NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SAVANNAH CAPITAL, LLC, a foreign limited liability company, individually and on behalf of DEVILLE CORP., a Florida corporation, Appellant, v. PITISCI, DOWELL & MARKOWITZ, and D. LEE PITISCI, individually, Appellees.	)	Case No. 2D19-4117

Opinion filed March 26, 2021.

Appeal from the Circuit Court for Hillsborough County; Martha J. Cook, Judge.

Stephenie Biernacki Anthony, Lydia M. Gazda and John A. Anthony of Anthony & Partners, LLC, Tampa, for Appellant.

Jeffrey M. James of Banker Lopez Gassler, P.A., Tampa, for Appellees.

SLEET, Judge.

Savannah Capital, LLC, on behalf of DeVille Corp. appeals the final judgment entered in favor of Pitisci, Dowell, & Markowitz and D. Lee Pitisci, Esq. (Appellees) in Savannah's action for breach of fiduciary duty and professional

malpractice. Because the trial court erred in entering a protective order prohibiting Savannah from taking Pitisci's deposition and in granting summary judgment prior to the completion of discovery, we reverse and remand for further proceedings. We find no merit in the other issues Savannah raises on appeal.

BACKGROUND

In October 2018, Savannah commenced the underlying action, individually and derivatively on behalf of DeVille, for breach of fiduciary duty and professional malpractice against the Appellees based on their simultaneous representation of DeVille and its former president, Thomas Martino, during Martino's personal Chapter 7 bankruptcy proceedings (Bankruptcy Case).

Prior Action

Martino initiated the Bankruptcy Case in November 2014 by filing a voluntary petition for protection from creditors under Chapter 7 of the Bankruptcy Code. His "Schedule F - Creditors Holding Unsecured Nonpriority Claims" listed DeVille as a creditor for a disputed claim of more than $1,000,000. Martino called it a loan while Savannah called it a debt. In April 2015, Pitisci participated in Martino's bankruptcy proceedings. In May 2015, after the deadline for creditors to file proofs of claims, Savannah filed its proof of claim in the Bankruptcy Case and filed a complaint objecting to the dischargeability of the debt (Nondischargeability Action). Savannah alleged that the debt had been wrongfully converted to Martino's personal use. Soon thereafter, on May 18, 2015, Appellees filed a notice of appearance on behalf of Martino and DeVille in the Bankruptcy Case and the Nondischargeability Action and then filed (1) a motion to dismiss the complaint on behalf of Martino and (2) a motion to dismiss DeVille as a party in the Nondischargeability Action on jurisdictional grounds. The bankruptcy court

granted the motion to dismiss DeVille as a party and denied Martino's motion to dismiss. In May 2016, Martino filed a motion for summary judgment, arguing that Savannah's claim was a derivative of DeVille's. The bankruptcy court granted the motion, holding that Savannah lacked standing to bring a direct action and should have sought to bring a derivative action instead.

Instant Action

Savannah's derivative action against Appellees alleged that they represented both Martino and DeVille during Martino's Bankruptcy Case prior to May 2015 and that they should have filed a derivative action on behalf of DeVille to challenge the dischargeability of the $1,000,000 disputed debt. In response, Appellees filed a motion for summary judgment and alleged that their representation of DeVille was limited to filing the motion to dismiss DeVille as a party on jurisdictional grounds, which was filed after the deadline for filing a proof of claims. The motion did not incorporate any affidavits or other admissible evidence; rather, it relied only on various filings in the Bankruptcy Case and Nondischargeability Action. Savannah filed a motion to abate summary judgment until after the completion of discovery. Several days later, Savannah attempted to schedule Pitisci's deposition. In response, Appellees filed a motion for protective order to prohibit his deposition and asserted that the issue addressed in the motion for summary judgment "would not be affected" by his testimony. Pitisci did not file any evidence or affidavits in support of the protective order. He relied only on various filings in the Bankruptcy Case and Nondischargeability Action to demonstrate that he did not represent DeVille in proceedings prior to filing the notice of appearance on May 18, 2015. The trial court denied Savanah's motion to abate and granted Appellees' motion for protective order in a one-page form order

devoid of any legal analysis or factual findings. The protective order remained in effect until after the hearing on the motion for summary judgment.

At the hearing, Appellees argued that summary judgment should be granted in their favor because Savannah failed to file a timely derivative claim on behalf of DeVille in the Nondischargeability Action and because they never represented Savannah. Once again, Appellees relied solely upon the Nondischargeability Action records to demonstrate that they did not represent DeVille until May 18, 2015. Savannah countered that Appellees appeared on behalf of Martino and DeVille in the Nondischargeability Action in April 2015 and that there was a genuine issue of material fact as to the scope of their representation. Further, Savannah argued that it should be allowed to take Pitisci's deposition to ascertain the scope of representation concerning Martino and DeVille. The trial court granted summary judgment and entered final judgment in favor of Appellees.

