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

LOWER TRIBUNAL ESCAMBIA COUNTY CIRCUIT COURT CASE NO.:
2021 CA 000385

L. Anton Rebalko and Ruth Evans-Rebalko

Petitioners

v.

CHRIS JONES, Property Appraiser for Escambia County, Florida,
SCOTT LUNSFORD, Tax Collector for Escambia County, Florida and
JIM ZINGALE, Executive Director, Florida Department of Revenue

Respondents.

PETITION FOR WRIT OF CERTIORI TO REVIEW RELATED NON-FINAL DISCOVERY ORDERS OF THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

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INTRODUCTION AND GENERAL FRAMEWORK OF DISPUTE

L. Anton Rebalko and Ruth Evans-Rebalko (hereinafter Petitioners) are husband and wife and Plaintiffs below. Property Appraiser Chirs Jones, Tax Collector Scott Lunsford, and Jim Zangle are all government representatives and the Defendants below (hereinafter Respondent).[1] Petitioners' use the word "court" (no capitalization) when referring to the lower tribunal. All emphasis is supplied unless otherwise indicated. Page references are to the Appendix ('A') followed by the applicable page number ('P'.) and line ('L'.) references when needed.

Petitioners seek certiorari review of three related and contemporaneously entered nonfinal orders allowing the Respondent, a government entity, a broad swath of classic 'cat out of the bag' discovery, involving highly confidential financial information despite Respondent's failure to make any showing of a constitutionally required compelling need for the discovery. The subject discovery is of a demonstrable 'fishing expedition' character and extends to the confidential records of non-joined third parties

[1] A collective singular noun is purposely used. As is typical of tax relief cases the property appraiser (Respondent Jones) is the primary defending party. He alone, served the Motion to Compel and the discovery attendant thereto. The Department of Revenue is joined as a nominal party.

without their having notice and an opportunity to be heard.

Article I Sections 23 and 25 of the Florida Constitution, Fla. Stat. §213.015, and §195.027(3), and Rules, 1.280(b)(1), 1.340(a)(b),1.350(b) all play a role in this writ request.

BASIS FOR INVOKING JURISDICTION

Article V, section 4(b)(3) of the Florida Constitution, Rule 9.100 Fla. R. App. P., and Rule 9.030(b)(2)(A) Fla. R. App. P.

NATURE OF RELIEF SOUGHT

Petitioners seek an order quashing three related discovery orders entered on June 17 and 20, 2022, allowing Respondent carte blanche access to Petitioners' constitutionally protected highly confidential/financial information as well as work product records without the existence of a legally cognizable basis for the ruling. The subject discovery orders extend to the records of non-joined third parties who had no notice or opportunity to be heard as to their potential rights.

STATEMENT OF FACTS

Overview of underlying litigation establishing the discovery dispute.

This is a tax relief lawsuit concerning Petitioners' Pensacola Beach government leased land and home situated thereon. The suit is framed under two alternative tax relief theories. The first two

counts of the suit challenge Respondent's denial of Petitioners' vested homestead exemption status for the 2019 and 2020 tax calendar years. The remaining four counts claim full ad valorem tax immunity for their government leased land and improvements thereon, covering the same two tax years. (A-Pgs.4;63). The exemption claims are pled as a backup to the more substantial tax immunity claims.

Respondent contests Petitioners' homestead exemption claims pursuant to the Fla. Stat. §196.061 homestead abandonment through rental provision. Petitioners counter by asserting the statute only governs possession granting rental agreements which Petitioners avoid through use of a guest licensing agreement that does not transfer possession to their guests. (A-P.463 L.19-22; P.469 L.5-10).[2] Petitioners further contend the facts fall outside the statutory rental restriction as Respondent cannot link together two consecutive years of homesteaded 'rentals' (even if licensing were to be regarded as the legal equivalent to renting). (A-Pgs.98-100; Pg.498 L.22-Pg.500-L.24)

[2] The fundamental legal distinction between renting and licensing is globally acknowledged throughout real property law and was specifically recognized in the ad valorem exemption case, *Turner v. Florida State Fair Authority*, 974 So.2d 470 (Fla 2nd DCA 2008). (A- P. 508 L.3-9; P. 306-310. See also, P. 315-317.

Respondent alternatively theorizes that Petitioners abandoned their homestead through frequent travel and/or their potentially having established a permanent residence elsewhere, although he doesn't refute that at all times material Petitioners have been in full compliance with Fla. Stat. 196.015.[3] Neither has Respondent refuted the fact that upon completion of their travels Petitioners habitually return to their homestead, and while gone all their personal property remains in place, their utility accounts remain active, and all property related services and maintenance protocols continue uabated—the antithesis of abandonment. (A—P.497 L.23-P.498 L.14)

Petitioners' alternative tax immunity claims are straightforward and squarely align with the most recent First District rulings that disallow ad valorem assessment of 99-year Pensacola Beach government leased land under agreements that do not automatically renew and therefore are nonperpetual.[4] Petitioners further argue that

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[3] Rules, 12D-7.013 and 12D-7.007 of the Fla. Adm. Code offer further 'intent' guidance.

[4] See, *Island Resorts Investments Inc. v. Jones,* 189 So.3d 917 (Fla. 1st DCA 2016); *Beach Club Towers Homeowners Ass'n Inc. v. Jones*, 231 So. 3d 566 (Fla. 1st DCA 2017); *Portofino Tower One Ass'n at Pensacola Beach, Inc. v. Jones, 231* So.3d 565 (Fla. 1st DCA 2017). Petitioners and their landlord, the Santa Rosa Island Authority, have mutually assented to negotiate the rent amount for a renewal lease, should Petitioners timely exercise their option to renew. (A- 651-655)

the most recent on topic Supreme Court decision precludes ad valorem assessment of land improvements under nonperpetual 99-year government leases upon proof that the useful life of the property improvement extends beyond the term of a finite 99-year government lease.[5] Respondent counters by asserting bygone era equitable ownership caselaw and by conflating Navarre Beach perpetual leases with Pensacola Beach nonperpetual leases. (A.-Pgs. 624-647)

At hearing, Petitioners unrefuted showing demonstrated Respondent's complete lack of need for discovery based upon his pre-suit collection of substantial evidence and Petitioners' augmenting judicial admissions.

Petitioners filed this lawsuit after a failed tax relief effort before the Escambia County Value Adjustment Board (VAB). During the VAB hearing the parties canvassed the identical ad valorem homestead tax exemption and government leasehold tax immunity

[5] The Florida Supreme Court, in distinguishing *1108 Ariola v. Jones*, 139 So.3d 857 (Fla. 2014), from their companion case, *Accardo v. Brown,* 139 So.3d 848 (Fla. 2014), held that under the nonperpetual Pensacola Beach leases in *Ariola*, property improvements can only be ad valorem taxed *absent* a showing that the useful life of the property improvements extend beyond the term of the lease. In accordance with *Ariola,* Petitioners have pled that their home's useful life should extend far beyond the now diminished years remaining on their finite lease, initially executed in 1969 -- with their home having been built many decades later.

issues now before the court, rendering the proceedings a dry run for the instant litigation.

Respondent's stout homestead abandonment evidentiary showing before the VAB included an abundance of boots on the ground as well as electronic surveillance. (A-Pgs.278-346). Respondent used his surveillance evidence along with a plethora of records amassed from Petitioners' utility accounts, county tax records, state tax records, and hundreds of pages of location specific data captured from Petitioners' Facebook Profile to overwhelmingly convince the hearing examiner to find in his favor on all homestead abandonment issues. (A-Pgs. 298-299) One day prior to their hearing[6] Respondent tendered to Petitioners a formidable stack of defense records totaling over one thousand pages (A-P.12) which literally showed his having tracked the Petitioners' whereabouts and time away from their homestead on a veritable daily basis during the calendar years 2018 through 2020. (A-P.337-339; P.513 L.7-14). Impressively, Respondent's voluminous collection of evidence further allowed him the ability to calculate the number of days per year Petitioners had licensed their home throughout the same three-year period. (A-P.289-297; 505 L.17- P.507 L.7) When before the VAB,

[6] The applicable administrative rule required Respondent's evidence tender a full week before the hearing.

