[Cite as *Block Communications, Inc. v. Pounds*, 2015-Ohio-2679.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Block Communications, Inc.	Court of Appeals No. L-13-1224
Appellee	Trial Court No. CI0201106113
v.	
Thomas F. Pounds, et al.	**DECISION AND JUDGMENT**
Appellants	Decided: June 30, 2015

* * * * *

Thomas Dillon and Rebecca E. Shope, for appellee.

Matthew J. Rohrbacher, Todd M. Zimmerman and Adam V. Nowland, for appellants.

Reginald S. Jackson, Jr. and Tammy G. Lavalette, for amicus Curiae John Doe, a member of The Toledo Free Press LLC.

* * * * *

OSOWIK, J.

{¶ 1} This is an interlocutory appeal from a judgment of the Lucas County Court of Common Pleas in which appellee, Block Communications, Inc. ("BCI"), sought

information from appellants, Thomas F. Pounds, Michael S. Miller, and the Toledo Free Press,[1] which appellants opposed. After holding a hearing, the trial court granted an evidentiary hearing on the motion to compel the information and denied TFP's request for a protective order and a motion to quash subpoenas after finding that the information sought did not constitute a trade secret and was not otherwise confidential or privileged and was, therefore, subject to discovery. The relevant, undisputed facts are as follows.

{¶ 2} Thomas F. Pounds is a former general manager of The Toledo Blade ("The Blade"), a daily publication in Toledo, Ohio, which is owned by BCI. Pounds resigned his position at The Blade in 2004. At that time, Pounds and The Blade's management executed a separation agreement which, in exchange for monetary compensation and certain other benefits,[2] prohibited Pounds from directly or indirectly disparaging BCI, The Blade, and related parties. The separation agreement also prevented Pounds from disclosing any of BCI's "confidential" information and from competing with The Blade for a period of one year after the separation agreement was signed. After leaving The Blade, Pounds formed the Free Press, a weekly newspaper distributed free of charge in the Toledo area.

{¶ 3} In 2010, the Free Press published a series of articles containing information about The Blade which BCI claimed was obtained and disseminated in violation of

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[1] Pounds, Miller and the Toledo Free Press will be referred to collectively as "TFP." Where necessary, they will be separately as either "Pounds," "Miller," or "Free Press."
[2] The exact terms of the separation agreement were filed in the trial court under seal, pursuant to a joint stipulated protection order.

Pounds' separation agreement. On October 20, 2011, BCI filed a complaint against Pounds, Miller and the Free Press in the Lucas County Court of Common Pleas, in which it set forth claims for breach of contract, disparagement, improper use of confidential information, violation of Ohio's Deceptive Trade Practices Act (R.C. 4165.01 et seq.), and tortious interference with contract.

{¶ 4} On December 20, 2011, the Free Press, Miller and Pounds each filed separate answers and counterclaims against BCI. In its three counterclaims, the Free Press asserted that The Blade tortiously interfered with its relationships with local businesses and limited the outlets through which the paper could be distributed to the public, entitling the Free Press to unspecified regular and punitive damages. Miller and Pounds each filed four counterclaims, three of which set forth claims of tortious interference that were similar to those asserted on behalf of the Free Press. In addition, in his fourth counterclaim, Miller alleged that BCI intentionally made the false representation that Miller was an "instrumentality" of Pounds, entitling Miller to unspecified regular and punitive damages. Pounds alleged in his fourth counterclaim that BCI deliberately misconstrued the terms of the separation agreement to forever prohibit him from "disparaging" The Blade or using negative information that later came into his possession when, in actuality, the agreement limited such actions to either a one-year period or a "reasonable amount of time." Accordingly, Pounds counterclaimed for damages "that will compensate him for his personal losses, for actual damages and

punitive damages in an amount of Ten Million Dollars, and a declaration that the Separation Agreement of 2004 has expired."

{¶ 5} On June 15, 2012, the parties jointly executed a "Stipulated Protective Order" in which they agreed to a process whereby the parties could designate documents produced through discovery either as "confidential information" or "confidential information – attorney's eyes only," based on a "good faith determination" that the documents deserved such a designation.

{¶ 6} Pounds and Miller each filed separate motions for summary judgment on August 28, 2012, and BCI filed a motion for additional time to respond to summary judgment on September 14, 2012. In the meantime discovery commenced in this case, however, BCI claimed that Pounds, Miller and the Free Press gave only partial answers in response to some of its requests. On September 25, 2012, BCI filed a motion to compel discovery ("first motion to compel"), in which it asked the trial court to order TFP to respond to the following:

> Interrogatory No. 3, in which BCI asked for a description of Pounds' job duties at the Free Press.
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> Interrogatory No. 4, in which BCI asked for the identities, by name, of all of the Free Press's "directors, members, managers, officers, or employees that are the supervisors or subordinates of Pounds."
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> Interrogatory No. 9, in which BCI asked for "the identity [sic] of all members of [the Free Press]."

