JOSEPH CELANO	*	**NO. 2003-C-1485**
VERSUS	*	**COURT OF APPEAL**
CHEHARDY, SHERMAN, ELLIS, BRESLIN & MURRAY, A LOUISIANA PARTNERHSHIP	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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ON SUPERVISORY WRIT FROM THE
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-15552, DIVISION "M"
HONORABLE C. HUNTER KING, JUDGE

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CHIEF JUDGE JOAN BERNARD ARMSTRONG

* * * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge David S. Gorbaty and Judge Edwin A. Lombard)

ROBERT G. STASSI
CHEHARDY, SHERMAN, ELLIS, BRESLIN, MURRAY & RECILE
ONE GALLERIA BOULEVARD
SUITE 1100
METAIRIE, LA 70001

COUNSEL FOR RELATOR

WRIT GRANTED;
JUDGMENT REVERSED;
DISCOVERY ORDERED

In this action to annul a July 21, 1999 default judgment based on fraud or ill practices, the defendant-relator, the law firm of Chehardy, Sherman, Ellis, Breslin & Murray ("Chehardy & Sherman") seeks supervisory review of a judgment quashing their subpoena duces tecum/notice of inspection for Whitney National Bank records pertaining to plaintiff-respondent, Joseph Celano's application for a home equity line of credit. Chehardy & Sherman seek to determine, for prescriptive purposes, when plaintiff discovered that the default judgment had been rendered against him. The plaintiff's petition for nullity was filed on October 4, 2002. The defendant contends that the plaintiff knew about the judgment on or before October 3, 2001, in which case plaintiff's nullity claim would have prescribed pursuant to the one year prescription provided by La. C.C.P. art. 2004(B). The defendant contends that the bank records will show or lead to the discovery of evidence that will show that the plaintiff knew of the judgment on or before October 3, 2001.

The trial court granted plaintiff's motion to quash on August 1, 2003, after a hearing.

The writ application contains a letter to plaintiff from Whitney National Bank's home equity department. The letter is dated October 9, 2001, and notifies plaintiff that in order to continue processing his request for a home equity line of credit Whitney needed proof of cancellation of the judgment obtained by Chehardy & Sherman.

The transcript of the hearing on the motion to quash reflects that counsel for Chehardy & Sherman represented that plaintiff alleged in his petition that he discovered the judgment on or about October 5, 2001, and filed his action to annul on October 4, 2002. Counsel for plaintiff did not dispute these factual assertions.

Louisiana trial courts have broad discretion when regulating pre-trial discovery, which discretion will not be disturbed on appeal absent a clear showing of abuse. Moak v. Illinois Central R.R. Co., 93-0783, p. 9 (La. 1/14/94), 631 So.2d 401, 406; Cacammo v. Liberty Mutual Fire Ins. Co., 99-1421, p. 4 (La.App. 4 Cir. 10/10/01), 798 So.2d 1210, 1214. However, the exercise of that discretion must take into account the general rule that a party "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending litigation …." La. C.C.P. art. 1422. La. C.C.P. art. 1426 states that a trial court may make any order justice requires to protect a party from annoyance, embarrassment,

oppression, or undue burden or expense. La. C.C.P. art. 1354 states that a trial court, in its discretion, may vacate a subpoena duces tecum if it is unreasonable or oppressive.

La. C.C.P. art. 1469.2 states that a subpoena duces tecum compelling production of bank records relating to the financial or credit information of its customers shall not be enforceable unless the person seeking production of such records has complied with the provisions of La. R.S. 9:3571 or La. R.S. 6:333, requiring that a copy of the subpoena be served on the person whose records are being sought. Plaintiff does not appear to dispute that relator met all of the statutory requirements. Therefore, we do not consider this to be an issue in this case.

The party seeking production of bank records over the objection of the customer must make a showing of relevancy and good cause. Ouachita Nat. Bank in Monroe v. Palowsky, 554 So.2d 108, 112 (La.App. 2 Cir.1989). The court in Ouachita analogized bank records to income tax returns, citing the confidential nature and highly personal character of their content. Id., at 544 So.2d at 112 (citing this court's decision in Bianchi v. Pattison Pontiac Co., 258 So.2d 388 (La.App. 4 Cir. 1972), involving a subpoena duces tecum for income tax returns of an automobile dealership.

At the same hearing on the motion to quash the trial court granted the

defendant's motion to compel answers to interrogatories ordering the plaintiff to describe his activities for the day period prior to filing the suit.

We find that the trial court abused its broad discretion by granting the plaintiff's motion to quash. Francois v. Norfolk Southern Corp., 01-1954 (La.App. 4 Cir. 3/6/02), 812 So.2d 804. The information sought is relevant. *Id.;* La.C.C.P art. 1422. When a trial court vacates a subpoena without first finding that the subpoena is unreasonable or oppressive, it has gone beyond it authority under La. C.C.P. art. 1354. Francois, supra.

There is a reasonable approach that would prevent the risk of unreasonable or oppressive discovery and at the same time allow the broad scope of discovery contemplated by L.C.C.P. art. 1422 to be realized, i.e., the trial court should have ordered an *in camera* inspection of the Whitney file to determine if there are any documents therein that would tend to show directly or indirectly when the plaintiff learned of the judgment, giving due regard to plaintiff's right to privacy to his personal financial data. Relator is correct in arguing that the fact that the plaintiff applied to the Whitney for a home equity line of credit and was turned down has already been acknowledged by the plaintiff in this litigation; therefore, the plaintiff cannot argue that the nature of the file is private.

For the foregoing reasons, we grant the relator-defendant's writ

application, reverse the judgment of the trial court, and order that the trial court allow the subpoena duces tecum to issue returnable to the trial court to conduct an *in camera* inspection of the Whitney file to determine if there are any documents therein that would tend to show directly or indirectly when the plaintiff learned of the judgment, giving due regard to plaintiff's right to privacy to his personal financial data.

WRIT GRANTED;
JUDGMENT REVERSED
DISCOVERY ORDERED