Respondent described his homestead abandonment body of proofs as 'an abundance of evidence' (A-P.286), with the County's VAB handpicked hearing examiner seeing it the same way (A –P.299).

In addition to Respondent having already gathered all proofs needed to support his defense theories before this suit was filed,[7] he was aided by Petitioners' conclusive judicial admissions made herein establishing that their home was occupied by paying licensed guests for more than 30 days per year for the consecutive years, 2018, 2019, and 2020. (A- P.489 L. 3-9; P. 89; P.90 [Items 6 and 8]) The same cut to the chase litigation efficiency philosophy precipitated Petitioners' sworn acknowledgment that they frequently travel for extended periods. (A-P.137 [Answer 5])

The discovery in dispute and hearing attendant thereto.

Respondent's homestead related Request for Production (A-Pgs.76-83) and Interrogatories (A-Pgs.115-130) served in 2021, and Respondent's tax immunity related Request for Production served in 2022, (A-Pgs. 258-263) along with Petitioners objections and two motions seeking protective orders were all joined for an extended hearing, initially scheduled for May 18, 2022. (A-271) This hearing

[7] Accordingly, this represented Respondent's first ultra-invasive assault on Petitioners' privacy rights with the instant discovery constituting a direct frontal assault on Petitioners' privacy rights. (A-P.488 L. 8-22)

was continued until May 23, 2022, (A-75) due to Respondent's noncompliance with the Rule 1.380 conference and certification requirements, necessitating his filing a rule compliant Amended Motion with certification.[8] (A-P.86 and 104 (paragraph f.))

In response to Respondent's discovery Petitioners asserted both general objections going to the sweeping overbreadth and 'fishing expedition' nature of the discovery along with more refined objections that speak to relevancy, constitutional privacy rights, work product privileges, and the due process rights of non-joined third parties. (A-Pgs.85-113;131-144;264-269) At hearing, Petitioners presented their position through representations of counsel, testimony of the undersigned, (A-P.495 L 19-P.498 L.20), evidentiary Packets 'A' and 'B', (A-Pgs.279-346), both documenting Respondent's substantial collection of defense evidence without discovery from Petitioners. Finally, Petitioners' Packet "C" records documenting Respondent's habitual pattern of defying legal authority when dealing with Petitioners (A-Pgs.348-436), demonstrated the high potential of substantial harm should Petitioners' confidential records be released

[8] Counsel for Respondent's certification fail stemmed from his refusal to confer based upon a proclaimed 'no conferencing policy' when litigating against pro se lawyers, although no such rule exemption exists.

to Respondent;[9] regardless of the existence of a confidentiality order. At hearing Respondent never impeached Petitioners' testimony or the records included within their three packets. Other than by representations of counsel Respondent neither made an effort to establish a compelling need for any of Petitioners' highly private records nor establish an inability to obtain substantially equivalent proofs though less intrusive means.[10] (A-Pgs. 444-559) Moreover, Petitioners' judicial admissions made at hearing (A-P.489 L. 3-23) when coupled with Petitioners' discovery response acknowledgements (A- P.90) subsumed Respondent's need for this discovery.

Also noteworthy, Respondent advanced specific arguments at hearing not found within the four corners of his written Amended Motion to Compel. Petitioners timely objected to Respondent's attempt to circumvent Rule 1.100(b) by arguing outside his written motion without ore tenuously moving to supplement his written motion. Petitioners' objection was noted by the lower court and treated as a standing objection. (A-P. 456 L.11-P.457 L.16). In the final analysis this left the record with nothing but these two

[9] The packet included one example after another of Respondent using his own playbook rather than following applicable legalities.
[10] Actual applicable legal standard.

unexplained, trite, and decidedly conclusionary written motion statements offered by Respondent to support access to a plethora of highly confidential financial records:

> "All of these requests relate to the rental of Plaintiffs' property and are discoverable." (A-P.153) and
>
> "All of the requested documents relate either to the issue of permanent residency in, or rental of, the plaintiffs' property on Pensacola Beach." (A-P.155)

The court's announced findings and rulings at hearing.

Against this record Judge Shackelford articulated her reasoning and findings in granting Respondent's unfettered access to Petitioners' financial records:

> He [referring to Petitioners] brought the lawsuit just like somebody who files a lawsuit for damages in a negligence case. You put everything about your life at issue potentially, it opens a very – a door for discovery. So he opened the door, he filed this lawsuit. It is not limited to his theory of the case. (A-P.549 L.3- 9)
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> And the other one was that you [referring to Respondent] have received information through other sources. I do not believe that limits you, meaning the County, from pursuing discovery from Mr. Rebalko [Petitioners] as to what he has or pursuing it in other ways to make sure you have all your information. (A-P.548 L.17- 22)
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> And I don't believe that the County is limited to when Mr. Rebalko decides he wants to admit something on the record, the County is not prohibited from pursuing discovery in other ways to either confirm that information – I mean, just thing that Mr. Rebalko can't decide for the

> defense how they want to perform their case. (A-P.458 L. 24-P.459 L. 5)

The orders under review.

But for a couple of minor exceptions (A-P.594[Paragraphs g, h]) Petitioners' objections were overruled, their motions seeking protective orders were denied, and Respondent's Amended Motion to Compel was granted. (A-P.588-596) Inter alia, the ordered discovery includes the following financial records *in their entirety and without any redactions:* Petitioners' complete tax returns, monthly account statements from banks, savings and loan institutions and credit unions, monthly credit card statements. Copies of all checks written from all such accounts (regardless of relevancy), insurance policies for the subject property and two other unowned properties, a full accounting of money spent by Petitioners in connection with the subject property as well as two other unowned properties, copies of promissory notes and mortgages covering all three properties. (A-P.76-82)

Also significant, without an order granting leave of court, the court's June 20, 2022, order requires Petitioners to answer more than thirty interrogatories when subparts are considered.

ARGUMENT

A. Petitioners' Unequivocal "Cat Out of the Bag" Irreparable Harm Jurisdictional Peg.

It is axiomatic that certiorari relief is appropriate when a nonfinal order granting discovery departs from the essential requirements of law which results in material injury for the remainder of the case that cannot be remedied on appeal from a final order. *Spry v. Professional Employer Plans*, 985 So.2d 1187 (Fla. 1st DCA 2008); *Commonwealth Land Title Ins. Co. v. Higgins,* 975 So.2d 1169, 1176 (Fla. 1st DCA 2008) (Discovery orders granting overbroad, unduly burdensome, or oppressive discovery are traditionally reviewed by certiorari.); *Horne v. Sch. Bd. Of Miami-Dade County*, 901 So.2d 238, 240 (Fla. 1st DCA 2005) (Orders granting discovery requests have traditionally been reviewed by certiorari because once discovery is wrongfully granted, the complaining party is beyond relief.); *Procter & Gamble Co. v. Swilley*, 462 So.2d 1188 (Fla. 1st DCA 1985) (Non-final orders that permit discovery are a classic example of the type of interlocutory order that may be reviewed by writ of certiorari.); *Boucher v. Pure Oil Co.,*101 So.2d 408 (Fla. 1st DCA 1957) (Litigants who are required to wrongfully answer discovery are beyond relief on appeal as information compelled cannot be extracted from the mind of the discovery recipient.); *Bank of N.Y. Mellon v. Figureroa* (Fla. 3rd DCA 2019) (Overbroad discovery orders warrant certiorari review.)