Interrogatory No. 12, in which BCI asked for the "the identity [sic] of all persons with whom Pounds has discussed John R. Block or Allan Block, from October 27, 2004 to the present," along with "a privilege log related to any information purportedly covered by R.C. 2739.12.[3]"

{¶ 7} In addition, BCI asked the trial court to compel the Free Press to answer certain requests for documents, including: (1) copies of the Free Press's operating agreements (request No. 3); (2) all documents "reflecting or identifying" the Free Press's members (request No. 4); (3) copies of "minutes, resolutions, or actions by consent of [the Free Press]" (request No. 5); (4) copies of "all agreements between Pounds and [the Free Press]" (request No. 6); (5) "documents referencing BCI, the Toledo Blade Company, John R. Block, Allan Block or any of the directors, officers, share holders or employees of BCI or The Toledo Blade" (request No. 8); (6) copies of correspondence by Pounds or other Free Press personnel referencing or relating to The Blade's advertising rates (request No. 11); (7) any documents "from or referencing any employees of The Toledo Blade" (request No. 15); (8) documents transmitted between Pounds or other Free Press personnel "regarding The Toledo Blade, BCI or any of its directors, officers, share holders or employees" (request No. 20); (9) copies of the Free Press's marketing plans (request No. 21); and (10) documents regarding the circulation of the Free Press (request No. 22).

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[3] Pursuant to R.C. 2739.12, newspaper reporters are not required to reveal the sources of information obtained in the course of their employment and used for purposes set forth in the statute.

{¶ 8} On October 26, 2012, TFP filed a memorandum in opposition to the motion to compel, in which it argued that the information sought was either not discoverable or had already been given to BCI. In addition, TFP asked the trial court to "hold a hearing and in camera review of the information sought by BCI, particularly privileged material, to determine its discoverability." On November 16, 2012, the trial court granted BCI's motion for additional time to respond to Pounds' and Miller's motions for summary judgment, and also granted BCI's first motion to compel responses to the above-referenced interrogatories and document requests.

{¶ 9} On December 5, 2012, TFP filed a "Motion for an Extension and Motion for a Protective Order or an In Camera Review and Request for Hearing" which stated that additional time was necessary to comply with BCI's discovery requests. TFP also asked for a hearing on the issue of whether or not a protective order should be issued to prevent BCI from obtaining the identities of the Free Press's members and investors, as sought in Interrogatory No. 9.

{¶ 10} In support of its request, TFP stated that because Pounds is a 60 percent owner of the Free Press, the other members do not have a controlling interest in the paper and, therefore, their names are not relevant. TFP argued that a protective order is needed since, pursuant to Section 15.4 of the Free Press's Third Amended Operating Agreement, its members have a duty of confidentiality, which includes a prohibition on disclosing the names of other members to third parties. Further, if a member is compelled by a court to disclose the names of other members, that member must notify the Free Press so it can

seek a protective order. Alternatively, TFP asked the court to conduct an in camera inspection of the requested documents because the identities of the Free Press's members is a trade secret pursuant to R.C. 1333.61(D). In support, TFP argued that: (1) the list itself has economic value in the hands of a competitor and (2) the members' names, which are not generally known by the public, are confidential pursuant to Section 15.4 of the Third Amended Operating Agreement. Finally, TFP argued that the members have a "vested interest" in keeping their identities confidential, since BCI would use that information to harm them.

{¶ 11} On December 21, 2012, BCI filed a memorandum in opposition to the motion for a protective order/in camera inspection. In support, BCI argued that: (1) no evidence was presented to support the claim that BCI would harm identified members of the Free Press, (2) the identities of the members are relevant because BCI needs them to properly investigate its claims against the Free Press, (3) no admissible evidence was presented to demonstrate that the members' identities constitute a trade secret pursuant to R.C. 1333.61(D), and (4) a hearing is "inappropriate" because the issues were previously briefed for the court on several prior occasions.

{¶ 12} On February 6, 2013, Pounds filed a motion for partial summary judgment as to his first counterclaim against BCI. In support, Pounds argued that Miller and the Free Press were not parties to the separation agreement, and are not bound by his obligation to not disparage The Blade or disseminate confidential information procured by Pounds during his employment by BCI. In addition, Pounds argued that Section 5 of

the agreement, which states that he "must not" disparage BCI or take any action intended to harm "the Company," is ambiguous because it does not set forth a time period during which the prohibition will be in effect. Pounds further argued that, because the agreement is ambiguous, he should be limited to only a term of one year, or a "reasonable" amount of time. Pounds asked the trial court to find that he did not violate the agreement as a matter of law since BCI did not file the lawsuit claiming that he "disparaged" The Blade until more than six years after the agreement was signed.

{¶ 13} On February 25, 2013, BCI filed a memorandum in opposition to Pounds' motion for partial summary judgment, in which it argued that the phrase "must not" is not ambiguous, and the separation agreement forever bars Pounds from disparaging The Blade and revealing confidential information obtained during his term of employment. That same day, BCI filed a cross-motion for summary judgment, in which it asked the trial court to dismiss Pound's first counterclaim. On March 13 and March 22, 2013, Pounds and BCI filed their respective replies. On April 19, 2013, the Free Press filed a separate motion for summary judgment, in which it argued that BCI's complaint against the paper for breach of contract should be dismissed as a matter of law because it was not a party to the separation agreement signed by BCI and Pounds.

