

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Lin Castre Gosman v. Joseph J. Luzinski, as Trustee of the
Bankruptcy Estate of Abraham David Gosman

Lin Castre Gosman v. Joseph J. Luzinski, as Trustee of the Bankruptcy Estate of Abraham David Gosman, 937 So. 2d 293 (Fla. Dist. Ct. App. 2006) (Fla. 4th DCA 2006) · No. No. 4D06-1896

SUMMARY

In **Gosman v. Luzinski**, 937 So. 2d 293 (Fla. 4th DCA 2006), the Florida Fourth District Court of Appeal held that a party’s objection to a discovery request as overly broad and burdensome tolls the obligation to file a privilege log under Florida Rule of Civil Procedure 1.280(b)(5) until the trial court rules on the objection and determines which materials are “otherwise discoverable.” The court reasoned that requiring a privilege log before the scope of discovery is resolved would force a party to review potentially undiscoverable documents, and it granted certiorari to quash a trial court order that had found waiver of attorney-client and other privileges for failing to file a log while the scope objection was pending. This decision clarifies that a timely scope objection suspends the privilege-log duty, and waiver should not be imposed when procedural rules are followed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Stevenson, C.J.; Hazouri, J.
JURISDICTION	Florida
DOCKET	No. 4D06-1896
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for writ of certiorari to review a circuit court order compelling production of documents and determining waiver of attorney-client privilege.
STANDARD OF REVIEW	Certiorari review for departure from essential requirements of law resulting in irreparable harm (privilege waiver).
PRECEDENTIAL VALUE	binding
PARTIES	Lin Castre Gosman v. Joseph J. Luzinski, as Trustee of the Bankruptcy Estate of Abraham David Gosman

TOPICS

civil procedure

discovery dispute

evidence

appellate procedure

bankruptcy

PRACTICE AREAS

civil_procedure

bankruptcy

discovery

QUESTIONS PRESENTED

1. Whether a party who objects to a discovery request as overly broad and burdensome waives attorney-client and other privileges by failing to file a privilege log before the court determines the scope of discoverable information.
2. Whether the circuit court departed from the essential requirements of law by finding waiver of privilege where the party had objected to the scope of discovery and requested an extension of time to file a privilege log.

HOLDINGS

1. No, a party who has timely objected to a discovery request on grounds of overbreadth or burdensomeness is not required to file a privilege log until after the court resolves the objection. The filing of the objection tolls the obligation to serve a privilege log because, until the scope of discoverable information is determined, the documents are not 'otherwise discoverable' under Florida Rule of Civil Procedure 1.280(b)(5).
2. Yes, certiorari review is proper when a discovery order compels production of privileged materials, because such an order causes irreparable harm that cannot be remedied on appeal.

KEY QUOTATIONS

“Before a written objection to a request for production of documents is ruled upon, the documents are not 'otherwise discoverable' and thus the obligation to file a privilege log does not arise. Once the objection is ruled upon and the court determines what information is 'otherwise discoverable,' then the party must file a privilege log reciting which documents are privileged.” (at 296)

“In our view, the objection to the discovery as burdensome essentially 'tolled' the obligation to file a privilege log until that objection was ruled upon.” (at 296)

FACTUAL BACKGROUND

A bankruptcy trustee sought to set aside transfers from debtor Abraham David Gosman to his wife, Lin Castre Gosman. The trustee served a discovery request on the wife seeking documents regarding her ownership and residence at various properties over a ten-year period. The wife timely objected that the request was overly broad and burdensome, asserted various privileges including attorney-client privilege, and requested an extension of time to file a privilege log if the court deemed one necessary. At a hearing on the trustee's subsequent motion to compel, the trustee agreed to limit the request to a year-and-a-half period.

PROCEDURAL HISTORY

In an action by a bankruptcy trustee to set aside transfers from a debtor to his wife, the trustee served on the wife a discovery request seeking ten years of documents. The wife timely objected on grounds of overbreadth and burdensomeness and asserted various privileges, requesting a thirty-day extension to file a privilege log if one were required. After the trial court denied her motion to dismiss, the trustee moved to compel production. At a hearing, the trustee agreed to limit the request to a year-and-a-half but argued the wife had waived privilege by not filing a log. The circuit court granted the motion to compel as limited but found waiver of all privileges. The wife petitioned for certiorari review.

DISPOSITION

writ_granted

CASES CITED

- Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097 (Fla. 1987)
- United Servs. Auto. Ass'n v. Crews, 614 So. 2d 1213 (Fla. 4th DCA 1993)
- TIG Ins. Corp. of Am. v. Johnson, 799 So. 2d 339 (Fla. 4th DCA 2001)
- Bankers Sec. Ins. Co. v. Symons, 889 So. 2d 93 (Fla. 5th DCA 2004)