The subject discovery orders find Petitioners in a classic "cat out of the bag" position as spoken to in *Allstate Ins. Co. v. Langston*, 655 So. 2d 91,94 (Fla. 1995) and *Martin–Johnson, Inc. v. Savage*, 509 So. 2d 1097, (Fla. 1987) by ordering production of highly confidential personal records absent any satisfactory relevancy showing or even an explanation that in light of Petitioners' admissions and Respondent's already acquired bank of evidence he still had a need for Petitioners' highly confidential records and otherwise couldn't obtain the substantial equivalent information through less intrusive means.[11] These same discovery rulings extended to records of non-joined parties despite their not being given notice and an opportunity to be heard.

Through these orders, the consequential prospect of irreparable harm to Petitioners is palpably obvious. An order that requires the pretrial release of protected records and thereby exposes highly confidential information to a government representative cannot be timely remedied through an appeal from a final order. Moreover, given the nature and extent of the highly confidential financial information ordered to be released,[12] it goes without saying that any

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[11] Respondent's prior success at gaining the substantial equivalent evidence would belie any ability for him to viably make this point.

[12] Other than redactions applicable to licensing agreements (A-P.594) no other redactions were permitted notwithstanding the abundance

use of these records outside the context of discovery could cause a variety of irreparable harms including the most obvious – credit card fraud and identity theft. This is far more than a hypothetical concern as discussed in detail under subpoint (B) (4) below.

B. The Court Committed Several Departures From the Essential Requirements of the Law by Granting Respondent's Motion to Compel a Plethora of Highly Invasive Discovery Directed to Their Homestead Exemption Relief Claims Pled Under Counts I and II.

(1) The General Improvidence of Granting 'Fishing Expedition' Discovery of Financial Records.

Respondent's discovery approach, now with court approval, began with a wide dragnet to capture virtually every conceivable financial record which could be combed through to see what might show up. By contrast, Florida law requires the litigant to first calculate what is needed, use a tailored approach, and then expand discovery, if needed.

Respondent's undisciplined discovery approach is evident from his stated "Definitions and "Instructions" which include defining "Document" as "meaning every writing of every type"; "any" to mean "any and all" and "every" to mean "every and all". (A-P.77-78) Within this grossly broad framework Respondent then demands a boiler

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of records warranting redactions, i.e., tax returns, bank statements, credit card statements and the like.

plate list of financial discovery from Petitioners with no regard for Rule 1.350 particularity requirements. Next, Respondent filed his Motion to Compel which only cryptically described his need (see in verbatim language displayed at the top of page 10 above) for Petitioners' highly confidential information and records.

Respondent's discovery approach is improperly overbroad and unduly burdensome. Our case law makes clear that discovery records sought should be designated with sufficient particularity to suggest their existence and materiality, and that *discovery should not be used to require a person to produce broad categories of financial documents which the discovery proponent then searches through to find what may be wanted*. *Walter v. Page,* 638 So.2d 1030 (Fla. 2nd DCA 1994); *Palmer v. Servis,* 393 So.2d 653 (Fla. 5th DCA 1981); *Devereux Fl Treatment v. McIntosh*, 940 So. 2d 1202 (Fla. 5th DCA 2006).

Seemingly unmindful of these standards Respondent's 2021 production request consists of 35 numbered items, that when further examined distills to the production of several hundred separate periodic financial records. Respondent's at best, negligible need for records beyond his already existing voluminous evidence collection is blatantly unreasonable and overburdensome. The ordered production even drags in the records of third parties although the

same records were previously pursued by Respondent through his service of subpoenas on various utility concerns and a state agency. (A-Pgs.603--622) Due to the lack of notice to third parties impacted by these orders basic due process considerations were ignored, rendering the court's ordering of Production Requests 12, 13, 15, 16, 20, 21, 23, 24, 26, 27, 29, 30, 32 and 33 (A-Pgs. 80-82) constitutionally and hence fundamentally infirm. A fortiori, because the third-party records trace to corporately owned properties that cannot be homesteaded and are located in Broward County, these records are beyond the legal reach of Respondent as a matter of statutory law and therefore per se irrelevant for the purpose of discovery. See, F.S. §195.027(3).

Although overbreadth alone is not usually advanced as a sole 'ride or die' certiorari argument,[13] given the unabashed extent of this fishing expedition it represents a sound starting point for the arguments that follow and is in accord with *Board of Trs. Of Internal Improvement Trust Fund v. American Educ. Enters., LLC*, 99 So.3d 450, 457 (Fla.2012) which allowed certiorari relief to limit abusive

[13] But certainly, a worthwhile argument when, as contended here, the government party seeking discovery has no compelling need for it.

discovery or to prevent overreaching "carte blanche" access to irrelevant discovery.[14]

(2) Contrary To the Essential Requirements Of the Law, the Court's June 20, 2022, Order Granted Respondent's Homestead Related Discovery Without A Proper Relevant Compelling Need Showing.

Here, the "cat out of the bag" release is particularly egregious because it was allowed based upon unverified pleadings, an unverified motion, and unsworn representations of Respondent's counsel.[15] (A-Pgs. 63-74; 146-243;443-558). See, *Concerned Citizens For Judicial Fairness, Inc., v. Yacucci,* 162 So.3d 68(Fla. 4th DCA 2014) (an attorney's unsworn argument does not constitute evidence, citing *Rowe v. Rodriguez–Schmidt,* 89 So.3d 1101, 1104 (Fla. 2d DCA 2012)). Likewise, neither Respondent's unverified pleading nor his unverified motion has any evidentiary value.

Because the June 20, 2022, order granting discovery of financial records is not based upon the needed relevance showing it conflicts

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[14] The Supreme Court's denial of certiorari relief in this case is based upon the petitioner's' failure to show irreparable harm with the case leaning hard on the fact that an income approach to assessment valuation was a major issue in the case rendering necessary the financial discovery sought. (Explanation provided at pages 458 and 459). Also, the case involved no constitutional privacy considerations such as asserted here.

[15] *Respondent's answer doesn't even include a relevant affirmative defense in support of his abandonment theory*. (A-Pgs.63-74)

with this Court's ruling in *Spry,* (supra), and its progeny holding that a discovery movant must make an evidentiary showing that establishes a relevant need for financial information before discovery is allowed. Obviously, the same reasoning and rationale should apply with equal force to all other non-financial, albeit highly confidential records. In *Rowe v. Rodriquez*, 89 So.3d 1101,1103 and 1104, (Fla. 2nd DCA 2012) the Second District brought forward the *Spry* case while referencing and speaking vigorously of the Florida Constitution's privacy protection of financial records:

> Article I, section 23, of the Florida Constitution protects the financial information of persons if there is no relevant or compelling reason to compel disclosure." *Borck,* 906 So.2d at 1211. This is because "personal finances are among those private matters kept secret by most people." *Woodward v. Berkery,* 714 So.2d 1027, 1035 (Fla. 4th DCA 1998) (citing *Winfield v. Div. of Pari–Mutuel Wagering,* 477 So.2d 544 (Fla.1985)). *The burden to prove the information is relevant or reasonably calculated to lead to the discovery of admissible evidence is on the party seeking the information. Spry v. Prof'l Emp'r Plans,* 985 So.2d 1187, 1188–89 (Fla. 1st DCA 2008).
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> Because of the strong public policy underlying this constitutional protection, "[t]he relevance of financial information should be determined only after an evidentiary hearing." *Id.* At 1188–89. Accordingly, it has been held a departure from the essential requirements of the law where a "trial court ordered production of [nonparty] financial information without any evidentiary inquiry as to its relevance." *Borck,* 906 So.2d at 1211;*see also Spry,* 985 So.2d at 1188

> Here, the trial court departed from the essential requirements of the law because it ordered production of a nonparty's financial information without considering any evidence regarding its relevance. A review of the transcript from the October 14, 2011, hearing reveals that the Former Husband provided no sworn testimony and nothing was moved or admitted into evidence.

