

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

ERIC NOVESHEN,
Petitioner,

v.

LAW OFFICES OF BARRY FRANKLIN & ASSOCIATES, and
CHRISTINE NOVESHEN, n/k/a CHRISTINA CARTER,
Respondents.

No. 4D12-892

[August 8, 2012]

PER CURIAM.

We grant the petition for writ of certiorari and quash the trial court's order granting the respondent's motion to compel compliance with outstanding discovery in aid of execution directed to him, which was entered *ex parte* despite petitioner having filed an objection to the discovery. The court entered the order pursuant to Local Rule 10A of the Seventeenth Judicial Circuit which permits the entry of an *ex parte* order compelling discovery where there has been a complete failure to respond or object to discovery.

The *ex parte* order is quashed, as the petitioner had filed objections and a motion for protective order prior to the motion to compel being filed. As we held in *Waters v. American General Corp.*, 770 So. 2d 1275 (Fla. 4th DCA 2000), the local rule can apply only where the conditions in the order are met, namely the failure to respond at all to discovery requests. That condition was not met in this case. The rules of civil procedure apply and require proper notice of the motion and hearing.

WARNER, GROSS and GERBER, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Arthur M. Birken, Judge; L.T. Case No. 03-18306 35.

Eric L. Noveshen, Fort Lauderdale, pro se.

Barry S. Franklin of Barry S. Franklin & Associates, P.A., Aventura, for respondent The Law Firm of Barry S. Franklin & Associates, P.A.

Not final until disposition of timely filed motion for rehearing.