. v. Ross, 778 So. 2d 481, 481-482 (Fla. 4th DCA 2001) ("Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case."

ESJ JI Leasehold, LLC, 337 So.3d at 116 (emphasis in original).

The Orders at bar depart from this principle of law. After all, nothing in the Amended Complaint or the Answer thereto in any way implicates Petitioner's financial wherewithal. Nonetheless, the lower court permitted dragnet discovery into Petitioner's private financial information, including ten years of federal income tax returns. In so ruling, the lower court departed from the essential requirements of law. Shojaee, 365 So.3d at 1187-88; Shojaee, 365 So.3d at 1193-94; ESJ JI Leasehold, 337 So.3d at 116; Bank of New York Mellon v. Fugueroa, 299 So.3d at 433; Mana, 47 So. 3d at 1100; Rousso, 146 So.3d at 66.

The complete detachment between the discovery at bar and the elements of the claims and defenses implicated by the pleadings is perhaps best reflected by Respondent's failure to even try to connect the two. Indeed, nowhere in the Motion or the Hearing did Respondent even argue that the discovery it sought was necessary to prove its equitable lien claim or to litigate Petitioner's defenses on the merits.

The closest Respondent came in this regard was arguing (without evidence) that Petitioner paid just $2,000 for the Property. Tellingly, however, Respondent did

not explain, even if that was the amount paid, how that entitled Respondent to the discovery at bar. No such explanation was possible. After all, whether Petitioner paid $2,000, $20,000, $200,000, or some other amount for title to the Property did not affect the elements of Respondent's claims, Petitioner's defenses, the proof necessary to prevail on those claims/defenses, or applicable case law in any way.

In concluding otherwise, the trial court seemed fixated on the possibility that Petitioner did not actually own the Property. It even went so far as to characterize its ownership as a "ruse." The court was far astray in this analysis.

Petitioner's ownership of the Property is undisputed, having been alleged in the Amended Complaint, admitted in the Answer, and set forth in the Miami-Dade Official Records for more than ten years. Under Florida Supreme Court precedent, this conclusively established Petitioner's ownership, obviating any further evidence or argument on the issue:

> … a party is bound by the party's own pleadings. There does not have to be testimony from either party concerning facts admitted by the pleadings. Admissions in the pleadings are accepted as facts without the necessity of further evidence at the hearing.

Fernandez v. Fernandez, 648 So. 2d 712, 713 (Fla. 1995).

The court's indication that Petitioner's ownership of the Property might be a "ruse" to avoid Respondent's equitable lien claim was even more off-base. After all, Petitioner has owned the Property since 2013, a full decade before Respondent even filed its equitable lien claim in this action. That undoubtedly explains: (1) why

Respondent's Amended Complaint does not challenge Petitioner's ownership in any way; and (2) why Petitioner never even argued that Petitioner's ownership of the Property was somehow a ruse to avoid an equitable lien claim. To justify dragnet discovery regarding ownership of the Property on these facts was a departure from the essential requirements of law.

In ruling otherwise, the trial court seemed to believe Respondent's prosecution of an "equitable lien" claim enabled the court to inject its own, subjective views of "equity" into the decision-making process. Indeed, the Hearing transcript reflects the court's thought process in this regard:

> Count 2 of the amended complaint is foreclosure of an equitable lien, and so he gets to inquire about things that may be funky on your side of the equation, which means he gets to find out everything he's been inquiring into. What was paid. See what was paid by the trust may be a ruse. In other words, they might not really be the owner. It's very funky. … I overrule all these privacy concerns because I think it's important to know what's really going on. Follow the money. …

(A-5, pp. 28-29) This analysis badly missed the mark.

The pleadings do not implicate anything "funky." Paragraph 28 of the Amended Complaint and Petitioner's Answer thereto conclusively show that Petitioner owns the Property. Miami-Dade Official Records show Petitioner has enjoyed ownership for more than ten years. (A-14; -27) The fact that Petitioner was not the borrower under the HELOC is not "funky." Indeed, Florida courts have adjudicated many thousands of foreclosure lawsuits where a third-party purchaser

took title to a property subject to an existing mortgage. See e.g.; Green Emerald Homes, LLC v. 21st Mortg. Corp., 300 So. 3d 698 (Fla. 2d DCA 2019); Benzrent 1, LLC v. Wilmington Sav. Fund Soc'y, FSB, 273 So. 3d 107 (Fla. 3d DCA 2019) (third-party purchaser entitled to challenge lender's standing to foreclose); Wilmington Trust, N.A. v. Alvarez, 239 So. 3d 1265, 1266 n.1 (Fla. 3d DCA 2018) (rejecting lender's assertion that third-party purchaser could not assert a statute of limitations defense in a foreclosure case). In fact, this fact pattern is so common that Florida DCAs have published decisions explaining the need for courts and the legislature to adapt to this fact pattern. See Bonafide Props., LLC v. Wells Fargo Bank, N.A., 198 So. 3d 694 (Fla. 2d DCA 2016) (J. Altenbernd, *concurring*).