{¶ 14} On May 10, 2013, TFP filed a motion to quash subpoenas duces tecum which were filed by BCI on May 3, 2013, in an effort to obtain financial information about the Free Press by obtaining financing documents from several banks. TFP also asked for a protective order as to those same documents "on grounds that they constitute

trade secrets or commercial information not to be disclosed." BCI opposed the motions to quash and for a protective order on May 24, 2013. On July 10, 2013, BCI filed a second motion to compel, in which it asked the trial court to order TFP to respond to its third set of interrogatories and requests for production of documents, which TFP opposed on July 26, 2013.

{¶ 15} On August 23, 2013, BCI filed Pounds' deposition, which was taken on March 14, 2013. In his deposition, Pounds testified that he spoke with potential investors and advertisers before forming the Free Press, some of which were his former co-workers at The Blade. Pounds stated that he drew up a five-year business plan and an operating agreement for the Free Press, which identified the paper's potential market. He said that his ex-wife, Kay, was formerly a co-owner of the paper, and that there were initially between 15 and 25 investors. Pounds stated that the only time he recalled criticizing any Blade employees was when he called a Blade reporter a "criminal" for interfering with the Free Press's sponsorship of a local event.

{¶ 16} Pounds stated that he has always been the general manager/president of the Free Press, and that Miller, as editor-in-chief, has the authority to hire and fire employees. Pounds further stated that Miller was unaware of the terms of the separation agreement. Pounds denied intentionally disparaging The Blade on several occasions, and further denied BCI's accusation that he overstated his paper's circulation numbers in comparison to that of The Blade. He denied physically retaining any "confidential information" after leaving his employment at The Blade.

{¶ 17} When asked about his own claims against The Blade, Pounds recounted several anecdotes to support his accusation that The Blade interfered with his ability to sell advertising in Toledo and to sponsor community events. He also recalled times when he was told that the Toledo Mud Hens and other business entities in Toledo would not allow the Free Press to distribute its papers out of fear that The Blade would retaliate. Pounds stated that Section 15.4 of the Free Press's Third Amended Operating Agreement does not allow Free Press members to disclose the names of other members; nevertheless, Miller disclosed his own interest in the company.

{¶ 18} On August 26, 2013, a hearing was held on BCI's outstanding motion to compel, and TFP's motion to quash and request for protective orders and/or an in camera inspection. At the hearing, counsel for TFP argued generally that BCI's motions to compel discovery should be denied because the Free Press would not be able to stay in business if it gave BCI the requested financial information. When the trial court asked for specific evidence as to how the Free Press would be harmed, TFP's counsel responded that information as to advertising rates, revenue, employee compensation, business plans, and other financial information are confidential trade secrets that may not be disclosed to the public.

{¶ 19} The trial court asked TFP's counsel to "break [that argument] down into pieces," to which counsel generally responded that members of the Free Press have other businesses that could be negatively affected by The Blade if their names were made known. TFP's counsel also argued that the requested financial data, which includes

TFP's revenue and expenses, would reveal the financial health of the Free Press to its major competitor, The Blade. Counsel for BCI responded that TFP needs to produce the documents that they claim are trade secrets before the trial court can decide which documents contain relevant information.

{¶ 20} As to the motion to quash, BCI's counsel argued that TFP's financial statements, business forecast documents, balance sheets and profit and loss statements are needed so that BCI can defend itself against the counterclaims for damages brought by Pounds, Miller and the Free Press, and also to judge the credibility of those counterclaims. In support of BCI's motion to compel, BCI's counsel argued that TFP is unable to meet the high burden imposed on a party claiming that requested information is a trade secret. BCI further argued that, in this case, TFP has already disseminated the requested information to third parties such as banks and potential new investors, and that Section 15.4 of TFP's Third Amended Operating Agreement only bars members from disclosing each other's names to outside entities in the absence of a court order. In response to the trial court's inquiry as to the relevance of the information being sought, BCI's counsel also argued that the goal of obtaining such information from TFP is to ascertain what disparaging information Pounds may have told others, including competitors, about The Blade.

{¶ 21} In response to BCI's argument, TFP's counsel said that disclosure of the members' names would have a "chilling effect" and would ultimately provide The Blade with the means of driving the Free Press out of business. When the trial court asked

TFP's counsel to "flesh out" that argument, counsel stated that individual advertisers are free to disclose what they pay for ads in the Free Press, however, the extent to which particular rates deviate from the paper's publicized "rate sheet" is confidential and privileged. Nevertheless, TFP's counsel admitted that it would be hard for BCI to estimate its potential liability without the requested financial information. BCI's counsel responded that the paper's rate sheet is public information and designating it for "attorney's eyes only" will not work. The trial court then asked BCI's counsel why it is necessary to force TFP to "spell out the demise of the viability of their business and hand that information over to a competitor who would gladly damage them, and quite frankly is a competitor who is considered a much larger player in the pool." BCI's counsel responded that none of the requested records would identify specific advertisers. After saying that it hoped to "strike a balance" between the parties, the trial court stated that the lack of detail in both parties' arguments gave it "nothing to go on."

