

# Third District Court of Appeal

## State of Florida

Opinion filed July 1, 2020.  
Not final until disposition of timely filed motion for rehearing.

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Nos. 3D20-313 & 3D20-527  
Lower Tribunal Nos. 14-13703, 16-1219 & 18-7447

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**The Shir Law Group, P.A., et al.,**  
Petitioners,

vs.

**Dario Carnevale, Esq., et al.,**  
Respondents.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Veronica A. Diaz, Judge.

A Case of Original Jurisdiction—Prohibition.

Robert E. Menje, PLLC, and Robert E. Menje (Pembroke Pines), for petitioners.

Kozyak Tropin & Throckmorton, LLP, and Javier A. Lopez, Tal J. Lifshitz and John I. Criste, Jr., for respondents.

Before SALTER, SCALES and GORDO, JJ.

SCALES, J.

In appellate case number 3D20-313, The Shir Law Group, P.A., Guy M. Shir, Stuart J. Zoberg, ZTJ Recovery, Inc., and Jodi Shir, the defendants below, seek certiorari review of a February 10, 2020 non-final order granting partial summary judgment in favor of the plaintiffs below, Dario and Flavia Carnevale.<sup>1</sup> In appellate case number 3D20-527, The Shir Law Group, P.A., Guy M. Shir, and Stuart, J. Zoberg petition this Court for a writ of prohibition, challenging the lower court's February 20, 2020 order denying their second motion to disqualify the same trial judge in the lower proceeding. We have consolidated the petitions for all purposes. For the following reasons, we grant partial relief in appellate case number 3D20-313, and deny the petition in appellate case number 3D20-527.

***Appellate Case Number 3D20-313***

“Our appellate jurisdiction to review non-final orders is limited to only those orders specifically scheduled in rule 9.130(a)(3).” Citizens Prop. Ins. Corp. v. Calonge, 246 So. 3d 447, 449 (Fla. 3d DCA 2018). The extraordinary remedy of common law certiorari should not be used to circumvent rule 9.130. See DeLoach v. Aird, 989 So. 2d 652, 654 (Fla. 2d DCA 2007). We, therefore, treat the instant petition as an appeal from a non-final order.

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<sup>1</sup> Prior to filing the instant certiorari petition, petitioners filed a notice of appeal in appellate case number 3D20-313 claiming the subject non-final order was reviewable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii).

The February 10, 2020 non-final order grants partial summary judgment in favor of the Carnevaless on their claims against appellants for constructive fraud.<sup>2</sup> Although appellants seek to challenge every aspect of the subject non-final order, we conclude that we have jurisdiction only to review those portions of the order that compel appellants to “convey [unit E-209 at the Miami Beach Club Motel Condominium] immediately to Dario Carnevale and Flavia Carnevale within three (3) days of the date of this Order” and to “disgorge to the Carnevaless” certain fees that had been collected by appellants “within ten (10) days of the date of this Order.” See Fla. R. App. P. 9.130(a)(3)(C)(ii) (providing for appellate review of non-final orders that determine “the right to immediate possession of property”). Based on the Carnevaless’ proper concession that the trial court erred in directing the immediate transfer of the condominium and disgorgement of money prior to entry of a final judgment in the lower proceeding, we reverse only that portion of the February 10, 2010 non-final order and remand for further proceedings consistent with this opinion. We lack jurisdiction to review, and express no opinion as to, the remaining portions of the order. See Saidin v. Korecki, 202 So. 3d 468, 470 (Fla. 1st DCA 2016) (recognizing that the district court’s jurisdiction to review certain

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<sup>2</sup> The Carnevaless’ other claims against appellants remain pending in the lower proceeding.

aspects of a non-final order under rule 9.130(a) “does not extend to afford review of certain other matters the non-final order addresses”).

***Appellate Case Number 3D20-527***

“[A] writ of prohibition is the proper procedure for appellate review to test the validity of a motion to disqualify.” JJN FLB, LLC v. CFLB P’ship, LLC, 283 So. 3d 922, 925 (Fla. 3d DCA 2019) (quoting Pilkington v. Pilkington, 182 So. 3d 776, 778 (Fla. 5th DCA 2015)). Our standard of review is *de novo*. Id.

The lower court’s February 20, 2020 order denied petitioners’ second motion to disqualify the trial court because the motion was legally insufficient. We agree. Petitioners’ second disqualification motion, filed on February 18, 2020, contains the same grounds raised by petitioners in their first disqualification motion, filed on December 2, 2019. The trial court denied petitioners’ first disqualification motion as legally insufficient and this Court, in appellate case number 3D19-2441, denied the petition for writ of prohibition with respect to the lower tribunal’s denial. Suffice it to say, we will not reconsider these grounds here. As to the additional grounds raised in the second disqualification motion, we conclude that the grounds are not legally sufficient. Assuming the facts alleged therein to be true, petitioners “did not have a well-founded fear of judicial bias.” Wall v. State, 238 So. 3d 127, 143 (Fla. 2018).

Appeal dismissed in part, reversed in part; Prohibition denied.