

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed October 14, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-2241

Lower Tribunal No. 07-34042

Gilbert Guede and Jeziel Guede,
Petitioners,

vs.

Windsor Capital Mortgage Corporation, etc.,
Respondent.

On Petition for Writ of Certiorari to the Circuit Court for Miami-Dade County, William Thomas, Judge.

Halpern Rodriguez, and Anouk M. Villegas and Marc A. Halpern, for petitioners.

David and Joseph, and Allan A. Joseph and Michael B. Kornhauser, for respondent.

Before RAMIREZ, C.J., and LAGOA and SALTER, JJ.

SALTER, J.

Gilbert and Jeziel Guede seek a writ of certiorari quashing two circuit court orders compelling them to produce documents, alleging that the “act of production may incriminate [them] and may lead to a link in the chain of evidence necessary to prove a crime.” The respondent, Windsor Capital Mortgage Corporation, requested production of applications for financing by the Guedes and additional documents alleged to have been created or used in a fraudulent mortgage scheme.

The circuit court correctly overruled the Guedes’ objections to production and their claims of privilege. No showing has been made that any of the requested documents are “testimonial communications” as detailed in Fisher v. United States, 425 U.S. 391 (1976), or that the very possession of the requested documents might itself constitute a criminal offense (as in Heddon v. State, 786 So. 2d 1262 (Fla. 2d DCA 2001)). Having conceded that copies of the requested documents were transmitted to other parties to the lawsuit, or in other cases to third parties, the Guedes’ objections have no basis in fact or law.

Petition denied. Respondent’s motion for attorney’s fees is granted and remanded by separate order.