

# EXHIBIT 10

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT COURT DIVISION

CASE NO. 12-12858 CA 27

TOTAL BANK, a Florida corporation,

Plaintiff,

vs.

BERNARDO ENRIQUE NAVARRO,  
an individual,  
Defendant.

\_\_\_\_\_ /

The above-entitled cause came on for hearing before the  
Honorable Rosa Rodriguez, Judge of the above-styled court,  
at the Dade County Courthouse, Miami, Florida, on the 29th  
day of January, 2014, commencing at 11:30 a.m.



APPEARANCES

On behalf of the Plaintiff:

SAPURSTEIN & BLOCH, P.A.  
9700 South Dixie Highway  
Suite 1000  
Miami, Florida 33156  
BY: BURT SAPURSTEIN, ESQUIRE

On behalf of Benworth:

LAW OFFICE OF ALEXIS GONZALEZ, P.A.  
3162 Commodore Plaza, Suite 3-E  
Coconut Grove, Florida 33133  
BY: LAZARO VAZQUEZ, ESQUIRE

1           (Thereupon, the following proceedings  
2       were had:)

3           THE COURT: Total Bank versus Navarro,  
4       is anybody here for this?

5           MR. VAZQUEZ: Yes, Your Honor. Lazaro  
6       Vazquez on behalf of the Garnishee, Benworth  
7       Capital Partners, LLC.

8           MR. SAPURSTEIN: Burt Sapurstein on  
9       behalf of Plaintiff, Total Bank.

10          Good morning, Your Honor.

11          MR. VAZQUEZ: We have a court reporter  
12       present here today.

13          THE COURT: Great. Please announce your  
14       appearances.

15          MR. VAZQUEZ: Lazaro Vazquez on behalf  
16       of Garnishee, Non-Party Benworth Capital  
17       Partners, LLC.

18          MR. SAPURSTEIN: And Burt Sapurstein on  
19       behalf of Total Bank, the Plaintiff.

20          MR. VAZQUEZ: Your Honor, before I begin  
21       my argument, just two things. If I may  
22       approach with a copy of the motion, I have a  
23       hard copy for the court.

24          THE COURT: Great. I have a copy. It's  
25       NON-PARTY Benworth Capital Partners, LLC's

1 Motion for Protective Order and Objections to  
2 Corporate Representative Subpoena... just to  
3 make sure that is the same copy.

4 MR. VAZQUEZ: Yes, Your Honor, that is  
5 what I just handed to the court.

6 THE COURT: I have it.

7 MR. VAZQUEZ: Your Honor, before I get  
8 into the merits of the actual argument, and I  
9 just want to make sure that the court is  
10 aware that the garnishee's position is, it's  
11 not objecting to any discovery being sought  
12 in execution of the final judgment against  
13 the individual Defendant who is Bernardo  
14 Enrique Navarro. Our objections are actually  
15 as to particular points raised in the Notice  
16 of Deposition Duces Tecum. First of all,  
17 Benworth is not a party, it is a garnishee,  
18 and as a matter of fact, Benworth is a  
19 competitor of Total Bank; Benworth issues  
20 loans just like Total Bank issues loans, so  
21 they're both in the same industry.

22 I also want to bring up to the court's  
23 attention that the court has not ordered  
24 Mr. Navarro to file a fact information sheet.  
25 I have a copy here of the Final Judgment,

1 Default Final Judgment, which doesn't say  
2 that the individual Defendant is ordered to  
3 file a fact information sheet. Now, the  
4 issue is that they're seeking the discovery  
5 as to the finances of Benworth, the actual  
6 corporation and as to the finance of other  
7 employees at Benworth, and that's the extent  
8 of our objection.