ANALYSIS

Savannah argues that the trial court erred in entering a protective order prohibiting Savannah from taking Pitisci's deposition and in granting summary judgment prior to the completion of discovery. We agree.

"The ruling on a motion for protective order is reviewed for abuse of discretion." State Farm Fla. Ins. Co. v. Lime Bay Condo., Inc., 187 So. 3d 932, 936 (Fla. 4th DCA 2016). And we review the trial court's order granting a motion for summary judgment de novo. Sherry v. Regency Ins. Co., 884 So. 2d 175, 177 (Fla. 2d DCA 2004) (citing Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000)).

> "A trial court possesses broad discretion in overseeing discovery, and protecting the parties that come

> before it." Pursuant to Florida Rule of Civil Procedure 1.280(c), a trial court may, upon a showing of good cause, issue a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" as justice may require. The burden of showing good cause is on the party seeking the protective order. And, "a strong showing is required before a party will be denied entirely the right to take a deposition." Florida courts have disapproved the entry of protective orders prohibiting the taking of depositions generally and orders providing for lengthy postponements of discovery.

Bush v. Schiavo, 866 So. 2d 136, 138 (Fla. 2d DCA 2004) (emphasis added) (citations omitted) (first quoting Rojas v. Ryder Truck Rental, Inc., 625 So. 2d 106, 107 (Fla. 3d DCA 1993), then quoting Deltona Corp. v. Bailey, 336 So. 2d 1163, 1169-70 (Fla. 1976)). Absent a strong showing of good cause, depositions of parties are permitted and are considered essential in civil actions. See Clarke v. Coca-Cola Refreshments USA, Inc., 282 So. 3d 897, 898 (Fla. 3d DCA 2019). The importance of oral depositions in trial preparation and use in trial proceedings cannot be overstated. Thus, the trial court's authority to prohibit the deposition of a party should be exercised with great caution on a case-by-case basis and should be imposed only when necessary.

In their motion for protective order, Appellees failed to allege with any particularity any reason why the deposition of Pitisci, a party defendant, would cause "annoyance, embarrassment, oppression, or undue burden or expense." See Fla. R. Civ. P. 1.280(c). They asked the court to take judicial notice of the various documents found in the dockets of the Bankruptcy Case and the Nondischargeability Action. However, those records do not provide a basis for the imposition of a protective order as they do not address the scope of Pitisci's representation or whether Pitisci did or did not undertake the representation of DeVille within the proof-of-claim filing window. Appellees did not submit any evidence to demonstrate good cause to prohibit Pitisci's

deposition entirely, nor did they contend that his deposition would not lead to the discovery of admissible evidence. See Fla. R. Civ. P. 1.280(b)(1); Dodson v. Persell, 390 So. 2d 704, 707 (Fla. 1980) ("A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics."). Rather, they asserted that Pitisci's deposition was not relevant to the issues raised in the motion for summary judgment. However, "relevancy is not a proper ground for protective relief under rule 1.280(c)." Hepco Data, LLC v. Hepco Med., LLC, 301 So. 3d 406, 413 (Fla. 2d DCA 2020).

Pitisci appeared in the bankruptcy proceedings for at least one month before he filed his notice of appearance on behalf of Martino and DeVille. And Savannah was entitled to take Pitisci's deposition to inquire and ascertain the scope of his representation. As Appellees made no strong showing of good cause to completely deny Savannah the right to take Pitisci's deposition, the trial court abused its discretion in granting the protective order.

The trial court further erred when it proceeded with the motion for summary judgment with the protective order in place. To establish a claim of professional malpractice, Savannah must prove (1) "the attorney's employment," (2) "the attorney's neglect of a reasonable duty," and (3) "the attorney's negligence as the proximate cause of loss to the client." See Larson & Larson, P.A. v. TSE Indus., Inc., 22 So. 3d 36, 39 (Fla. 2009). The protective order deprived Savannah of its right to discover information tending to establish the liability of Pitisci and present evidence in opposition to the motion for summary judgment. "Where a protective order of the trial court has temporarily precluded the plaintiff[] from deposing [the defendant] and the

effect of such order is to deprive the plaintiff[] of the opportunity to discover information tending to establish the liability of the [defendant], the entry of a summary judgment for the [defendant] while the protective order is in effect is premature." Scherr v. Andrews, 497 So. 2d 970, 970 (Fla. 3d DCA 1986); see also Brandauer v. Publix Super Markets, Inc., 657 So. 2d 932, 933 (Fla. 2d DCA 1995) ("Summary judgment should not be granted until the facts have been sufficiently developed for the court to be reasonably certain that no genuine issue of material fact exists." (citing Singer v. Star, 510 So. 2d 637, 639 (Fla. 4th DCA 1987))); Erace v. Erace, 683 So. 2d 1114, 1114-15 (Fla. 3d DCA 1996) (concluding that summary judgment was premature when plaintiff attempted to depose the defendant and the trial court granted defendant's motion for protective order). Accordingly, we reverse.

Reversed and remanded for further proceedings.

KHOUZAM, C.J., and LABRIT, J., Concur.