With the court going on to say:

> Consequently, the trial court only heard the attorneys' unsworn argument, which does not constitute evidence. *See DiSarrio v. Mills,* 711 So.2d 1355, 1357 (Fla. 2d DCA 1998). In this case, just as in *Spry,* "although a hearing was held, [Respondent] presented no evidence as to the relevance of [Petitioner]'s financial information." 985 So.2d at 1189. And as in *Borck,* the trial court "rel[ied] entirely on [Respondent]'s council's [sic] representation … without even taking testimony from the parties." 906 So.2d at 1211. Accordingly, we must grant the writ and quash the trial court's order compelling discovery.

The very same discovery requirements apply here. These maxims sharply contrast with the court's view that discovery of this type is viewed under the spectrum of an unobstructed wide-open door. (See, court's statements cited above at Page 10.) Here the only relevant showing came from Petitioners through the undersigned's testimony (A-P.496 L.8--P.498 L.20), judicial admissions (A-P.489 L. 3-23), acknowledgments of record, (A- P.90 [Items 6 and 8]), and the robust collection of proofs comprising Packets 'A' through 'C', (A-P.279-436).[16] None of these proofs were impeached or refuted in any

[16] All exclusively supporting Petitioners' discovery related arguments.

way by Respondent. Buttressing Petitioners' proofs were evidentiary equivalent judicial admissions. Considered together, no record basis exists for the discovery ordered.

To highlight the critical significance of Respondent's failure to carry his burden, Petitioners cited the court to *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544 (Fla. 1985). (A-P.252) In *Winfield,* a number of individuals asserted the privacy protection of Florida Constitution Article I, Section 23, to contest the enforcement of a *statutorily authorized* subpoena targeting bank records. In addressing their constitutional argument, the Supreme Court said:

> The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. *The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.*

In *Winfield* the Supreme Court ultimately held that the bank records were accessible *based upon the absence in the record of any showing upon which a finding could be made that the subpoenaed records were not essential to the government's inquiry*. By distinction, in this case Respondent made no competent showing of an essential government need for Petitioners' information and records. Here, it was Petitioners

who made the only proper showing upon which findings of fact could be properly made.

Thus, *Winfield* teaches us that discovery of confidential records cannot take place absent the Respondent making a relevant showing of a compelling state interest and need for Petitioners' records as well as a relevant showing of an inability to obtain substantially similar evidence through less intrusive means. This is in stark contrast to the trial court's view that Respondent has unfettered discovery rights over Petitioners' confidential records. (Again see, hearing excerpts at Pages 10 and 11 above.)

Weaver v. Myers, 229 So.3d 1118 (Fla. 2017) is another major Florida Supreme Court case that states several guiding privacy principles restricting government access to the private information of natural persons. Further, W*eaver* makes clear that by filing suit a litigant does not waive all rights over confidential information, at page 1132. *Weaver* also makes clear that "*the burden of proof* rests with the state to justify an intrusion on privacy." (*Weaver*, at page 1133). *Weaver* also directly speaks to Petitioners' existing plight when citing the First District's decision, *Antico v. Sindt Trucking*, 148 So.3d 163, 164 Fla. 1st DCA 2014) by noting: "Thus, by exercising its certiorari jurisdiction, the district court necessarily held that the decedent had an enforceable constitutional right to privacy in the litigation

context." Contrast this interpretation of constitutional privacy protections against the trial court's contrarian view that all privacy is waived upon the filing of suit, "[y]ou put *everything* about your life at issue . . .", (A- P.548 L. 4-9). If the court's discovery rulings are allowed to stand, then to paraphrase the Court's words in *Weaver*, Petitioners' constitutionally protected privacy rights will be rendered hollow and thus chill the navigation of their daily lives from moment to moment; (*Weaver,* at page 1130).

McFall v. Welsh, 301 So. 3d 320 (Fla. 5th DCA 2019) is another case granting certiorari relief in the face of Article I, Section 23 opposition to an order granting discovery. *Mcfall* cites *Spry*, supra, for the evidentiary proposition, "that the burden of proving that a person's private financial information is relevant is on the party seeking the information." Because the party seeking the discovery in *Mcfall* failed to make this showing, the Court concluded that the trial court departed from the essential requirements of the law.

Even without an express mention of constitutional privacy rights, the court in *Borck v. Borck*, 906 So. 2d 1209 (Fla. 4th DCA 2005) issued a writ of certiorari quashing an order allowing discovery of confidential records: "Because the order broadly permitted discovery of the financial records of non-parties without showing a compelling reason for their disclosure, the court departed from the

essential requirements of law." The court below committed an analogous departure from the essential requirements of the law by ordering discovery of highly confidential records without Respondent first establishing the required foundation. In accord, *Vega v. Swait*, 961So.2d 1102 (Fla. 4th DCA 2007).

Despite Respondent's failure to make the required showing of a compelling government need for Petitioners' records and despite Petitioners' showing that Respondent had no need for their records, the court opined:

> And the other one was that you [Respondent] have received information through other sources. I do not believe that limits you, meaning the County, from pursuing discovery from Mr. Rebalko as to what he has or pursuing it in other ways to make sure you have all your information. I am going to *generally find* that the individual requests are relevant and allowed and will be provided. (A-P.548 L.18-25)

Entering a finding of relevancy of need without regard for Respondent having met his burden of competently establishing his compelling need factor is a clear departure from the essential requirements of the. Based upon the record before the court discovery which may have been arguably relevant lost the relevant need factor once Respondent ventured out on his own and acquired a mass of substantially equivalent records from other sources.

(3) Further Discovery Related Factors Of Record Rendering the Court's Homestead Related Discovery Orders a Departure From the Essential Requirements Of the Law.

Respondent supposedly wants Petitioners' confidential records to support their two non-pleaded[17] defense theories: Petitioners abandoned their homestead through rental and otherwise abandoned their homestead through travel. Under the first premise Petitioners' financial records are irrelevant as a matter of law as the statutory rental metric is measured by the number of rental days within any two consecutive years. To avoid this statutory reality Respondent conflates the statute's daily metric with a fictional dollar metric to contrive a need for Petitioners' closely guarded financial records.[18] This point makes clear that Respondent's fishing expedition pursuit of Petitioners' financial records is not *reasonably and particularly tailored* to lead to relevant evidence.

Through representations of counsel Respondent also contended he needed Petitioners' credit card information to see where they were

[17] A review of Respondent's Answer reveals his failure to plead an abandonment affirmative defense. (A-Pgs. 64-74.

[18] At hearing, Petitioners pointed out this incongruity and further spoke to Respondent's ability to calculate the total number of days that Petitioners' home was occupied by paying licensed guests through the local and state tax records Respondent had which canvassed all transactions during the 2018-2020 period. (A-P.505 L. 6-11; P.289,290-292).

when using their charge cards. (A-P.466 L.9-P.467 L.21) Could there be a more intrusive means of establishing a person's whereabouts?[19] Even Respondent admits that credit card information is potentially more private than the highly regarded privacy afforded tax returns, (A-P. 466 L.9-15). Credit card expenditures can include the disclosure of such highly intimate personal matters as identification of medical providers, medical care needs, prescription drugs, reading material preferences, personal hygiene needs, political contributions, religious donations, sexual preferences, and so much more.

Moreover, under our jurisprudence Petitioners' whereabouts are only relevant if they have no intent of returning to their homestead. Petitioners made this point when citing the court to *Crain v. Putnam*, 687 So.2d 1325 (Fla. 4th DCA 1997) *Burdick v. Burdick*, 399 So.2d 410 (Fla. 3rd DCA 1981) *Poppell v. Padrick*, 117 So.2d 435 (Fla. 2nd DCA 1960) *Marsh v. Hartley*, 109 So.2d 34 (Fla. 2nd DCA 1959).

