

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

SANTANA EQUESTRIAN PRIVATE FINANCIAL, LLC,
Appellant,

v.

TIFFANY RICHTMYER, d/b/a APOLLO SPORT HORSES, LLC,
PAULO SERGIO MATEO SANTANA FILHO, BROCK CLERMONT, and
ALEXA WHITE,
Appellees.

No. 4D21-3363

[September 14, 2022]

Appeal of a nonfinal order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Joseph Marx, Judge; L.T. Case No. 50-2021-CA-003328-XXXX-MB.

Christine R. Davis of Davis Appeals, PLLC, Tallahassee, for appellant.

Larry A. Zink of Zink, Zink & Zink Co., L.P.A., Hillsboro Beach, for appellee Tiffany Richtmyer, d/b/a Apollo 14 Sport Horses, LLC.

PER CURIAM.

Santana Equestrian Private Financial, LLC (“Santana Equestrian”) appeals a nonfinal order determining the right to immediate possession of a competitive jumping horse, which horse Santana Equestrian contends it purchased in good faith and in the ordinary course of business.

Following a two-day bench trial, the trial court granted replevin and awarded the horse to appellee Tiffany Richtmyer. We reverse, agreeing with Santana Equestrian that this case is controlled by *Carlsen v. Rivera*, 382 So. 2d 825 (Fla. 4th DCA 1980), and section 672.403, Florida Statutes (2020) – a provision of Florida’s Uniform Commercial Code (UCC).

The relevant provisions are as follows:

**672.403 Power to transfer; good faith purchase of goods;
“entrusting”**

(1) A purchaser of goods acquires all title which her or his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) The transferor was deceived as to the identity of the purchaser, or

(b) The delivery was in exchange for a check which is later dishonored, or

(c) It was agreed that the transaction was to be a “cash sale,” or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be larcenous under the criminal law.

§ 672.403, Fla. Stat. (2020).

The UCC further provides:

“Buyer in ordinary course of business” means a person who, in ordinary course, buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which

the seller is engaged or with the seller's own usual or customary practices.

§ 671.201(9), Fla. Stat. (2020).

As explained in *Carlsen*, under the UCC, if goods are entrusted to a merchant who deals in goods of that kind and ultimately the goods are sold to a good faith buyer in the ordinary course of business, then the entruster's intent, intervening sales, and the merchant's fraudulent actions are irrelevant. 382 So. 2d at 826-27. "The buyer in the ordinary course of business obtains good title by virtue of [section 672.403(2)]." *Id.* at 827. "The purpose of this section of the Uniform Commercial Code is to protect the buyer in the ordinary course of business and thus to eliminate impediments to the free flow of commerce." *Id.* at 826.

There is no dispute that Richtmyer entrusted the horse to a known merchant, her former fiancé. He in turn either sold or entrusted the horse to another merchant in the sport jumping business with directions to sell the horse. A year and a half after the initial entrustment, the second merchant sold the horse to Paulo Santana, owner of Santana Equestrian.

The trial court's reasons for finding that Santana was not a good faith buyer in the ordinary course of business are not supported by the record.

The only expert at trial testified that this was a typical sale in the industry. Santana Equestrian bought the horse from an established company in the business of buying and selling jumping horses. Paulo Santana considered the horse's athletic ability and United States Equestrian Federation record. He viewed video of the horse's performance on jumps, and he relied on the experience and opinion of a trusted source, his godson, a professional rider who had ridden the horse daily for a few weeks. The equestrian expert testified the sales price and negotiations were also typical in the industry. She did not find the purchase price suspicious or see anything out of the ordinary in this sale.

The evidence established that the sale comported "with the usual or customary practices" in the business of selling jumping horses and that Santana was a good faith purchaser for value under the UCC.

Accordingly, we reverse the replevin judgment awarding possession to Richtmyer.

Reversed.

CIKLIN, KUNTZ and ARTAU, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

GCTC HOLDINGS, LLC,

Petitioner,

v.

TAG QSR, LLC; GULF COAST PITA, LLC d/b/a PITA PIT; RALPH C.
ANZIVINO; and MARY JO ANZIVINO,

Respondents.

No. 2D21-3457

September 9, 2022

Petition for Writ of Certiorari to the Circuit Court for Lee County;
James Shenko, Judge.

Julia Kapusta and Courtney L. Fernald of Englander Fischer, St.
Petersburg, for Petitioner.

Kelli A. Edson, Julia M. Wischmeier, and Gabriela N. Timis of
Quarles & Brady, LLP, Tampa, for Respondents.

MORRIS, Chief Judge.

GCTC Holdings, LLC, seeks a writ of certiorari to quash the
trial court's order granting Tag QSR, LLC; Gulf Coast Pita LLC

d/b/a Pita Pit; and Ralph C. and Mary Jo Anzivino's (the Respondents) motion for reconsideration of an order sustaining GCTC's objection to a request for production. We conclude that in granting the motion, the trial court departed from the essential requirements of law resulting in material injury that cannot be remedied on appeal. Therefore we grant the petition.

