

**SUPREME COURT OF FLORIDA**

**CASE NO. SC14-2038**

Lower Tribunal Case No. 3D14-380, 13-23414 CA 15

**WILLIAM SCOTT HANNON, individually  
and G&S REALTY ADVISORS CORP., a Florida Corporation,**

Petitioners,

vs.

**MARK ROUSSO and THE ALHADEFF LAW GROUP, P.L.,**

Respondents.

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**INITIAL JURISDICTIONAL BRIEF OF PETITIONERS**

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## **STATEMENT OF THE FACTS AND OF THE CASE**

Andrew Mirmelli wanted to purchase or lease parking lots on the 200 block of West Flagler.<sup>1</sup> He entered into a confidentiality and non-circumvention agreement with William Scott Hannon and G & S Realty Advisors Corporation (collectively, “Hannon”) whereby Hannon promised to provide Mirmelli with information about Hannon’s progress in purchasing such lots with the idea that Mirmelli might purchase, lease, or invest in lots acquired by Hannon. Mirmelli in turn agreed not to try to directly purchase the lots and agreed to keep confidential both his interest in the lots and any information provided by Hannon. On May 14, 2013, unknown investors purchased a parking lot located at 208 West Flagler Street, Miami, Miami-Dade County, Florida.

Mirmelli sued Hannon to be released from the agreement and alleging he was damaged because he was not one of the investors who purchased the parking lot. He specifically averred:

*18. Subsequent to meeting with Defendant, HANNON, Plaintiff, MIRMEELLI learned that a property was for sale located at 208 West Flagler Street. This property was later sold to a third party.*

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<sup>1</sup> Unless otherwise indicated, the facts are taken from the dissent found in the decision under scrutiny, *Roussio v. Hannon*, reported at 146 So. 3d 66 (Fla. 3d DCA 2014).

*19. Due to the actions and/or inactions of Defendants, HANNON and G & S, Plaintiff, MIRMEELLI did not purchase this property or any other property located on this block. . . . .*

*21....[A]s a direct and proximate result of the Defendants' false or materially misleading statements regarding same, the Plaintiff has incurred substantial damages, including, without limitation, the ability to purchase, and/or lease a parking lot located at 208 West Flagler Street....*

Hannon expressly denied these allegations and sought to test them by discovering the identity of the investors who were behind the purchase of the parking lot located at 208 West Flagler. Hannon therefore subpoenaed Mark Rousso, the manager of Miami Flagler Parking Lots, LLC, the company that purchased the 208 West Flagler property. Hannon requested that Rousso provide the following documents:

1. All agreements between Miami Flagler Parking Lots, LLC and Andrew Mirmelli.

2. All communications between you and Andrew Mirmelli. This will include all emails and text messages. If these have not been printed out, you are requested to have these available in downloadable form.

3. Any and all documents showing the source of the funds used by Miami Flagler Parking Lots, LLC to acquire or purchase the real property identified in the attached deed. [The attached warranty deed identified the parking lot located at 208 West Flagler by its legal description].

4. The sales contract for the acquisition of the real property identified in the deed attached hereto.

Hannon also subpoenaed the records custodian of the Alhadeff law firm and requested the custodian to bring the following records:

1. All records pertaining to the deposit placed with respect to the attached contract [for sale of the parking lot located at 208 West Flagler on May 14, 2013] to include, but not be limited to:

- a. Copies of any checks delivered to the firm that comprise the deposit;
- b. If the deposit was placed by wire transfer, the advise [sic] issued by the bank into which the deposit was placed;
- c. Any documentation that shows or reflects the source of the deposit;
- d. The deposit slip pertaining to the deposit into the firm's account;
- e. The trust account records of the firm pertaining to the deposit, in particular, those required by Rule 5-1.2 of the Rules Regulating Trust Accounts.