Consistent with the case law Petitioners' unrefuted testimony at hearing clearly demonstrated they habitually return to their

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[19] Respondent had no compelling need for Petitioners' credit card statements to establish their whereabouts as Respondent already proved that through electronic surveillance he was able to pinpoint the Petitioners' whereabouts through the location of their cars. (A-P.343-344) *All this discovery was allowed although Respondent never even sought to take Petitioners' depositions, a potentially far less intrusive fact finding discovery vehicle.*

homestead after being away, that their seasonal departure is no more significant than to accommodate guest use of their home during the seasonal summer months, with all their furniture, furnishings and other belongings remaining in their home. The undersigned further testified that there has never been an interruption/transfer of their utility accounts, while Petitioners continue all their ordinary scheduled interior and exterior upkeep and maintenance services during their travels. (A-P.497 L.23-P.498 L 8)

Given the lack of any challenge to Petitioners' compliance with Fla. Stat. 196.015 (see, Respondent's withdrawal of these statutory related requests Items 1 and 2 under his Amended Motion to Compel, (A-P.234)) in tandem with the undersigned's testimony, and judicial admissions, Respondent's dogged and wide scope pursuit of financial records is without the required particularity and 'compelling need' factors to establish any discovery right to invade Petitioners' private records. Despite Petitioners' judicial admissions substituting for Respondent's need for evidence the court treated Petitioners' admissions as insignificant:

> And I don't believe that the County is limited to when Mr. Rebalko decides he wants to admit something on the record, the County is not prohibited from pursuing discovery in other ways to either confirm that information – I mean, just thing that Mr. Rebalko can't decide for the

> defense how they want to perform their case. A-P.548 L. 25-P.549 L.6)

The court's view of judicial admissions departs from the established legal tenet that a party's judicial admission serves to dispense with the need for evidence on the point admitted. Without a need for evidence on the point, there is no need for discovery to enable making the evidentiary point. As explained by the 11th Circuit in *Best Canvas Products v. Ploof Truck Lines*, 713 F.2d 618, 621 (11th Circuit 1983):

> "[J]udicial admissions are proof possessing the highest possible probative value," and facts judicially admitted are facts established not only beyond the need of evidence to prove them, but beyond the power of evidence to controvert them." That is, "[j]udicial admissions are conclusive".

Further cases demonstrating this point are *Lutsch v. A.Q. Smith*, 397 So. 2d 337, 340 and 341, (Fla. 1st DCA 1981) (quoting from McCormick, Handbook on the Law of Evidence, §262 (3d ed. 1972), "Judicial admissions are not evidence at all, … which have the effect of withdrawing a fact from issue and dispensing with the need for proof of the fact.", with the Court determining that to require further proof of the admitted fact would have been a waste of judicial time. See also, *City of Deland v. Miller*, 608 So. 2d 121 (Fla. 5th DCA 1992) (admissions accepted as facts without the necessity of further proof

citing *Carvell v. Kinsey*, 87 So.2d 577,579 (Fla. 1956)). *Holland v. CSX Transportation, Inc.* 583 So.2d 777 (Fla. 2nd DCA 1991) (trial court's disregard of admission is error).

The court departed from the essential requirements of the law by failing to accept the value of Petitioners' admissions at face value in favor of a ruling based on an overbroad interpretation of three inapposite formula driven tax valuation centric cases. See, decretal Paragraphs 'a' and 'd' (A-P.593 and 594). This point is expounded upon next.

(4) The Court's Faulty Linchpin Dependence Upon Miramar, Bystrom, and Turner.

In rendering its ruling, the court relied upon three cherry picked words from *Bystrom v. Whitman*, 488 So.2d 520, 523 (Fla. 1986) "whole factual picture" to nullify the ordinary conclusive impact of judicial admissions. Further, the court applied an out of context statement from *Turner v. Bell Chevrolet, Inc.* 819 So. 2d 177, 180 (Fla. 2nd DCA 2002) to conflate admissions (which by their nature are unilateral) with the notion of a unilateral stipulation,'[20] (an oxymoron). Each of these two cases center upon a property

[20] If Respondent's discovery was not for a harassing purpose, Petitioners' admissions would have been readily accepted. They were rejected because the admissions stand in the way of the intended harassment purpose.

appraiser's strict use of the income financial formula approach to assess the value of commercial properties. Both cases are confined to their facts and are entirely inapposite, as the instant case does not involve an appraisal or valuation dispute with Respondent over the underlying dollar assessment he assigned to Petitioners' property or property improvements.[21]

Specifically, the inapplicable *Bystrom* facts involved an assessment valuation dispute concerning a commercial shopping plaza where the property appraiser selected the income approach to arrive at the property's value. The income approach uses this specific financial formula: Net Income/Overall Rate of Return = Value. Given that a known net income variable was critical to the equation, the taxpayer's federal returns and other pertinent financial records were critically needed by both the property appraiser and the taxpayer to competently argue their respective valuation positions at trial. In *Bystrom*, *no judicial admission was involved*, rather the taxpayers contended their financial records were not needed as they were willing to stipulate to the property appraiser's hypothesized income figure. This was not a viable option or solution because a property

[21] Respondent was able to fully and competently value Petitioners' leased property without any records from Petitioners and Petitioners have never refuted Respondent's valuation.

appraiser's legal duty mandates the defense of his selected valuation method based on an actual net income figure, rendering critically necessary the taxpayers' financial records. *In this limited context* n*othing less than the "whole factual picture", as gleaned from the taxpayer's financial record, could satisfy the valuation assessment financial formula being used.*[22] Accordingly, the *Bystrom* court could not elevate the taxpayer's constitutional privacy rights above the property appraiser's critical need for financial records as the records were vital to his reaching a competent valuation figure and sustainable trial outcome. No such evidentiary privacy waiver conundrum exists for Petitioners as they never challenged the Respondent's appraised value of their parcel, although in reading the court's order one could certainly think that was the case.

Based on Petitioner's judicial admissions and Respondent's already amassed evidence, the Respondent has no compelling need for Petitioners' financial records to adequately assert his 30-day statutory rental abandonment defense. Nor are Petitioners' financial records critically needed to adequately determine the number of days Petitioners were away from their (one and only) declared homestead

[22] The *Bystrom* court's "whole factual picture" cliché comes from two divorce cases cited therein. Both involved a court's critical need for specific financial records to allow the use of a mandatory formula to enter a monetary support finding.

for Respondent to make his alternative intent to abandon argument.[23] Thus, the court's reliance upon *Bystrom* to vitiate the ordinary conclusive impact of Petitioners admissions while simultaneously dispensing with Petitioners' constitutional rights is without proper aligned legal support and hence a clear departure from the essential requirements of the law.

Turner v. Bell Chevrolet, 819 So.2d 177 (Fla. 2nd DCA 2002), is even more remote as the case does not entail: (1) A discovery issue of any kind, (2) any judicial admissions, or (3) any asserted constitutional privacy protection and concomitant proof of a 'compelling need' by the property appraiser. The taxpayer in T*urner* was a car dealership rather than a 'natural person'.[24] *Turner* involved an erroneous evidentiary ruling at trial that precluded the property appraiser from defending his total tax assessment in accordance with the obligatory just value constitutional standard. The Court's holding

[23] Based upon *Crain, Burdick, Poppell* and *Marsh*, (all fully cited at pages 26 and 27), the number of days away is not determinative of abandonment. Rather the relevant focus is on intent to return factors. Moreover, the dispositive abandonment 'through rental' point will turn on the court's four corners interpretation of Petitioners' 'licensing' agreement and the express language of Fla. Stat. 196.061.

[24] The Article I Sec. 23 constitutional privacy protection only applies to natural persons.

in *Turner* couldn't be more inapposite to the instant discovery dispute.