9 If Your Honor goes to Page 2 of our  
10 motion, it says that Benworth is -- excuse  
11 me, that they're asking -- examination topic  
12 number two, they're asking Benworth to  
13 produce a representative regarding the  
14 payments made to other employees of the  
15 garnishee for the years 2012 to 2013.  
16 They're also seeking any person reporting  
17 self-employment income through garnishee for  
18 the years 2012 through 2013, and they're  
19 seeking Benworth produce a representative  
20 regarding the financial records of garnishee  
21 for the years 2012 through 2013.

22 Our entire position has been, they're  
23 obviously entitled to seek discovery of  
24 the -- any payments that are going towards  
25 Bernardo Enrique Navarro, but everything else

1 is off limits because otherwise it turns into  
2 a fishing expedition.

3 THE COURT: Let me interrupt.

4 MR. VAZQUEZ: Yes.

5 THE COURT: The Defendant is Navarro, as  
6 an individual only?

7 MR. VAZQUEZ: Yes, Your Honor.

8 THE COURT: And the judgement is as to  
9 Navarro as an individual only?

10 MR. VAZQUEZ: Yes, Your Honor.

11 THE COURT: I just want to make sure. Go  
12 ahead.

13 MR. VAZQUEZ: And going forward -- I  
14 have a copy of the --

15 THE COURT: I'm sorry to interrupt you  
16 again. You don't have an objection to any of  
17 this as it pertains to Mr. Navarro  
18 individually, your objection is as to other  
19 parties; is that correct?

20 MR. VAZQUEZ: Yes, Your Honor.

21 THE COURT: Okay. So the employees  
22 namely are the only other parties that  
23 there's an interest in?

24 MR. VAZQUEZ: Yes.

25 THE COURT: Okay.

1 MR. VAZQUEZ: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. VAZQUEZ: And I have here about  
4 seven or so employees that are employed by  
5 Benworth.

6 THE COURT: Okay. Let me just cut to the  
7 chase here -- I'll get back to you.

8 Mr. Sapurstein, that has a certain  
9 visceral appeal right away, that if he's the  
10 garnishee and if he's an individual. So  
11 explain.

12 MR. SAPURSTEIN: Happy to, Your Honor.

13 THE COURT: Okay.

14 MR. SAPURSTEIN: If I may, I'd like to  
15 show the court the Florida Department of  
16 State, Division of Corporation information on  
17 Benworth.

18 THE COURT: Okay.

19 MR. SAPURSTEIN: So that Your Honor can  
20 see that the manager of Benworth is  
21 Mr. Navarro. I also have the deposition in  
22 aid of execution of Mr. Navarro that we took  
23 a little over a year ago, Your Honor. This  
24 is the original, if I may.

25 And, Your Honor, this is not a situation

1 where we're dealing with a third party  
2 unrelated to our debtor, this is a  
3 corporation owned and controlled by our  
4 debtor.

5 In the deposition, Your Honor, Page 9,  
6 Line 18, I ask Mr. Navarro: "Are you  
7 employed, sir?"

8 "Yes."

9 "By whom?"

10 "Benworth Capital Partners."

11 "And what position do you hold?"

12 "President."

13 Well, actually he's the manager, Your  
14 Honor.

15 THE COURT: Okay.

16 MR. SAPURSTEIN: And so I said: "Are you  
17 paid a salary?"

18 And he said: "No."

19 I said: "How are you paid?"

20 And his answer was, moving to Page 10.

21 "Year end, I get paid at the end of the  
22 year."

23 And I said: "Do you get one check?"

24 He said: "Yes."

25 "And did you receive a check in December

1 of '12?"

2 "No."

3 "Why not?"

4 "My accountant hasn't done it yet."

5 "Are you expecting a check in a  
6 particular amount?"

7 "I don't know."

8 "You don't know if you're expecting to  
9 get paid?"

10 "I don't know when I'm expecting it."

11 "How much is the check going to be?"

12 "I don't know."

13 So we go on to Page 12, and I'm asking  
14 him how do you explain how much money you're  
15 going to get, you're the president?

16 I said: "Are you also the owner of  
17 Benworth?"

18 "I'm an owner."