Rousso and Alhadeff moved for a protective order claiming their purchase of the lot was irrelevant to Mirmelli's claims against Hannon, particularly because they were not involved in the litigation, their financial information was presumed confidential and the communications between Rousso and his counsel could be protected by the attorney-client privilege.<sup>2</sup> That motion for protection was denied by

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<sup>2</sup> Assertions contained the motion are recited at 146 So. 3d., at 69.

the lower tribunal. Roussio and Alhadeff then sought and obtained writ of *certiorari* from the Third District on the basis that:

(1) discovery is limited to matters framed by the pleadings and neither the complaint nor Hannon's affirmative defenses implicated the financial records of Roussio and Alhadeff and as such the order denying the motion for protective order departed from the essential requirements of law.<sup>3</sup>

(2) third party financial records are of the utmost sensitivity and are not discoverable unless the party seeking discovery established a need for the discovery sufficient to overcome the privacy rights of the third party.<sup>4</sup>

(3) attorney client communications are privileged.<sup>5</sup>

(4) even though a confidentiality agreement was offered in the trial court the petition was granted *because the requested discovery constitutes a trolling exercise through the confidential and potentially privileged records of a non-party*.<sup>6</sup>

### **POINT ON APPEAL**

Does *Roussio v. Hannon*, 146 So. 3d 66 (Fla. 3d DCA 2014), conflict with and disregard *The American Educational LLC v. Board of Internal Improvement Trust Fund*, 99 So.3d 450 (Fla. 2012) and *Sucart v. Office of Commissioner*, 129 So. 3d 114 (Fla. 3d DCA 2013)?

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<sup>3</sup> 146 So. 3d., at 69.

<sup>4</sup> 146 So. 3d., at 69-70.

<sup>5</sup> 146 So. 3d., at 70.

<sup>6</sup> 146 So. 3d., at 70.

## **SUMMARY OF ARGUMENT**

Through your decision in *American Educational* you mandated a severely limited use of *certiorari*, emphasizing the great latitude afforded trial courts to determine what is or what is not discoverable, particularly where the materials sought appear to be somewhat relevant. You also posited that discovery of third party financial information is not *per se* shielded from discovery because where the material sought appears to be relevant to the subject matter the information is discoverable. Moreover, through your decision you acknowledged the almost exclusive right of trial courts to protect parties through use of orders such as those maintaining confidentiality. Yet, notwithstanding the emphatic curtailment of the uses of the writ of *certiorari* and in total disregard and conflict, *Rousso v. Hannon* pronounces a different standard.

## **ARGUMENT**

In *The American Educational LLC v. Board of Internal Improvement Trust Fund*, 99 So.3d 450 (Fla. 2012) this Court expressed:

1. *Common law certiorari is an extraordinary remedy...*<sup>7 8</sup>

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<sup>7</sup> 99 So.3d at 454.

<sup>8</sup> All emphasis is supplied unless otherwise indicated.



2. *Certiorari relief is an “extremely rare relief that will be provided in “very few cases”.*<sup>9</sup>

3. *Certiorari is available to review non-final orders “but only in very limited circumstances.”*<sup>10</sup>

4. A finding that the petitioning party has suffered an irreparable harm that cannot be remedied on direct appeal is a condition precedent to invoking a district court’s *certiorari* jurisdiction.<sup>11</sup> **Without this an appellate court “may not grant certiorari”.**<sup>12</sup>

5. Once jurisdiction is determined, the order in issue must constitute a departure from the essential requirements of the law for *certiorari* to issue.<sup>13</sup>

6. *Irrelevant discovery alone is not a basis for granting certiorari.*<sup>14</sup>

7. Only when it is “**affirmatively** established that requested discovery was neither relevant nor [would] lead to the discovery of relevant information”, *certiorari* is available.<sup>15</sup> Emphatically *where materials sought by a party would appear to be relevant to the subject matter of the pending action, the information is fully discoverable.*<sup>16</sup>

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<sup>9</sup> 99 So.3d at 455.

<sup>10</sup> 99 So.3d at 454.

<sup>11</sup> 99 So.3d at 454-455.

<sup>12</sup> 99 So.3d at 455.

<sup>13</sup> 99 So.3d at 455.

<sup>14</sup> 99 So.3d at 452.