The third decision relied upon by the court is *Miramar Marina Corp. v. Garcia*, 316 so.2d 746 (Fla. 3rd DCA 2021). Like *Bryson* and *Turner*, the *Miramar* facts involve a property appraiser's decision to assess a commercial property by using the net income valuation approach. And just like *Bryson* and *Turner*, the property appraiser in *Miramar* carried his relevance burden by showing that the taxpayer's financial records were indispensable to implement the income valuation equation. Like *Turner*, the taxpayer was not a natural person, therefore there was no fundamental privacy protection constitutional factor nor concomitant 'compelling need' factor to consider. For this reason, the discovery ruling was decided under the garden variety rule-based 'calculated to lead' discovery standard rather than the more restrictive constitutional standard applicable here. Thus, the court's quoted language from *Miramar* (A-P.593), is also out of legal context and therefore not supportable.

Because all three of these cases are commercial property assessment cases pursuant to Fla. St. 195.027(3) and Rule 12D-1.005, F.A.C Respondent is authorized to access financial records if needed to allow proper assessment of a property's value. No similar relevant statutory or administrative rule based right exists under the

facts of this case because Petitioners never challenged the Respondent's assessed valuation of their parcel.

In fine, counsel for Respondent's approach in drafting this order[25] was to alter the narrative of the instant case by misaligning the case facts with three inapposite commercial assessment /appraisal valuation cases. This misapplication of the law leads to the inescapable conclusion that the court's June 20, 2022 substantive discovery order departs from the essential requirements of the law.

(5) Petitioners' Financial Records Are Per Se Irrelevant to Respondent's Statutory Abandonment Defense Because Each Tax Year Stands On Its Own and Respondent Lacks the Facts Needed to Render Relevant Petitioners' Financial Records For Any Of the Years Involved.

In reaching this conclusion, the first material factor to consider is the settled case law that each tax year is distinct and stands on its own. *Crapo v. Academy For Five Element Acupuncture, Inc*, 278 So.3d 113 (Fla. 1st DCA 2019) (The general maxim of "each year stands on its own" is foundational to the understanding of tax law, applicable to both tax exemptions and valuation); *Container Corp. of Am. V. Long,* 274 So. 2d 571, 573 (Fla. 1st DCA 1973) (Ad valorem taxes

[25] This order (A-Pgs. 591-596), as prepared by Respondent's counsel, also includes drafting liberties when compared to the court's oral pronouncements at hearing. (A-Pg.547 L.17--Pg.550 L.1)

assessed against property in this state for any given tax year must stand or fall on its own validity, *unconnected with the assessment made against that land during any prior or subsequent year*.) Respondent agrees to this strict year-by-year bookends perspective and fundamental tax law maxim. (A-P.438-442)

Based on the principle that each tax year stands alone, Petitioners' next urge this Court to consider the actual language of Fla. Stat. 196.061:

> **196.061 Rental of homestead to constitute abandonment**.
> (1) The rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead, and the abandonment continues until the dwelling is physically occupied by the owner. *However, such abandonment of the homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year* unless the property is rented for more than 30 days per calendar year for 2 consecutive years.

This statutory language makes clear that January 1 is an isolated bright line date that determines a property's use for any given tax calendar year. Any property use after this date is only relevant in defining property use for the next calendar tax year. See, *Lanier v. Overstreet,* 175 So.2d 521 (Fla.1965); *Dade County v. Cedars of Lebanon Hospital*, 355 So.2d 1202 (Fla. 1978); *Sowell v.*

Panama Commons L.P., 192 So.3d, 27 at 31 (Fla. 2016); *Baldwin v. Henriquez*, 279 So. 3d 328 (Fla. 2d DCA 2019)

Because there is no showing or even contention that Petitioners license their home to others during the offseason winter months, (where the January 1 date falls), any use thereafter is relevant only if a *homesteaded* property (see statutory title) is rented for more than 30 days per calendar year for two consecutive years.

In this case Petitioners initially declared their Pensacola Beach home their permanent residence and homestead effective January 1, 2019. (A-Pgs. 330-331) Accordingly, consistent with both logic and the legal notion that each tax year stands on its own, Petitioners' 2018 records are not calculated to lead to any relevant or admissible evidence as the subject property was not homesteaded for that calendar tax year, rendering the property's use irrelevant.

Based upon the statutory and case law significance of the January 1 date, even if Respondent had satisfied his obligatory 'compelling need' relevance showing and inability to gain equivalent evidence from a less intrusive source, Petitioners' 2020 records are not calculated to lead to relevant evidence. All property uses after January 1, 2020, are relevant for the 2021 calendar tax year (not part of this lawsuit) but not for the 2020 calendar tax year.

This fact and legal reality leaves Respondent one year short of

the two consecutive years needed to render relevant any financial records for the entire 2018 through 2020 period. Accordingly, without the needed second consecutive year, there is no discovery relevance to, or need for Petitioners' 2019 records because the 2019 records, standing alone serve no defense case purpose.

By substituting the subject matter of store locations for the maxim that each tax year stands on its own, *Publix Supermarkets v. Santos*, 118 So.3s 317 (Fla. 3rd DCA 2013) can be interpreted as a factual analogous certiorari relief granting case. Also noteworthy is the *Santos* court reference to *Board of Trs. Of Internal Improvement Trust Fund v. American Educ. Enters., LLC,* 99 So.3d 450, 457 (Fla.2012) for the Florida Supreme Court's statement of the law that certiorari review is appropriate where the discovery order effectively grants "carte blanche" to irrelevant discovery.

Because of the critical relevance of timing to Respondent's defense theories it should be further noted that Petitioners' exemption was officially denied on April 23, 2020, (A-P.396) which is more than a month before Petitioners' property use related occupancy licenses start for the 2020 season. (A-P. 290) Hence, the Respondent even jumped the gun by premising his denial upon a presumed 30 rental day count without yet having a single day to tally.

Last, Respondent's statutory abandonment thesis is further hampered by the well-established body of law that substantively treats licensing and renting as disparate property estates. This is a substantive distinction rather than a mere form over substance assertion. In an exemption specific context see, *Turner v. Florida State Fair Authority*, 974 So.2d 470 (Fla 2nd DCA 2008) (A-Pgs. 306-310) and the Florida Bar Journal Article of record (A-Pgs. 315-317).

(6) Contrary To the Legal Requirement the Subject Order Was Entered Without Balancing the Interests Of the Parties'.

The Third District Court in *Higgs v. Kamprounds of America*, 526 So.2d 980 (Fla. 3rd DCA 1988) sagely advised:

> Courts, when confronted with discovery questions, *especially those involving confidential information*, decide the questions by balancing the competing interests to be served by granting or denying the discovery. *Rasmussen v. South Fla. Blood Serv.*, 500 So.2d 533, 535 (Fla.1987); *North Miami General Hosp. v. Royal Palm Beach Colony, Inc.*, 397 So.2d 1033 (Fla. 3d DCA 1981); *Dade County Medical Ass'n v. Hlis*, 372 So.2d 117 (Fla. 3d DCA 1979). Thus, the party seeking discovery of confidential information must make a showing of necessity which outweighs the countervailing interest in maintaining the confidentiality of such information.

In accord, *Friedman v. Heart Inst. Of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (The law "strikes the proper balance between

allowing appropriate discovery and protecting litigants' privacy and equitable interests); *Bradstreet v. Taraschi*, 529 So.2d 809 (Fla. 5th DCA 1988) (trial courts must perform a delicate balancing act; an inquiry which is too limited may prevent a party from obtaining necessary evidence, while an overbroad inquiry becomes an unfettered fishing expedition). Below the court failed to engage this fundamental function as evident from the expressed contrarian views quoted in full at Pages 10 and 11 above.

