

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SHOBHAN PAUL,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

BRIAN T. ROGERS,

Real Party in Interest.

B242284

(L.A.S.C. No. SC109499)

OPINION AND ORDER
GRANTING PEREMPTORY
WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Allan J. Goodman,
Judge. Petition granted.

Shobhan Paul, in pro. per., for Petitioner.

No appearance for Respondent.

Slaughter & Reagan, William M. Slaughter and Gabriele M. Lashly for Real Party
in Interest.

The trial court abused its discretion by denying Shobhan Paul's (Paul) motion to quash a subpoena to JP Morgan Chase Bank and ordering production of Paul's 2007 construction loan file to defendant Brian T. Rogers (Rogers). The construction loan file contains information subject to the laws of financial privacy and not relevant to defeat Paul's claim of diminution of value of his real property.¹ Accordingly, the petition is granted.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves a dispute between Paul and Rogers, next door neighbors on the Pacific Coast Highway in Malibu.²

On April 27, 2011, Paul filed a third amended complaint against Rogers (the operative complaint) for (1) breach of contract (oral and written), (2) breach of contract (oral), (3) assault, (4) negligence, (5) intentional infliction of emotional distress, (6) nuisance, (7) slander, and (8) declaratory relief. In the complaint Paul alleged that Rogers had opposed the construction of a new house on the Paul property. The City of Malibu Planning Commission overruled his objections. Rogers appealed to the City Council. The City Council unanimously ruled against him. Rogers sought a restraining order against Paul, but it was denied by Judge Gerald Rosenberg. On January 28, 2011, the court issued an injunction against Rogers because of Rogers alleged misconduct that includes, but is not limited to holding Paul's guests at gunpoint, nearly ramming Paul's car, posting a striking rattlesnake sign on the fence of Paul's property, and charging

¹ As there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a peremptory writ of mandate "in the first instance." (Code Civ. Proc., § 1088; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1237–1238; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240–1241; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court's intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

² Paul acquired the property in 1994. In 2007 he obtained a construction loan from JP Morgan Chase Bank and began construction of a spec house which he completed in March 2010.

towards Paul in a menacing manner. Paul further alleged that his property was listed for sale, but Rogers' conduct has made it impossible to market the property, and as a result forced Paul to take the house off the market. His complaint requested damages for diminution of the value of the property.

Rogers served a deposition subpoena for production of business records on JP Morgan Chase Bank for Paul's 2007 construction loan file. Paul moved to quash the subpoena. The trial court granted in part and denied in part the motion to quash, ultimately holding that the subpoena was proper but tax returns and tax information were to be excluded.

Rogers then served a modified subpoena excluding tax matters. Paul filed a second motion to quash. The trial court approved the subpoena but ordered that social security numbers be excluded or redacted and that the parties enter into a protective order.

Rogers served a modified subpoena, which is the subject of this writ petition. The subpoena demanded production of:

“Any and all documents pertaining to SHOBHAN PAUL in connection with the construction loan agreement dated 11/15/ 2007, including, but not limited to, initial borrower application, borrower authorization, credit used to qualify the loan, initial disclosures, initial good faith estimate, initial truth in lending, estimated settlement statement (HUD 1), lender loan approval, appraisals, final borrower application, final disclosures, final good faith estimate, final truth in lending, notes, deed of trust, all riders, escrow instructions, title policy, right of rescission, purchase agreement, foreclosure documents, correspondence, memoranda, phone notes, information collected and/or stored on any electronic devices. ** CMMC No. 07514865/1075148651; ORDER/TITLE No. 80701632 ** ANY TAX RETURNS, 1099's, W-2's OR SOCIAL SECURITY NUMBERS MUST BE EXCLUDED OR REDACTED **”

Paul filed another motion to quash the subpoena. Rogers opposed the motion on the ground that the trial court had already ruled on this matter twice, finding that the records are relevant and should be produced.

On June 18, 2012, the trial court denied Paul's motion: "Plaintiff's motion to quash defendant's subpoena to JP Morgan Chase Bank is denied with prejudice in its entirety. The records responsive to the subject subpoena are to be produced by the deponent to the address on the subpoena in Huntington Beach on or before June 21, 2012. This Court has executed a Protective Order regarding the JP Morgan Chase Bank documents."

DISCUSSION

Paul contends the subpoenaed material is not relevant to any issues in the dispute but instead is an unwarranted invasion of his privacy. Rogers argues that the material is relevant to defeat Paul's claim for diminution of value of the property. We agree with Paul.

Article I, section 1 of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

"Article I, section 1's 'inalienable right' of privacy is a 'fundamental interest' of our society, essential to those rights ""guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitution."" [Citations.] But another state interest lies in ""facilitating the ascertainment of truth in connection with legal proceedings"" [Citations.] The constitutional right of privacy is 'not absolute'; it may be abridged when, but only when, there is a 'compelling' and opposing state interest. [Citations.]

"In an effort to reconcile these sometimes competing public values, it has been adjudged that inquiry into one's private affairs will *not* be constitutionally justified simply because inadmissible, and irrelevant, matter sought to be discovered *might* lead to other, and relevant, evidence. [Citation.] "" When compelled disclosure intrudes on constitutionally protected areas, it cannot be justified solely on the ground that it may lead to relevant information."" [Citations.]

"And even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must then be a

‘careful balancing’ of the ‘compelling public need’ for discovery against the ‘fundamental right of privacy.’ [Citations.]” (*Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 524–525.)³

In balancing the interests for and against disclosure, the court should consider: “‘the purpose of the information sought, the effect that disclosure will have on the parties and the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances.’ [Citation.]” (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 658.)

Personal financial information is generally protected by the constitutional right of privacy. (See *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 268.) In this case the subpoena requests just such information. It seeks Paul’s loan application which contains such private information as Paul’s credit report, his credit history, his credit card information, a list of all of Paul’s assets and liabilities, income, funds held in banks, life insurance, his automobiles, and real estate holdings. Such records relate to the private affairs of Paul. Nor do the materials appear relevant to any claim or defense in the case. Rogers merely argues that such disclosure might lead to the discovery of admissible evidence of whether Paul overstated the value of the property, whether Paul’s responses to discovery have been truthful, and whether Paul possess a sophistication in real estate transactions. Further, even were such records’ direct relevance more readily apparent, a proper balancing of the competing values would necessarily weigh in favor of Paul’s right of privacy.

³ Since “judicial discovery orders [relating to private matters] inevitably involve *state-compelled* disclosure of presumptively protected information, the principles [of art. I, § 1] have equal application to purely private litigation.” (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 856, fn. 3.)

In this case, the deposition subpoena was overbroad and intruded on Paul's financial privacy rights.

DISPOSITION

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of June 18, 2012 denying Paul's motion to quash the deposition subpoena to JP Morgan Chase Bank, and to issue a new and different order granting the same, in Los Angeles Superior Court case No. SC109499, entitled Shobhan Paul v. Brian T. Rogers.

The temporary stay order is terminated upon the entry of a new order as described above.

Petitioner is to recover his costs.

NOT TO BE PUBLISHED

THE COURT*:

*MALLANO, P. J.

ROTHSCHILD, J.

JOHNSON, J.