BACKGROUND

GCTC is the owner of a commercial shopping center. The Respondents Tag QSR, LLC, and Gulf Coast Pita LLC d/b/a Pita Pit LLC had a commercial lease with GCTC, and the Anzivinos were the guarantors of the lease. The underlying dispute involved GCTC's complaint for eviction and monetary damages, including claims against the Anzivinos, after the Respondents defaulted on their lease. The Respondents raised several affirmative defenses including that GCTC was required to ensure that the shopping center remained fully leased. The Respondents also filed a counterclaim seeking damages for constructive eviction and breach of the covenant of quiet enjoyment. During discovery, the Respondents sought, among other things, GCTC's monthly rent

rolls as they related to the other tenants of the shopping center.

Specifically, request for production #15 sought

[m]onthly rent rolls of Gulf Coast Town Center from the inception of GCTC's ownership to February 1, 2020, identifying the specific leased units by tenant name, location, square footage, and amounts billed and monies collected for each unit by month, and identifying the vacant units, including square footage of each vacant unit.

GCTC objected to this request, arguing that it was overbroad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence and further arguing that "it calls for privileged and confidential trade secret information." The Respondents then filed a motion to compel, which was denied after a hearing on the basis of overbreadth. The trial court made no finding related to GCTC's assertion of trade secret privilege.

Thereafter, the Respondents filed a motion for reconsideration as to request #15, arguing that the information they sought was readily available to GCTC because it was contained in all of the various leases between GCTC and the other tenants. Aside from the request for the leases, the Respondents asked for "any records showing when tenants vacated leased premises during the few years' time span." The Respondents maintained that the

information was critical to their defense and counterclaim and that without it they would be unable to present relevant evidence of the vacancy rate change in the shopping center during their tenancy. The Respondents asked the court to order production of the leases "with appropriate redactions to preserve privacy," along with "any records showing when a tenant vacated leased premises, again, with appropriate privacy redactions." Without holding a hearing, the trial court granted the motion, requiring GCTC to provide the leases with redactions to protect the tenants' privacy. No provision was included permitting GCTC to make redactions to protect its own privacy. This certiorari proceeding follows.

ANALYSIS

"[C]ertiorari is appropriate when a discovery order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal." *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995) (citing *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1099 (Fla. 1987)). And discovery of certain kinds of information, like material protected by privilege such as trade secrets, can result in irreparable harm. *Id.*; *see also*

Brinkmann v. Petro Welt Trading Ges.M.B.H., 324 So. 3d 574, 577-78 (Fla. 2d DCA 2021).

Trade secrets are privileged pursuant to section 90.506, Florida Statutes (2019). "To ensure that this privilege is properly protected, courts have set forth a three-step analysis for trial courts to undertake when faced with a claim that a discovery request seeks the production of protected trade secret information." *Lewis Tree Serv., Inc. v. Asplundh Tree Expert, LLC*, 311 So. 3d 206, 210 (Fla. 2d DCA 2020). "In the first step, the trial court must determine whether the information requested constitutes or contains trade secret information." *Id.* "This step will usually—but not always—require the court to conduct an *in camera* review of the documents to determine whether, in fact, they contain trade secret information." *Id.* at 210-11 (citing *Ameritrust Ins. Corp. v. O'Donnell Landscapes, Inc.*, 899 So. 2d 1205, 1207 (Fla. 2d DCA 2005)); *see also Brinkmann*, 324 So. 3d at 578 ("When parties dispute that documents are protected under certain statutory provisions, the proper course is for the trial court to conduct an in-camera inspection to determine if the requested documents are discoverable." (quoting *E. Bay NC, LLC v. Estate of Djadjich*, 273 So.

3d 1141, 1144 (Fla. 2d DCA 2019)); *Bright House Networks, LLC v. Cassidy*, 129 So. 3d 501, 505 (Fla. 2d DCA 2014) (noting that determination of whether requested information contains trade secrets usually requires an in camera review). If the trial court determines that the information is a trade secret, then it must determine "whether the party seeking production can show reasonable necessity for the requested information." *Lewis Tree Serv., Inc.*, 311 So. 3d at 211 (quoting *O'Donnell Landscapes, Inc.*, 899 So. 2d at 1207); *see also Cassidy*, 129 So. 3d at 505. This includes consideration of whether the requesting party's need for the documents outweighs the other's party's interest in maintaining the confidentiality of the documents; this is a fact-specific inquiry. *Lewis Tree Serv., Inc.*, 311 So. 3d at 211. "Finally, if the court determines that there is a reasonable necessity for production of trade secret information, the third step requires the court to determine what safeguards, such as a confidentiality order, should be put in place to properly protect that information." *Id.*; *see also Cassidy*, 129 So. 3d at 506.