<sup>15</sup> 99 So.3d at 457.

<sup>16</sup> 99 So.3d at 458.

8. Even though *individual financial information is not discoverable when there is no financial issue pending in the case to which the discovery applies...However, where materials sought would appear to be relevant to the subject matter of the pending action, the information is fully discoverable.*<sup>17</sup>

9. *The rules of discovery provide sufficient means to limit the use and dissemination of discoverable information via protective orders, and it is the responsibility of the trial court to decide whether to employ those means in [a] case.*<sup>18</sup>

10. *Absent a showing of irreparable harm a petition for certiorari should be denied.*<sup>19</sup>

In *Sucart v. Office of the Commissioner*, 129 So.3d 112 (Fla. 3d DCA 2013)

upon observing *Board of Trustees*, the Third District added:

*The burden on a party to show the departure from an essential requirement of law, however, is high. “A departure from the essential requirements of the law that will justify issuance of this extraordinary writ requires **significantly more than a demonstration of legal error.**”*<sup>[20]</sup>

Rather than follow precepts of this Court rarefying dispensation of *certiorari* relief to very few and limited circumstances, with irrelevancy of the discovery sought not a proper basis for dispensation (and particularly not where the discovery sought

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<sup>17</sup> 99 So.3d at 458.

<sup>18</sup> 99 So.3d at 459.

<sup>19</sup> 99 So.3d at 459.

<sup>20</sup> 129 So.3d at 115 citing *Vill. of Palmetto Bay v. Palmer Trinity Private Sch., Inc.*, 37 Fla. L. Weekly D1599, D1600 (Fla. 3d DCA 2012).

appears relevant) and recognizing that through protective orders a trial court may adequately protect confidentiality and limit use of information, including confidential financial information, the Third District in *Rousso* misapplies<sup>21</sup> or conflicts with *American Educational*. Instead *Rousso* provides a standard expanding rather than limiting application of the extraordinary remedy of *certiorari* by adopting an improperly narrow view of discoverable evidence. *Rousso* requires that a litigant must make it more than “appear” that the material sought is relevant, and prescribes that third party financial information is somehow always sensitive and subject to protection through *certiorari*.

Thus the *Rousso* opinion places a burden on the party seeking the information to one of more than the appearance of relevancy regarding the request, and identifies the overwhelming concern as that of privacy. It seemingly ignores the available mechanism of cure for its privacy concerns - confidentiality orders - for which trial courts are preemptively given wide discretion by *American Educational* . Rather, it is the *Rousso* dissent that aligns perfectly with the precepts of this Court.

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<sup>21</sup> A misapplication of decisions provides a basis for express and direct conflict jurisdiction under Article V, Section 3(b)(3) Florida Constitution. *See Dorsey v. Reider*, 139 So. 3d 860, 862 (Fla. 2014); *Basulton v. Hialeah Automotive*, 141 So. 3d 1145, 1151 (Fla. 2014).

Ironically, the Third District itself has posited that one must show significantly more than a demonstration of legal error to obtain *certiorari*.<sup>22</sup> But that position is ignored. By its decision in *Rousso*, the Third District pronounces a more lax standard.

### **CONCLUSION**

Because the decision of the Third District in *Rousso* conflicts with or misapplies this Court's pronouncements in *American Educational* and that of the Third District itself, in *Sucart*, this Court has jurisdiction to consider a review of the *Rousso* decision.

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<sup>22</sup> *Sucart, supra.*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was on October 27, 2014, served via email upon Mark C. Alhadeff, The Alhadeff Law Group, P.L., Attorneys for Respondents, 3050 Biscayne Blvd., PH 1, Miami, FL 33137 and Alexander S. Orlofsky, The Orlofsky Law Firm, P.L., Attorneys for Mirmelli, 767 Arthur Godfrey Road, Miami Beach, Florida 33140 and upon.

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the Initial Jurisdictional Brief of Petitioners filed in this appeal complies with the font requirements of Rule 9.210(a)(2), of the Florida Rules of Appellate Procedure.

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