{¶ 22} In addition to the above, TFP's counsel argued that the list of the members' names is a trade secret pursuant to R.C. 1333.61(D). Counsel further stated that the requested documents would provide BCI with "a broad x-ray of the health of the Free Press," and asked the trial court to at least allow only the attorneys to see them. Counsel for BCI stated that the purpose of the lawsuit is to stop Pounds from disparaging The Blade, and any other characterization is based on "pure speculation." BCI's counsel further stated that the documents are necessary because, pursuant to the separation agreement, Pounds agreed not to disclose information to third parties that he acquired

while working for The Blade, and he also agreed not to disparage or defame, or say anything else that is negative about The Blade for an indefinite period of time. TFP's counsel responded that the requests are a "fishing expedition" designed to put the Free Press out of business.

{¶ 23} On September 6, 2013, the trial court issued a journal entry in which it addressed the following: (1) TFP's December 5, 2012 motion for a protective order/in camera review, (2) BCI's July 10, 2013 motion to compel discovery responses, and (3) TFP's May 10, 2013 motions to quash subpoenas and for a protective order. After reviewing the evidence presented at the hearing and in the record, the trial court made the following findings and conclusions.

{¶ 24} As to TFP's motion for a protective order/in camera review, the trial court found that TFP's objections to relevancy were not well-taken because BCI presented enough evidence to support a "good faith basis" for its breach of contract claim, and because TFP's disclosure that Pounds owned 60 percent of TFP after May 2004 did not resolve issues related to ownership and control of the company before that date. In addition, the trial court found that Section 15.4 of the Operating Agreement, which purports to restrict the disclosure of TFP members' names, does not prohibit disclosure if the members agree to disclose, or if disclosure is ordered by a court. Finally, the trial court found that TFP did not present sufficient evidence pursuant to Ohio's Uniform Trade Secrets Act, R.C. 1333.61 et seq., or the six-factor test set forth by the Ohio Supreme Court in *Al Minor & Assoc., Inc. v. Martin,* 117 Ohio St.3d 58, 2008-Ohio-292,

881 N.E.2d 850, ¶ 16, to demonstrate that the list of names constitutes a trade secret. Based on its findings, the trial court concluded that the information sought by BCI potentially qualifies as "confidential information" under the parties' stipulated protective order. Finally, the trial court noted that the question of whether an LLC's list of members' names constitutes a trade secret has not been directly addressed in Ohio therefore, that issue, which is at the heart of this case, is "particularly well-suited for appellate review and guidance."

{¶ 25} As to BCI's motion to compel responses to document request Nos. 29, 31, and 32, the trial court found that TFP failed to meet its burden to show that any of the requested documents were either confidential, privileged, or met the definition of trade secrets, as set forth above.[4] In addition, the court found that BCI's need for the information outweighed any potential harm to TFP. Accordingly, the trial court ordered TFP to either produce the documents or designate them as "confidential" or "confidential – attorneys eyes only," subject to the terms of the stipulated protective order.

{¶ 26} Finally, the trial court found that TFP failed to present evidence to establish that the information sought from local banks[5] was not reasonably calculated to lead to

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[4] The discovery requests were for documentation of member meetings (No. 29), documents given to potential investors, owners and lenders (No. 31), and TFP's business plans (No. 32).

[5] BCI sought to obtain loan documents, business forecasts, balance sheets, profit and loss statements, cash flow statements, and work papers that may have been generated by TFP from several banks, including Fifth Third Bank, First Merit Bank, PNC, Signature Bank, N.A., and Key Bank.

discoverable evidence, or that the information constituted a trade secret as defined above. The trial court also found that BCI's need for such information to mount a defense against TFP's counterclaim exceeded any potential harm caused by its release. Accordingly, the trial court denied TFP's motion to quash. The trial court also found that TFP's request for a new protective order was moot in light of its ruling, and also because the stipulated protective order was already in place.

{¶ 27} TFP filed a timely notice of appeal from the trial court's decision on October 3, 2013. On December 16, 2013, a motion for leave to file a brief of amicus curiae in support of TFP was filed by John Doe, "a member of the Toledo Free Press LLC."

{¶ 28} On December 20, 2013, BCI filed a motion for partial dismissal of this appeal, in which BCI argued that TFP's first assignment of error was "untimely filed" because it essentially asked for a reconsideration of the trial court's November 16, 2012 judgment. On January 23, 2014, this court granted John Doe's request to file a brief of amicus curiae.

{¶ 29} On May 8, 2014, we denied BCI's partial motion to dismiss, after finding that: (1) the trial court's November 16, 2012 judgment denying TFP's first request for a protective order was not final and appealable, and (2) the filing of TFP's second motion for a protective order, although arguably a motion for reconsideration, did not "retroactively transform [that] non-appealable order into a final, appealable order." *Block Communications, Inc. v. Pounds,* 6th Dist. Lucas No. L-13-1224 (May 8, 2014).