Here an objective balancing of rights based upon the record before the court squarely tilts in favor of protecting Petitioners' privacy based upon their unrefuted showing of Respondent's already acquired collection of evidence, coupled with Petitioners' judicial admissions balanced against Respondent's absence of establishing a compelling state interest and need for Petitioners' records. The scale further swings in Petitioners' favor based upon an unrefuted showing that their highly confidential records are not safe in Respondent's hands despite the hypothetical protection of a confidentiality order.

In this connection, Packet 'C' consists of a convincing array of incidences of Respondent's willful defiance of binding 'rule of law' authority when dealing with Petitioners. These examples include:

> • Defiance of Fla. Stat. 836.05 by virtue of Defendant's threatening Petitioners with filing a tax lien despite clear statutory provisions that preclude the attachment of tax

liens to any interest associated with 99-year government leaseholds. (A-P.362-366)

• Defiance of Fla. Stat. 843.08, citing an instance where a member of Respondent's senior staff represented herself as "law enforcement" involved in "criminal investigations" to gain access to masked information (a data classification exclusively reserved for use by law enforcement officers). Under this artifice Respondent was able to track Petitioners' movements throughout the course of the time frame Respondent contends is relevant to thoroughly support his abandonment defense. (A-P.368-370)

• Defiance of Chapter 810 and Rule, 1.350 Fl. R. Civ. P. based upon Respondent's weekly trespasses upon Petitioners' property, for litigation related rather than valuation assessment reasons, including trespass instances after suit was filed, without notice and permission, thus circumventing the mandatory property inspection provision and procedures called for under our discovery rules. (A-P.373-377)

• Defiance of Fla. Stat. 839.13 and Chapter 119 in connection with Respondent's willful alteration and manipulation of a several hundred-dollar public records search related invoice sent to Petitioners precipitating a payment controversy between the parties and concomitant delay in the release of public records relevant to litigation issues in this case. (A-P.379-386)

• Further violations of the same statutory provisions by obscuring the date stamps of intra office communications to conceal the fact that time records needed to create an invoice postdated the invoice itself, thereby raising a clear inference the time records were made up or boot strapped to match a purely contrived final invoice amount. (A-P.387-391).

• Chapter 119 law breaking alterations of public records by purposely obscuring the dates of intra office communications relating to time records in tandem with time records going directly to Property Appraiser, Jones and his C.O.O., Mr. Peters to be 'massaged'. (A-P.383-384).

• Respondent's violation of Chapter 119's service charge limitations by charging Petitioners a per page rate for electronic copies by using the statutory rate for single sided conventional photocopying of records and then unlawfully refusing to tender the public records to Petitioners without paying this unlawful charge. Respondent continued his defiance of the law despite Petitioners' good faith advisements. Only after suit was filed and discovery was taken did Respondent reverse his policy by refunding the unlawful overcharges. (A-P.352-360).

• Defiance of Article I, Section 25 of the Florida Constitution and Fla. Stat. 196.193 relative to Respondent's serving Petitioners with a defectively vague, confusing, and otherwise misleading statutory homestead exemption denial notice. (A-P.395-397).

• Respondent's defiance of clear statutory directives that prohibit him from denying homestead exemptions without complying with a predicate "due consideration" proof standard. (A-P.396;398)

• Respondent's wholesale disregard for the privacy protections provided under Art I Sec. 23 of the Fla. Constitution, and related protective statutes by demanding that Petitioners forsake their privacy rights as a condition precedent and requirement for exercising their legal right to an informal conference. (A-P.403-408).

• Respondent's flaunting of the public trust by making public proclamations under his "11 Commandments" and other public pledges to treat taxpayers respectfully, while not hesitating to personally malign Petitioners before his staff, despite his VIII "Commandment" pledge not to ridicule taxpayers. Respondent, as the agency's ultimate role model was quick to express his ire and ridicule Petitioner upon reading a perfunctory January 4, 2021 dated Memorandum of Law. (A-P.414-391). See also, his maligning personality assessment of Petitioner for doing nothing more than asking for a needed continuance request. (A-P.420)

• Respondent's defamation of Petitioners by referring to them as fraudsters despite being in receipt of VAB findings concluding that Petitioners presented excellent legal arguments in connection with the underlying case facts. Subsequent republications of the same libel were then made part of the public record. (A-P.423-427)

• Respondent's apparent cavalier disregard of advice given to him by the State Attorney General who, upon specific request of Respondent, provided an informal opinion discouraging Respondent's continued use of fraud references in connection with homestead exemption investigations. Despite the Attorney General's advice Respondent continues to ubiquitously use this derogatory colloquialism in connection with his homestead exemption investigations. (A-P.428--431)

• Respondent's display of untrustworthiness by falsely representing to Petitioners' that his Chapter 119 service charges were fully supported by time logs when upon taking discovery Petitioners learned that no such time logs ever existed. (A-P.434-436)

See, also (A.Pgs. 253-256)

These examples represent only what Petitioners know about, based exclusively upon their limited dealings with Respondent. All these transgressions occurred despite the fair dealing with taxpayers' *rule of law* directive established by Article I, Sec 25 of the Florida Constitution and the legislatively enacted taxpayer protections codified under the Fla. Stat. §213.015. Although each cited instance exemplifies Respondent's resistance to authority, the court treated all these clear red warning flags as nothing more than rhetoric:

> And I will say Mr. Rebalko spent a fair amount of time talking about concerns, giving me examples about how the government can't be trusted, a topic *which would be a good one for a long day, not today,* but I did hear a number of examples about the government; and in this case specifically the government who is the defendant in the case. (A – Pg.552 L.12-18)

And then, as if Petitioners' showing was never made the court concluded by saying:

> …and should the County breach that [confidentiality] agreement, then you will bring that to my attention and will take whatever action is necessary. *I have no reason to think that they will*[26]*…but if they do, and I know Mr. Levy will and Mr. Findley will be on a heightened sense of making sure that no one inadvertently does anything in this case, If feel confident of that. . .* (A –Pg.552 L.23-P. 553 L.55)

[26] This is said despite the demonstrable historical record to the contrary indicating a high threshold probability for noncompliance; none of which was refuted by Respondent.

It cannot be reasonably expected that a confidentiality order will deter a party who habitually disregards authoritative rules, regardless of the source. Given this disconcerting history *the Court's factual understanding and conclusions are not supported by the record*. In fine, a confidentiality order cannot be relied upon to serve as a cure all 'band aid' in light of Respondent's gaping wound pausing potential with Petitioners.

The purpose of protective orders is to rightfully and meaningfully guard a party who needs the court's protection. *Martin–Johnson v. Savage*, 509 So. 2d 1097 (Fla. 1987); *Beverly Enterprises-Florida, Inc. v. Ives*, 832 So. 2d 161, 162 (Fla. 5th DCA 2002). In this instance the lower tribunal departed from the essential requirements by failing to properly measure and balance Petitioners' privacy rights based upon the record established at the parties' May 23rd hearing.

Further troubling is the lower court's plan (A-P. 598-601) to somehow use opposing counsel as the means to control the client (A-P. L. 2-5) (actual reversal of agent/principle relationship which has the principal (the Respondent) controlling the acts of the agent (his counsel)) when the track record reflects the abject ongoing failure of opposing control to keep Respondent within the bounds of legal compliance. It is simply not the role or day-to-day function of an

attorney to police the out of court conduct of a client. It is also exceedingly naïve to expect and rely upon a wrongdoer to prospectively share their planned misdeeds with counsel.

Further alarming is the order's dispersal of Petitioners' highly confidential records to potentially hundreds of unnamed persons,[27] *including temporary employees*, (A-P.599) the majority of whom would have a remotely tenuous and unexplained need to review these records.[28] This confidentiality order departs from the essential requirements of the law as it fails to serve its intended purpose. Under the circumstances this is a confidentiality order in name only.