This may be a foreclosure case, and Respondent may be prosecuting an "equitable lien" claim, but that does not give the lower court license to adjudicate this case via His Honor's own, subjective views of fairness. On the contrary, even in the foreclosure context, Florida courts are constrained to "fixed principles" of law in the decision-making process. David v. Sun Federal Sav. & Loan Ass'n, 461 So. 2d 93, 95 (Fla. 1984). In the words of the Florida Supreme Court:

> Although providing equitable relief in a proper case is discretionary with the trial judge, were that discretion not guided by fixed principles, the degree of uncertainty injected into contractual relations would be intolerable. Equity cannot therefore look solely to the result in determining whether to grant relief, but must apply rules which confer some degree of predictability on the decision-making process.

Id.

Here, the "fixed principles" in play were the elements of an equitable lien claim, Petitioner's defenses thereto, and discovery relevant to those elements and defenses. Contrary to how the trial court ruled, the elements of an equitable lien claim are quite narrow:

> An equitable lien on the property benefited has been held to arise where a person in good faith, and under a mistake as to the condition of the title, makes improvements, renders services, or incurs expenses that are permanently beneficial to another's property. But there is no such lien where the expenditures are made with knowledge of the real state of the title; nor will such a lien arise where there is an adequate remedy at law.

Johns v. Gillian, 184 So. 140, 145 (Fla. 1938); see also McPherson v. Redding, 323 So. 3d 687, 688 (Fla. 3d DCA 1975) (elements of equitable lien). The elements of a mortgage foreclosure claim are similarly narrow. Bank of Am., N.A. v. Delgado, 166 So. 3d 857, 859 (Fla. 3d DCA 2015) ("Foreclosure plaintiffs must show: (1) an agreement; (2) a default; (3) an acceleration of debt to maturity; and (4) the amount due.").

Nothing within these elements, or any of Petitioner's affirmative defenses, implicates Petitioner's financial wherewithal, the amounts paid for the Property, or the administration of the Trust, or the identity of the Trust beneficiaries. The pleadings reflect no "ruse." The discovery at bar was hence an impermissible effort to delve into confidential, private information without any foundation in law. By ruling otherwise, the lower court departed from the essential requirements of law, materially injuring Petitioner and leaving it with no remedy on appeal. Shojaee, 365

So.3d at 1187-88; Shojaee, 365 So.3d at 1193-94; ESJ JI Leasehold, 337 So.3d at 116; Bank of New York Mellon v. Fugueroa, 299 So.3d at 433; Mana, 47 So. 3d at 1100; Rousso, 146 So.3d at 66.

Respondent's dogged pursuit of discovery revealing the beneficiaries of the Trust and the beneficiaries of the Trust administration is particularly perplexing in the context at bar. After all, this is a foreclosure case. In recent years, Florida courts have adjudicated many thousands of foreclosure lawsuits involving plaintiffs who prosecuted the lawsuit as trustee of an alphabet soup trust. In that context, this Court has routinely prevented arguments or discovery regarding the administration of the trust, the identity of the trust beneficiaries, or the inner workings of the trust. See e.g. HSBC Bank USA, N.A. v. Buset, 241 So. 3d 882, 890 (Fla. 3d DCA 2018); Castillo v. Deutsche Bank Nat'l Trust Co., 89 So. 3d 1069 (Fla. 3d DCA 2012). There is no reason to apply these principles of law differently where the defendant is the trust.[9]

[9] This Court scarcely imagine a foreclosure defendant procuring discovery compelling Bank of New York Mellon, N.A., as Trustee of XYZ Trust, to identify the beneficiaries of the trust or answer questions about how much it paid to acquire the loan. See Buset, 241 So. 3d at 890. Such discovery is not somehow permissible merely because Petitioner, the defendant below, is the party trying to protect the particulars of its trust administration.

In light hereof, this Court should readily conclude that the Orders at bar departed from the essential requirements of law, materially injuring Petitioner and leaving it with no adequate remedy on appeal.

B. The Orders Erroneously Require Petitioner To Pay Attorney's Fees And Costs For Discovery Disputes Without A Good-Faith Effort To Resolve The Dispute in Advance, Without The Good-Faith Certification Required By Rule 1.380, and Despite Petitioner's Objections Being "Substantially Justified."