Accordingly, we found that the appeal was timely, and denied BCI's partial motion to dismiss on that basis. *Id.* All preliminary matters having been determined, this case is now decisional.

{¶ 30} On appeal, TFP sets forth the following assignments of error:

A. The Trial Court Erred When it Denied [TFP's] Motion for a Protective Order.

B. The Trial Court Erred When it Granted [BCI's] Motion to Compel Discovery Responses.

C. The Trial Court Erred When it Denied [TFP's] Motions to Quash Subpoenas and for a Protective Order.

{¶ 31} In addition, appellant John Doe filed a brief of amicus curiae on appeal, setting forth the following additional "arguments:"

A. Ohio implicitly recognizes the right of members of a limited liability company to confidentiality in that membership.

B. The trial court abused its discretion when it failed to weigh the competing interests to be served by allowing discovery to proceed against the harm that may result to non-litigants.

Standard of Review

{¶ 32} A trial court's decision to grant or deny a discovery request is an interlocutory order which normally is neither final nor appealable. *McHenry v. Gen. Acc. Ins. Co.,* 104 Ohio App.3d 350, 351, 662 N.E.2d 51 (8th Dist.1995). However, in this

case, we previously held that the trial court's interlocutory order is final and appealable because it involves alleged confidential information and/or trade secrets. *Block Communications, Inc. v. Pounds,* 6th Dist. Lucas No. L-13-1224 (May 8, 2014), *supra*, citing *Harvey v. PD Properties, Inc.,* 8th Dist. Cuyahoga No. 97097, 2012-Ohio-276, ¶ 7; R.C. 2505.02.

{¶ 33} Once a trial court's decision regarding discovery is determined to be a final and appealable order, it generally will not be overturned on appeal absent a finding of abuse of discretion. *Randall v. Cantwell Mach. Co.,* 10th Dist. Franklin No. 12AP-786, 2013-Ohio-2744, ¶ 9, citing *MA Equip. Leasing I, L.L.C. v. Tilton*, 10th Dist. Franklin No. 12AP-564, 2012-Ohio-4668, 980 N.E.2d 1072, ¶ 13. An abuse of discretion connotes more than a mere error of law or judgment, instead requiring a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 276 (1983). With these standards in mind, we will now address TFP's and Doe's assignments of error.

{¶ 34} TFP asserts in its first assignment of error that the trial court erred when it denied TFP's request for a protective order. In support, TFP makes six arguments: (1) Ohio law protects the identities of an LLC's members as trade secrets, (2) the members' identities are not relevant to the issues in this case, (3) the members' identities "are protected as proprietary business information," (4) disclosure of the members' identities will have a "chilling effect on business in Ohio," (5) the court failed to consider potential harm to third parties resulting from disclosure of the members' names, and

(6) BCI has brought no claims against TFP's individual members, and has not attempted to pierce TFP's "corporate veil."

{¶ 35} Appellant John Doe, a member of the Toledo Free Press,[6] similarly asserts that members of an Ohio LLC are "implicitly" entitled to confidentiality "with regard to their membership status." In support, Doe argues that R.C. 1705.04 does not require disclosure of the identities of an Ohio LLC's members or managers. Doe also asserts that the trial court's reliance on *Delay v. Rosenthal Collins Group, LLC,* 585 F.3d 1003 (6th Cir.2009), in which the Sixth Circuit Court of Appeals held that the addresses of Ohio LLC members should be disclosed in order to establish jurisdiction under diversity statutes, is misplaced and that the trial court failed to weigh the potential harm that disclosure may cause TFP and its members against BCI's claim that it needs the information. Finally, Doe also asserts that the names of TFP's members are, at best, "marginally relevant" to the issues raised in BCI's claims and TFP's counterclaims, and the trial court erroneously refused to consider the potential harm to non-litigants if their names are given to BCI.

Ohio Law and R.C. 1705.04

{¶ 36} As stated above, appellant Doe asserts on appeal that Ohio law implicitly shields the names of an LLC's members from public disclosure. We disagree.

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[6] In the amicus curiae brief, Doe states only that he or she is a member of TFP who wishes to remain anonymous, and asks this court not to draw any conclusions as to gender or identity by the choice of the name "John."

{¶ 37} R.C. 1705.04, which dictates requirements for the filing of an LLC's articles of organization, requires a declaration of the name of the company, R.C. 1705.04(A)(1), the period of its duration, R.C. 1705.04(B), and "[a]ny other provisions that * * * are not inconsistent with applicable law" that the members elect to set out in the articles. R.C. 1705.04(A)(3). R.C. 1705.22 gives each member the right to obtain information regarding the status of the business and its financial status, and a current list of names, addresses and businesses of all the members "upon reasonable demand for any purpose reasonably related to its membership interest in the company." R.C. 1705.22(A)(1). Further, pursuant to R.C. 1705.28, an Ohio LLC is required to keep a current list of its members' names, R.C. 1705.28(A)(1), copies of the last three years' financial statements, R.C. 1705.28(A)(5), and an accounting of the amount of cash and/or the value of other property contributed by each member, R.C. 1705.28(A)(6)(a). R.C. 1705.48(A) states that an Ohio LLC's debts, obligations and liabilities are not the members' responsibility and R.C. 1705.48(B) protects members and managers from liability simply because of their relationship to the LLC. However, pursuant to R.C. 1705.48(C), members and managers may be held personally liable for their own actions and omissions.