(8) Contrary To Florida Supreme Court Adopted Rules the Court Ordere Petitioners to Answer More Than Thirty Interrogatories Without Leave of Court.

Respondent's interrogatories probe into a variety of private information areas that would not be normally disclosed to others and therefore fall within the 'cat out of the bag' category. Obviously, the more the inquiries, the greater the intrusion.

Rule 1.340(a) dictates that a party must obtain leave of court to propound more than thirty interrogatories. Under the majority view,

[27] Rendering impossible Petitioners' ability to keep track of who has which confidential record.

[28] This order was also singularly drafted by Respondent's counsel and then signed by the court.

an interrogatory is confined to related inquiries that share a subsuming intra inquiry relationship. If the interrogatory is worded so that joined inquiries do not have a subsuming relationship, then the inquiries must be considered as separate interrogatories.

As discussed above, *Crapo v. Academy For Five Element Acupuncture,* 278 So.3d 113 (Fla. 1st DCA 2019) makes clear that each tax year is separate and independent from another tax year. Accordingly, Interrogatories 5, 6, and 10-14 contain disjunctive yearly discrete subparts which when fully counted alters the count for these interrogatories from seven to twenty-one.

Discrete subparts again arise with Interrogatories 3 and 4 based upon the "facts, information, beliefs, or other basis" distinct serial inquiries. Accordingly, these two numbered interrogatories total to eight.

Interrogatories 7-9 ask for responses and details relative to four distinctly bifurcated real property interests for three standalone years. Thus, each of the three interrogatories should be regarded as twelve separate interrogatories for a total count of thirty-six. All totaled, the final sum is sixty-five interrogatories.

Accordingly, the court departed from the essential requirements of our rules of procedure by allowing more than thirty interrogatories without leave of court. Departure from Supreme Court adopted rules

is sufficient to trigger certiorari relief. *Bennett v. Continental Chemicals, Inc.*, 492 So. 2d 724, 728 (Fla. 1st DCA 1986); *Allstate Insurance Co. v. Kaklamanos*, 843 So.2d 885, 890 (Fla. 2003).

C. THE COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW IN THE HANDLING OF PETITIONERS' WORK PRODUCT OBJECTIONS.

Work product warrants discovery protection to guard against the unfairness of one party preparing his case through the investigative work product of his adversary. *Paradise Divers* Inc. *v. Upmal*, 943 So.2d 812 (Fla. 3rd DCA 2006). Respondent's Production Request Item 1. (A-P.262), commits this exact offense. Here, without the Rule 1.280(b)(4) required evidentiary showing and justification the court improvidently green lighted the preparation of Respondent's case through Petitioners' investigative work product.

The court's June 17 and June 20 substantive discovery orders summarily denied Petitioners' work product objections without requiring Respondent to properly meet his burden in demonstrating a particularized "undue hardship" without Petitioners' work product, without the aid of a privilege log, and without conducting an in camera inspection. After specifically overruling *all* of Petitioners' work product objections the court then instructed Petitioners to supply an after-the-fact (and seemingly pointless) privilege log. (A-P.588 and

595) Given this cart before the horse chronological scenario and given the substantial work entailed in assembling a conscientious privilege log, Petitioners face another 'cat out of the bag' predicament.

Based upon the lack of record support, accompanying findings or any analysis both orders overruling Petitioners' work product objections run afoul of *Brinkmann v. Petro*, 324 So.3d 574 (Fla. 2nd DCA 2021); *Nevin v. Palm Beach County School Board*, 985 So.2d 1003, 1006 (Fla. 1st DCA 2007); *Metric Eng'g, Inc. v. Small,* 861 So.2d 1248, 1250 (Fla. 1st DCA 2003); *Falco v. N. Shore Labs.*, 866 So.2d 1255, (Fla. 1st DCA 2004); *Fla.E.Coast Ry. v. Jones*, 847 So.2d 1118 (Fla. 1st DCA 2003); *Avatar Property v. Mitchell*, 314 So.3d 640 (Fla. 3rd DCA 2021) (and cases cited therein). The denial of Petitioners' work product objections, but then ordering a figurative non sequitur privilege log amounts to a departure from the essential requirements of the law and results in irreparable harm.

Respondent's failure to carry his burden should end here as was given his one bona fide bite at the apple prospect, vis-à-vis the parties' May 23rd extended full 'opportunity to be heard' hearing.

D. Remaining Departures From the Essential Requirements of the Law Regarding the Court's June 17, 2022 Order Vis-à-vis Respondent's 2022 Served Ad Valorem Tax Immunity Related Discovery.

Whether Respondent's 2022 discovery was served because Respondent has a legitimate "hardship" need for Petitioners' work product or was served to cause intimidating busy work for Petitioners is a valid concern, given that months before serving this January 2022 discovery Respondent served two summary judgment motions[29] directed to the very same Counts III through VI that this discovery directs to *without any need for Petitioners' records*. (A-Pgs. 624-649). From this perspective, either the discovery is disingenuous, or the summary judgment motions are disingenuous, or perhaps all are disingenuous.

This discovery request begins with sweepingly broad "Definitions and Instructions" including: "Document" shall be interpreted in its broadest sense . . ."; 'any means all'; 'disjunctive includes conjunctive and vice versa,' with the actual wording of the individual requests being similarly grossly broad in style.

Respondent's sweeping 'interpreted in its broadest sense' directive (now, with the court's approval) is incorporated into Production Requests 1 through 3, with each such request containing their own 'any and all' standalone sweeping language. As worded, these requests represent a classic fishing expedition by seeking

[29] Not yet ruled on.

nothing in particular and everything in unrefined terms. This is antithetical to the particularity requirement of Rule 1.350 and relevant case law that abhors wide net casting discovery. As worded, Item 1 even includes the undersigned counsel's mental impressions which our jurisprudence has always treated as immune from discovery. *Atlantic Coast Line v. Allen*, 40 So.2d 115 (Fla. 1949).

Relative to the court's June 17th order, Petitioners incorporate by reference all arguments made in challenge of the court's June 20th substantive discovery order in demonstration of the court's multiple departures from the essential requirements of the law and concomitant 'cat out of the bag' irreparable harm consequences to Petitioners.

CONCLUSION

The court's June 20th order mistakenly relies upon three *inapposite* commercial tax value assessment cases. The order departs from the essential requirements of the law by allowing discovery of constitutionally protected highly private information without any proper showing of relevance/compelling need and despite Petitioners unimpeached showing that (1) Respondent has no need for Petitioners' private records, (2) Respondent already has the substantial equivalent evidence, and (3) Respondent can neither be trusted with Petitioners' records nor trusted to comply with a

confidentiality order. Release of Petitioners' constitutionally protected private information and records will cause irreparable harm which cannot be remedied by appeal for basic 'cat out of the bag' reasons.

Respondent neither carried his burden of showing a hardship need for Petitioners' work product. For this reason, the denial of Petitioners' work product objections constitutes a departure from the essential requirements of the law. Finally, the court's confidentiality offer departs from the essential requirements of the law as it does not adequately and reasonably meet its intended purpose in light of the hearing record.

Wherefore, Petitioners respectfully ask this Honorable Court to reverse the court's orders granting Respondent's Motion to Compel, denying Petitioners objections and protective order motions, and quash the confidentiality order on grounds of inadequacy, and for such other relief as the Court deems appropriate.

Respectfully Submitted,

/s/ Lee Rebalko_____
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1752 Ensenada Seis
Pensacola Beach, Fl 32561
Fla. Bar No. 276081

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to all counsel of record and to The Honorable Jan Shackelford through the e-filing portal and by email this 14th day of July 2022.

/s/ Lee Rebalko
L. Anton Rebalko

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition is in full compliance with the requirements of Rule, 9.045 Fl. R. App. P.

/s/ Lee Rebalko
L. Anton Rebalko