19 "Are you a shareholder?"

20 "Yes."

21 Then he says his percentage of the  
22 shares is nine percent and his wife's  
23 percentage is 91 percent, Your Honor.

24 So when we start talking about other  
25 employees specifically, I want to know about

1 his wife who he said -- moving to Page 13,  
2 Your Honor: "Is your wife employed by  
3 Benworth?"

4 "Yes."

5 "What does she do?"

6 "She helps with the office."

7 "She's an office worker?"

8 "Yes."

9 "And does she receive a salary?"

10 "Yes."

11 "How much does your wife receive?"

12 And he says that he has no idea.

13 THE COURT: Let me ask you, are you  
14 seeking only Mr. Navarro and Mrs. Navarro or  
15 are there others?

16 MR. SAPURSTEIN: Well, in his deposition  
17 he says he has two or three --

18 THE COURT: I'll let you respond.

19 MR. SAPURSTEIN: He says he has two or  
20 three other employees, Your Honor. I don't  
21 care about the other unrelated employees.

22 THE COURT: Okay. So you're interested  
23 in the wife?

24 MR. SAPURSTEIN: I'm interested in the  
25 wife.

1 THE COURT: Okay.

2 MR. SAPURSTEIN: I'm interested in  
3 Mr. Navarro. It doesn't sound to me like  
4 somebody who says he gets one check at the  
5 end of the year, is the manager of the LLC,  
6 is the member of the LLC and suddenly say, "I  
7 don't know how much money I'm getting," et  
8 cetera et cetera.

9 THE COURT: I didn't know what this  
10 business -- I just didn't know the scenario.

11 MR. SAPURSTEIN: No, of course not.

12 THE COURT: I didn't know any of these  
13 facts.

14 MR. SAPURSTEIN: He does go on to say  
15 that his wife gets paid \$70,000 on Page 19 of  
16 the, of the deposition.

17 And I would also point out that he was  
18 subpoenaed to bring his tax return and he  
19 brought only two pages and never brought the  
20 schedules including the K1 which would tell  
21 us the theoretically how much he earned from  
22 Benworth. So there's that issue as well,  
23 Your Honor.

24 THE COURT: I understand.

25 MR. SAPURSTEIN: Thank you.

1 THE COURT: Thank you. Okay. Got the  
2 picture somewhat.

3 Let me hear from you again.

4 MR. VAZQUEZ: Just briefly, Your Honor.  
5 Again, it's very important to note that  
6 Benworth is a direct competitor of Total Bank  
7 so there -- if you take a look at their  
8 specific request, and I attached a copy of  
9 the Notice of Deposition.

10 THE COURT: I have it here.

11 MR. VAZQUEZ: It's not requesting what  
12 he's saying he wants here today in court,  
13 it's actually very, very ambiguous.

14 THE COURT: Where are you reading? I  
15 have Page 1 or -- where --

16 MR. VAZQUEZ: Exhibit A.

17 THE COURT: Hold on. Number 1 -- you  
18 mean you're going to be asking about payments  
19 to him or just like, you know, like, when he  
20 was employed and how much he's been paid? .

21 MR. VAZQUEZ: I don't have an objection  
22 to Number 1, Your Honor.

23 THE COURT: Okay.

24 Number 2 is going to be only other  
25 employees, but that's really going to be just

1 to the wife, correct, Mr. Sapurstein?

2 MR. SAPURSTEIN: Yes, Your Honor.

3 THE COURT: Wife only?

4 MR. SAPURSTEIN: Yes.

5 THE COURT: And then 3, any person  
6 reporting self-employment income -- I don't  
7 understand that.

8 MR. SAPURSTEIN: Well, Your Honor,  
9 again, they didn't bring their entire tax  
10 return, notwithstanding the fact that they  
11 were subpoenaed to do so. So, we're not sure  
12 whether he pays himself a 1099 and he does  
13 self-employment tax, or whether he get a W-2  
14 from Benworth.