Under well-established precedent, sanctions are authorized in the discovery context only after an order compelling discovery is violated. See Fla.R.Civ.P. 1.380. Likewise, attorney's fees for prosecuting a motion to compel may be granted only if the opposing party's objections are not "substantially justified" and only after a good-faith attempt to resolve the discovery dispute without court intervention and a good-faith certification by counsel establishing same. See Fla.R.Civ.P. 1.380; Fed. Express Corp. v. Sims, 265 So. 3d 637 (Fla. 4th DCA 2019).

Here, there was no previous order compelling discovery of any sort. As such, "sanctions" against Petitioner were plainly unauthorized. See Fla.R.Civ.P. 1.380.

While attorney's fees are theoretically possible upon the granting of a motion to compel, the Orders at bar departed from the essential requirements of law by imposing such fees in this case for two different reasons.

First, the Response, the Hearing, and the instant Petition all show that Petitioner's objections to the discovery at hand were "substantially justified." In fact, the lower court itself agreed that Petitioner's failure to produce documents at

the Deposition was appropriate given Respondent's failure to provide the requisite 30-days' notice. (A-5, p. 24, lines 16-19, p. 25, lines 13-24) There can be no doubt this objection was well-taken. See Ohio Cas. Ins. Co. v. Jackman, 621 So.2d 531 (Fla. 2d DCA 1993) ("The deposition notices, which were titled "*duces tecum*" scheduled the depositions for fewer than thirty days from the date of service of the notices. Ohio Casualty should have been afforded thirty days to submit written objections to what was essentially a document request. See Fla. R. Civ. P. 1.350. We do not condone any practice that attempts to circumvent the time frames and procedures set forth in the rules").

Moreover, the lower court agreed that Petitioner was allowed to have Ernesto as its designated corporate representative. (A-5, p. 27, lines 1-2)

Despite at least some of Petitioner's objections having merit, the lower court awarded Respondent attorney's fees for the entire Deposition anyway. This was error. See Fed. Express, 265 So. 3d at 639. In the words of the Fourth District:

> Even if we were to assume that the circuit court implicitly considered the first sentence's second clause and found that the defendants' opposition to the motion was not substantially justified, the record belies such a finding. As the circuit court itself stated at the hearing, "Some of the objections were well-founded, but some weren't." … Despite those findings, the circuit court awarded the plaintiff's attorney every dollar for every hour spent on the motion, with the only explanation in the written order being that the plaintiff was the "prevailing party." This erroneous view of the law constitutes an abuse of discretion.

Id. This Court should grant relief for that reason alone.

Second, Respondent made no effort whatsoever to resolve the discovery disputes at bar before filing the Motion to Compel, and the Motion lacks the good-faith certification required by Fla.R.Civ.P. 1.380(a)(2). As that Rule provides:

> The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.

Respondent's failure to comply with this Rule in any fashion should have precluded the granting of the Motion and, at minimum, the award of attorney's fees. Id.

CONCLUSION

In light hereof, Petitioner, Aylsworth & Aylsworth LLP as Trustee of the 198 Avenue Family Trust, respectfully requests that this Court grant this Petition and issue a Writ of Certiorari quashing the Orders at bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via this Court's EPortal system and/or via Email on February 29, 2024 to all parties on the ***Service List*** below.

_/s/ *Vestalia Aylsworth*_____
Vestalia Aylsworth, Esq.
Florida Bar No. 111007
Attorney for Petitioner
12307 SW 143 Lane, Miami, FL 33186
305-282-6020
va@AylsworthLLP.com (Primary)
vestalia@live.com (Secondary)

Service List:

NELSON MULLINS RILEY & SCARBOROUGH, LLP
Co-Counsel for Respondent/Plaintiff, JPMORGAN CHASE BANK, N.A. at
Partner, Rebecca Rodriguez, Esq. at Rebeca.Rodriguez@nelsonmullins.com
Partner, T.W. Anderson, Esq. at TW.Anderson@nelsonmullins.com

LOGS LEGAL GROUP LLP
Co-Counsel for Respondent/Plaintiff, JP MORGAN CHASE BANK, N.A. at
Jennifer Kopf, Esq. at FLEservice@logs.com; MasterEfilings@logs.com; and JKopf@logs.com

The Honorable Judge David C. Miller at
Judicial Assistant, Barbara Gener at BGener@jud11.flcourts.org

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font used in this Petition for Writ of Certiorari is Times New Roman 14-point, in compliance with Fla. R. App. P. 9.210(a)(2).

_/s/ *Vestalia Aylsworth*_____
Vestalia Aylsworth, Esq.
Florida Bar No. 111007
Attorney for Petitioner