{¶ 38} While Doe correctly asserts that none of the above-referenced statutes mandates disclosure of the names of an LLC's members or financial information to third parties, he has failed to establish that they prohibit the dissemination of such information, either expressly or by implication. In this case, only Section 15.4 of the Free Press's

Third Amended Operating Agreement prohibits the LLC's members from disclosing such information to third parties, however, that prohibition does not include court-ordered disclosure.

{¶ 39} On consideration of the foregoing, we find no support for Doe's claim that Ohio law creates an express or implied "protectable interest in preserving the confidentiality of [the members'] identities." His argument to the contrary is, therefore, without merit.

Relevance

{¶ 40} Both TFP and Doe assert on appeal that the information sought by BCI is not relevant to the issues raised in this case.

{¶ 41} Civ.R. 26(B)(1) states, in pertinent part, that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party * * *." Ohio courts have found that the standard for relevancy during discovery "is much broader than the test for relevancy used at trial." *Hope Academy Broadway Campus v. White Hat Mgmt., LLC,* 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911, ¶ 42, citing *Covington v. The MetroHealth Sys.*, 10th Dist. Franklin No. 02AP-243, 2002-Ohio-6629, ¶ 23. Accordingly, "[m]atters are only irrelevant at the discovery stage when the information sought will not reasonably lead to the discovery of admissible evidence." *Id.,* citing *Tschantz v. Ferguson*, 97 Ohio App.3d 693, 715, 647 N.E.2d 507 (8th Dist.1994).

Moreover, "'the concept of relevancy as it applies to discovery is not to limit it to the issues in the case, but to the subject matter of the action, which is a broader concept.'" *Dater v. Charles H. Dater Found.*, 1st Dist. Hamilton Nos. C-202675, C-202784, 2003-Ohio-7148, ¶ 51, quoting *Dennis v. State Farm Ins. Co.*, 142 Ohio App.3d 196, 204, 757 N.E.2d 849 (7th Dist.2001).

{¶ 42} Generally, the admission or exclusion of relevant evidence is within the sound discretion of the trial court, and will not be overturned absent a finding that the trial court abused its discretion. *Northeast Professional Home Care, Inc. v. Advantage Home Health Servs., Inc.*, 188 Ohio App.3d 704, 2010-Ohio-1640, 936 N.E.2d, ¶ 36 (5th Dist.). However, Ohio courts have held that a trial court's determination as to the relevancy of discovery materials is not a final, appealable order. *Lytle v. Mathew*, 9th Dist. Summit No. 26932, 2014-Ohio-1606, ¶ 10, citing *Hope Academy*, *supra*, ¶ 43. Accordingly, we need not reach a determination as to the relevancy of the information sought by BCI, or whether the trial court erred or otherwise abused its discretion by compelling its discovery.

Trade Secrets/Confidential Information

{¶ 43} TFP and Doe further assert on appeal that the trial court erred by denying TFP's motion for a protective order and/or in camera inspection because TFP's business and financial records and the list of its members' names constitute confidential information and protected trade secrets, respectively. In addition, TFP and Doe assert

that the trial court erred by refusing to consider the negative impact on the LLC's members if BCI were to obtain such information.

{¶ 44} As stated above, generally, appellate courts review a trial court's decision regarding discovery matters for abuse of discretion. *Randall,* 10th Dist. Franklin No. 12AP-786, 2013-Ohio-2744, *supra,* at *¶* 9. "However, the appropriate standard of review for a privilege claim depends on whether it presents a question of law or a question of fact." *Id.* When it is necessary to interpret and apply statutory language to determine whether certain information is confidential and/or privileged, a de novo standard applies. *Id.* In this case, one of the issues presented is whether the information sought by BCI in discovery constitutes protected trade secrets pursuant to R.C. 1333.51. Accordingly, our determination as to whether TFP's members' list is a trade secret is de novo. *Med. Mut. of Ohio v. Schlotterer,* 122 Ohio St.3d 181, 2009-Ohio-2496, 909 N.E.2d 1237, ¶ 13.

{¶ 45} R.C. 1333.61(D), part of Ohio's Uniform Trade Secrets Act, defines a "trade secret" as:

> [I]nformation, including * * * any business information of plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

{¶ 46} In addition, the Supreme Court of Ohio has adopted the following six factors to analyze a trade secret claim:

> (1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, *i.e.*, by the employees; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information. *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), citing *Pyromatics, Inc. v. Petruziello*, 7 Ohio App.3d 131, 134-135 (8th Dist.1983).