15 THE COURT: Okay.

16 MR. SAPURSTEIN: We'd like to see the  
17 W-2's of both Mr. Navarro and his spouse so  
18 we can determine if they're paid. He claims  
19 he gets one check at the end of the year.  
20 We'd like to see the payroll, we'd like to  
21 see if that's correct.

22 THE COURT: Okay.

23 MR. SAPURSTEIN: And they can redact it  
24 as to any other employee, other than  
25 Mr. Navarro and his spouse.

1 THE COURT: So basically you want the  
2 W-2, any payroll records or documentation  
3 reflecting payments to Mr. and Mrs., whether  
4 they're as employees or 1099's or whatever.

5 MR. SAPURSTEIN: Exactly, Your Honor,  
6 that's correct.

7 THE COURT: Okay, I understand. And then  
8 financial records of the garnishee for the  
9 years 2012 and 2013.

10 MR. VAZQUEZ: That's overly ambiguous,  
11 Your Honor.

12 THE COURT: Hold on.

13 MR. VAZQUEZ: That's our issue.

14 MR. SAPURSTEIN: Again, Your Honor,  
15 since Mr. Navarro is the member/owner of the  
16 company, along with his wife, they appear to  
17 own 100 percent of the company, we'd like to  
18 see the balance sheet, we'd like to see the  
19 assets, we'd like to see what monies are  
20 being earned by that company because that  
21 bares directly on the ability we believe of  
22 Mr. Navarro to pay this judgment.

23 THE COURT: Okay. I understand.

24 Let me hear -- let's start with two.  
25 This goes to the wife considering that she

1 owns 91 percent.

2 MR. VAZQUEZ: Your Honor, just cutting  
3 to the chase. The bottom line is what he's  
4 requesting is.... he wants the wife's  
5 information. The wife has a private  
6 financial interest in this information that's  
7 separate and apart from her husband. The  
8 judgement was entered personally against  
9 Bernardo Enrique Navarro, it was not entered  
10 against his wife, that's the whole reason why  
11 we're objecting today. I feel that the  
12 wife's private financial information is off  
13 limits as well and I have case law to support  
14 that. They haven't shown -- there has to be  
15 some kind of good faith predicate to show  
16 that there's something going on where it  
17 would alert them to the fact that they have  
18 to have discovery as to this person.

19 THE COURT: Let me see your case.

20 MR. VAZQUEZ: Yes.

21 THE COURT: Let me see it.

22 And then really four goes hand in hand  
23 because that's related to the wife also.

24 In light of Mr. Navarro seeming to be in  
25 control of the company but with the wife

1 actually owning the stock, you know, I  
2 understand the concern.

3 MR. SAPURSTEIN: Your Honor, also in the  
4 deposition, I said: "What does your wife do,  
5 she has three children at the time six and  
6 under?"

7 He said: "She works from the home."

8 I said: "Well, what does she do?"

9 And his answer was: "Well everything,  
10 she washes the floor, she types." This is  
11 the response I got.

12 THE COURT: At the business?

13 MR. SAPURSTEIN: Yes, notwithstanding  
14 the fact that she's allegedly the 91 percent  
15 owner of the company.

16 THE COURT: Give those to the bailiff,  
17 please.

18 Let me see the cases that you have.

19 So you've given me this Rappaport case,  
20 and in this case they were just going after  
21 discovery of the wife, there was no company  
22 in the middle like we have here.

23 MR. VAZQUEZ: Correct, Your Honor.

24 THE COURT: I'm just glancing at it, so  
25 I'm going to rely on you if I've

1 misapprehended it.

2 MR. VAZQUEZ: I'm sorry, Your Honor. If  
3 I could direct the court to this one  
4 particular case out of the Third D.C.A.

