

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

DANIEL DELMONICO,
Petitioner,

v.

TONY CRESPO and **DONOVAN MARINE, INC.**, a Louisiana Corporation,
Respondents.

No. 4D10-3688

[March 2, 2011]

PER CURIAM.

Petitioner, Daniel Delmonico, seeks certiorari review of an order denying his motion for a protective order. Respondents, Tony Crespo and Donovan Marine, Inc., sought financial discovery of both petitioner and non-parties “in aid of execution” of an award of attorney’s fees. *See Fla. R. Civ. P. 1.560.*

Respondents assert that this court, in a separate related case, ordered petitioner to pay attorney’s fees, in accordance with section 768.79, Florida Statutes. However, we *provisionally* granted fees, conditioned on the trial court determining that respondents are entitled to fees under the statute. As a determination has not yet been made by the trial court, we agree with Delmonico that he may be irreparably harmed if forced to reveal financial information where no judgment has yet been entered and where no relevance is shown between the financial discovery and the attorney’s fees. *See Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (general rule is that personal financial information is ordinarily discoverable only *in aid of execution* after judgment; where materials sought by a party appear relevant to subject matter of pending action information is fully discoverable).

Further, we find that the court departed from the essential requirements of law where it prematurely allowed discovery in aid of execution of a non-existent judgment. *See, e.g., In re Estate of Posner*, 492 So. 2d 1093, 1093 (Fla. 3d DCA 1986) (finding “the probate court departed from the essential requirements of law when it permitted contingent creditors to take pre-judgment discovery in aid of execution”).

We accordingly grant the petition for writ of certiorari and quash the order which denied petitioner's motion for a protective order.

Petition Granted; Order Quashed.

STEVENSON, DAMOORGIAN and GERBER, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Dale Ross, Judge; L.T. Case No. 03-19435 CACE 08.

Ismael Diaz of the Law Office of Ismael Diaz, P.L., Coral Gables, for petitioner.

A. Rodger Traynor, Jr., of Akerman Senterfitt, Miami, for respondents.

Not final until disposition of timely filed motion for rehearing.