{¶ 47} This court has held that "[a] claimant asserting trade secret status has the burden to identify and demonstrate that the material is included in categories of protected information under the statute." *Arnos v. MedCorp, Inc.*, 6th Dist. Lucas No. L-09-1248, 2010-Ohio-1883, ¶ 26. Also, the party claiming to possess a trade secret must demonstrate that he or she has taken "some active steps to maintain its secrecy in order to enjoy presumptive trade secret status." *Id.*

{¶ 48} TFP produced no admissible evidence at the evidentiary hearing held on August 26, 2013, to substantiate its claims that it would be irreparably harmed by disclosure of its members' names, in spite of the trial court's repeated, specific requests for such information. Similarly, the record contains nothing other than anecdotal evidence and the subjective opinions of Pounds and others that BCI harmed TFP's business interests in the past, and that the disclosure of TFP's financial information would enable BCI to harm TFP and its members in the future. In addition, paragraph 15.4 of the Third Amended Operating Agreement, which became effective in 2010, limits the members' ability to disclose each other's names. However, it also states that those names may be disclosed pursuant to a court order.

{¶ 49} The Supreme Court of Ohio has held that "[c]onclusory statements as to trade secret factors without supporting factual evidence are insufficient to meet the burden of establishing trade secret status." *Arnos v. MedCorp, Inc.*, 2010-Ohio-1883, ¶ 28, citing *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 404, 732 N.E.2d 373 (2000). Upon consideration of the record in this case, although the information sought in discovery does, in part, consist of "business information" and a "list of names," we conclude that TFP failed to meet its burden under R.C. 1333.61(D) and *State ex rel. Plain Dealer*, *supra*, to demonstrate that the list and other financial information requested through discovery satisfies the test for a trade secret.

{¶ 50} The second issue is whether the information sought by BCI was confidential, protected information, for which the trial court should have issued a

protective order or held an in camera inspection. In support, TFP argues that its members and its business would be irreparably harmed if it is compelled to produce business information and the list of its members' names to BCI as part of discovery in this case.

{¶ 51} When the trial court is asked to fashion a protective order or hold an in camera review of information, it must "balance the competing interests to be served by allowing discovery to proceed against the harm which may result." *Arnold v. Am. Natl. Red Cross*, 93 Ohio App.3d 564, 576, 639 N.E.2d 484 (8th Dist.1994). As with the issue of trade secrets, the burden to establish the information's protected status falls upon TFP, as it is the party seeking to exclude the information. *Ramun v. Ramun*, 7th Dist. Mahoning No. 08 MA 185, 2009-Ohio-6405, ¶ 31, citing *Covington v. The MetroHealth Sys.,* 150 Ohio App.3d 558, 2002-Ohio-6629, 782 N.E.2d 624, ¶ 24. Because TFP's claim requires us to review factual questions, as opposed to the interpretation of statutory language, "an abuse-of-discretion standard applies." *Nunez Vega v. Tivurcio*, 10th Dist. Franklin No. 14AP-327, 2014-Ohio-4588, ¶ 9, citing *Randall*, 10th Dist. Franklin No. 12AP-786, 2013-Ohio-2744, at ¶ 9.

{¶ 52} TFP correctly states that, at the evidentiary hearing on August 26, 2013, the trial court compared an order compelling disclosure of TFP's members' names and business plans to forcing a party to "take the knife out of the drawer, sharpen it, and clean it up and then hand it over to the eventual attacker to slice their throat." However, that remark was made in the context of "summing up" TFP's position with regard to the requested information. As stated above, TFP presented no evidence at that hearing, or

elsewhere in the record, other than counsel's conclusory statements, to support its argument that the information sought by BCI constituted confidential, privileged business information. In addition, although TFP asked the trial court to conduct an in camera inspection, it did not offer evidence at the hearing to justify that request.

{¶ 53} Based on the lack of evidence, coupled with the existence of the stipulated protective order, we cannot say that the trial court abused its discretion by concluding that an effective remedy was already in place, and that TFP did not meet its burden to demonstrate that more court-ordered protection was necessary to prevent potential harm to TFP or its members.

Chilling Effect/ Potential Harm

{¶ 54} TFP also asserts that if the trial court's orders are allowed to stand, there will be a "chilling effect on business in Ohio." In support, TFP argues that, as a result of the trial court's ruling, any claim to privacy by an Ohio LLC member is eliminated making it difficult, if not impossible, for businesses to obtain investors in this state. TFP further argues that, as a matter of public policy, an Ohio LLC's members should not be forced to identify themselves in this lawsuit or any similar situation where the members are merely "innocent bystanders" who have no direct interest in the outcome of a legal action.