"If the trial court orders disclosure, it must make findings to support its determination." *Cassidy*, 129 So. 3d at 506 (citing

O'Donnell Landscapes, Inc., 899 So. 2d at 1207). "A trial court 'may . . . depart from the essential requirements of law when it "requires production of documents—without explanation—despite objections that statutory protections apply." ' " *Brinkmann*, 324 So. 3d at 578 (quoting *E. Bay NC, LLC*, 273 So. 3d at 1144); *see also Harborside Healthcare, LLC v. Jacobson*, 222 So. 3d 612, 616 (Fla. 2d DCA 2017). "That is, where the trial court fails to specifically address whether claimed statutory privileges apply, leaving this court 'to guess at the basis for the discovery of each document' and as to whether the trial court even considered the objection, certiorari relief may be warranted." *Brinkmann*, 324 So. 3d at 578 (quoting *E. Bay NC, LLC*, 273 So. 3d at 1144); *see also Jacobson*, 222 So. 3d at 616. "This is because detailed findings on the issue of privilege 'are necessary for meaningful appellate review.' " *Brinkmann*, 324 So. 3d at 578 (quoting *Nemours Found. v. Arroyo*, 262 So. 3d 208, 211 (Fla. 5th DCA 2018)).

This court has repeatedly granted petitions for writ of certiorari where a trial court skips the first step—conducting the in camera review—and fails to make findings in its order regarding whether the requested information constitutes a trade secret or

whether the requesting party has demonstrated a necessity to overcome the claim of privilege. *See, e.g., Brinkmann*, 324 So. 3d at 578-80; *Cassidy*, 129 So. 3d at 506; *Summitbridge Nat'l Invs. LLC v. 1221 Palm Harbor, L.L.C.*, 67 So. 3d 448, 450-51 (Fla. 2d DCA 2011); *O'Donnell Landscapes, Inc.*, 899 So. 2d at 1207-08.¹

Here, no in camera review was ever conducted, the trial court never determined whether the requested information constituted trade secrets or whether the Respondents had demonstrated a sufficient necessity for the documents, and the trial court's order contained no findings relating to GCTC's claim of trade secret privilege. GCTC has clearly established a departure from the essential requirements of the law.

Turning to the issue of irreparable harm, the Respondents suggest that this court may determine, as a matter of law, whether

¹ Other districts likewise recognize that ordinarily an in camera review or evidentiary hearing must be conducted in order to determine whether the requested information constitutes a trade secret. *See Sea Coast Fire, Inc. v. Triangle Fire, Inc.*, 170 So. 3d 804, 808 (Fla. 3d DCA 2014); *Salick Health Care, Inc. v. Spunberg*, 722 So. 2d 944, 946 (Fla. 4th DCA 1998). Other districts also acknowledge the necessity for a trial court to make findings in orders of production following assertions of privilege. *See Sea Coast Fire, Inc.*, 170 So. 3d at 809; *Rare Coin-It, Inc. v. I.J.E., Inc.*, 625 So. 2d 1277, 1279 (Fla. 3d DCA 1993).

the requested documents constitute a trade secret. Were this court to determine that the trade secret privilege did not apply, then there would be no irreparable harm. However, the issue of whether requested information constitutes a trade secret generally "can be determined only after an *in camera* review," *Lewis Tree Serv., Inc.*, 311 So. 3d at 212, and it "must be decided by the trial court in the first instance," *Brinkmann*, 324 So. 3d at 579 n.4. Thus the irreparable harm component of our certiorari analysis cannot be resolved on this basis.

Furthermore, the fact that the trial court's order permits GCTC to redact information does not preclude us from determining that GCTC established irreparable harm. Notably, the order only permits redactions to protect tenants' privacy. The order says nothing about allowing GCTC to make redactions to protect any privileged confidential business information, that is, trade secrets. This is undoubtedly the result of the trial court's failure to conduct an *in camera* review and failure to rule on GCTC's assertion of the trade secret privilege. By requiring GCTC to produce the leases without first conducting an *in camera* review, without making any findings related to the issue of trade secret privilege and the

respondent's necessity for the documents, and without including any safeguards to ensure protection of any trade secrets contained in the leases, the trial court departed from the essential requirements of the law resulting in material harm to GCTC that cannot be remedied on appeal. Certiorari is therefore appropriate.²

Petition granted; order quashed.

KHOUZAM and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.

² We note that the Respondents' request for copies of the leases was made for the first time in the motion for reconsideration, and contrary to their assertion, that request is potentially broader in scope than their initial request for the monthly rent rolls. Arguably, GCTC was not afforded due process because it was not provided with the opportunity to present argument about the new, potentially broader request prior to the trial court's granting of the respondent's motion. *Cf. Moody v. Dorsett*, 149 So. 3d 1182, 1184 (Fla. 2d DCA 2014) (noting that if a trial court's ruling is "found to be erroneous, litigants must be granted an opportunity to present their case under the corrected ruling" (quoting *John Hancock Mut. Life Ins. Co. v. Zalay*, 522 So. 2d 944, 946 (Fla. 2d DCA 1988))); *Willson v. Big Lake Partners, LLC*, 211 So. 3d 360, 365 (Fla. 4th DCA 2017) (concluding that where a trial court changes its ruling during or after a trial without offering the party affected the opportunity to present its own evidence on the issue, an abuse of discretion occurs).