{¶ 55} At least one Ohio court has held that a party who claims that his or her rights are "chilled" must demonstrate "'evidence of a 'specific present object harm' or a threat of 'a specific future harm.'" *Ohio Elections Comm. v. Ohio Chamber of*

Commerce and Citizens for a Strong Ohio, 10th Dist. Franklin Nos. 03AP-1121, 03AP-1137, 2004-Ohio-5253, ¶ 30, quoting *Friends Social Club v. Secy. of Labor,* 763 F.Supp. 1386, 1393 (E.D.Mich.1991). In that instance, the appellate court held that a mere "subjective belief" that intimidation or harassment might result from disclosure of the names of advertisement sponsors in a political campaign is insufficient to establish a factual basis on which to conclude that a "chilling effect" would result from enforcement of the subpoena issued by a local elections commission. *Id.* at ¶ 31.

{¶ 56} In this case, TFP seeks to protect its financial information and the names of its members by arguing that the trial court's refusal to first grant a protective order or hold an in camera inspection spells certain doom not only for the organization, but also for its investors. We recognize that, like the sponsors in *Ohio Elections Comm.*, TFP might have difficulty presenting evidence to support its assertions of future harm without disclosing at least some of the very information it seeks to protect. However, other than counsel's arguments and hearsay statements made by Pounds and others, the record contains no admissible evidence that any of the alleged instances in which BCI harmed the Free Press by pressuring local advertisers and business into shunning the paper actually took place. In addition, TFP has made no effort to have the requested discovery information classified as "confidential information" or "confidential information – attorney's eyes only," under the parties existing stipulated protection order. Accordingly, we cannot say that the trial court abused its discretion by refusing to grant TFP's request

for a protective order or an in camera inspection, based on TFP's subjective belief that disclosure might cause TFP and its members intimidation or harassment.

Piercing the "Corporate Veil"

{¶ 57} TFP asserts that the trial court erroneously relied on R.C. 1705.48, which imposes personal liability on the members of an LLC, to bolster its decision to require disclosure of the members' names, when BCI made no attempt to "pierce the Free Press's corporate veil." TFP then reasserts that: (1) its members are "innocent third parties in this lawsuit," which BCI has erroneously cast as Pounds' "instrumentality," (2) a protective order should have been issued because the members' names are not relevant to BCI's claims, (3) BCI gave no "compelling reason" other than "speculation" to support its request for the members' names, and (4) the "unique relationship" between TFP and its members demonstrates the need to protect the "proprietary and trade secret status of the members' identities."

{¶ 58} The trial court's statement regarding personal liability of an LLC's members under R.C. 1705.48 was made as part of a discussion regarding the members' rights and responsibilities in the context of their expectation of privacy, as opposed to the expectations of "mere financial benefactors or supporters." The trial court did not suggest or find that BCI would have to "pierce the corporate veil" in order to obtain TFP's members' names. TFP's remaining arguments have been addressed elsewhere in this decision.

{¶ 59} On consideration, we find that the trial court did not err by refusing to grant TFP's request for a protective order and/or an in camera inspection. TFP's first assignment of error and John Doe's two assignments of error are not well-taken.

{¶ 60} In its second assignment of error, TFP asserts that the trial court erred when it granted BCI's motion to compel discovery responses. In support, TFP expressly adopts the arguments made in support of its first assignment of error. In addition, TFP argues that the business plans of the Free Press are protected by R.C. 1333.61(D), which includes "business information or plans" in the statutory description of a "trade secret," and R.C. 1333.65, which states that a court "shall preserve the secrecy of an alleged trade secret" in the context of discovery proceedings.

{¶ 61} R.C. 1333.65 does not mandate that a trial court issue a protective order based on a mere allegation that material is a "trade secret." *See State ex rel. ABM Janitorial Midwest, Inc. v. Franklin Cty. Court of Common Pleas*, 10th Dist. Franklin No. 09AP-27, 2010-Ohio-623 (The trial court has discretion to issue a protective order in response to an allegation of trade secrets.). As set forth above, TFP did not meet its burden to establish that the list of its members' names meets the definition of a trade secret, as defined by R.C. 1333.61(D), and *Arnos v. MedCorp, Inc.*, 6th Dist. Lucas No. L-09-1248, 2010-Ohio-1883. As to TFP's remaining argument that the information sought is not relevant, we have previously determined that the issue of relevancy cannot be addressed in the context of this appeal. *Lytle v. Mathew*, 2014-Ohio-1606, *supra*. TFP's second assignment of error is not well-taken.

{¶ 62} In its third assignment of error, TFP asserts that the trial court erred as a matter of law when it denied the motions to quash and for a protective order, because the loan documents sought by BCI contained confidential information and/or trade secrets. We disagree.

{¶ 63} Generally, an appellate court will not overturn a trial court's ruling on a motion to quash a subpoena absent a finding of an abuse of discretion. *Bickel v. Cochran*, 10th Dist. Franklin No. 14AP-439, 2014-Ohio-5862, ¶ 9. For the reasons set forth above, we find that the trial court did not abuse its discretion when it found that TFP did not meet its burden to demonstrate that the information sought by BCI constituted confidential, protected information and/or trade secrets. TFP's third assignment of error is, therefore, not well-taken.

{¶ 64} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. ____________________________
JUDGE

Thomas J. Osowik, J.

____
Stephen A. Yarbrough, P.J. JUDGE
CONCUR.

____
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.