5 THE COURT: Yes.

6 MR. VAZQUEZ: It's a law firm -- you  
7 have the copy in front of Your Honor.

8 THE COURT: Yes.

9 MR. VAZQUEZ: It's Pyszka Kessler  
10 Massey. It's the Law Firm's move for a  
11 protective order in a dissolution of marriage  
12 proceeding to limit discovery of financial  
13 documents by non-equity partner's wife.

14 This is the same scenario, where the  
15 wife is a partner in Benworth and she has no  
16 stake in this judgment, the judgement is  
17 entered against her husband, and now they're  
18 trying to backdoor in and reach the wife, but  
19 they haven't laid that predicate.

20 THE COURT: Well, they're not really  
21 trying to reach the wife, from what I  
22 understand, they're trying to reach his  
23 interest in this Benworth company and whether  
24 any of his interests in that or assets,  
25 either assets, interest in the company or

1 income is, I guess, being diverted to the  
2 wife. It's not a situation, as I see it,  
3 where they're just, you know, going to the  
4 wife just because she's the wife.

5 MR. SAPURSTEIN: Exactly.

6 MR. VAZQUEZ: And the court has hit on  
7 the point. They're trying to see if he's  
8 diverting monies to the wife, but they  
9 haven't established anything. There has --  
10 he has to lay some kind of predicate. He  
11 took the man's deposition, man referring to  
12 Navarro, and Navarro, in full candor, said  
13 this is my wife's interest, this is what she  
14 does for a living. But that's not a showing  
15 to the court that it's sufficient to invade  
16 the wife's privacy interest as a partner of  
17 Benworth.

18 MR. SAPURSTEIN: Your Honor, it takes a  
19 lot of temerity to stand before the court,  
20 when your client comes to a deposition and  
21 says that he's the nine percent owner, his  
22 wife's 91, she gets 70,000, he may or may not  
23 get a check, yet the documents with Secretary  
24 of State reflect that he's the manager of the  
25 company, it's his company. What does she do?

1 She washes the floor and types.

2 It's clear that this Defendant is  
3 attempting to hide income and assets, and I  
4 think it's very reasonable to take a look and  
5 see the extent to which that is happening.

6 THE COURT: I've heard enough. I'm going  
7 to deny the Motion for Protective Order  
8 regarding the wife, you know, matters related  
9 to her and this company, given that  
10 Benworth --

11 MR. VAZQUEZ: Benworth Capital Partners.

12 THE COURT: -- is a competitor, if  
13 there's some kind of confidentiality  
14 agreement that you all want to include or --  
15 you know, certainly I would, you know, be  
16 willing because I understand, but I don't  
17 know that any proprietary issues, you know,  
18 would come up, but you could consider that.

19 But I think that as to the wife's  
20 finances, just as to this one company, his  
21 interest in this one company, is not  
22 inappropriate.

23 MR. VAZQUEZ: Your Honor, if I could  
24 just make a record.

25 THE COURT: Sure.

1 MR. VAZQUEZ: We've cited to the 3rd  
2 D.C.A.'s opinion at 602 So.2d 955, Pyszka,  
3 Kessler, Massey, Weldon, Catri, Holton, &  
4 Douberley v. Mullin.

5 It's our position that, "Disclosure of  
6 information delineating the partners'  
7 financial situation unnecessarily violates  
8 their privacy rights." And we're relaying on  
9 this opinion. And here the order would  
10 violate the privacy rights of the wife.

11 The next opinion that we're relying on  
12 would be Bradstreet v. Taraschi, it's at 529  
13 So.2d 809. "In a dissolution of marriage  
14 action, a third party's financial records may  
15 discoverable if an issue arises as to  
16 improper financial dealings between the third  
17 parties and one of the spouses. However, it  
18 is improper to require a third party to  
19 disclose financial records which are not  
20 relevant to any economic issues in the  
21 action. Trial courts must perform a delicate  
22 balancing act, an inquiry which is too  
23 limited may prevent a spouse from obtaining  
24 evidence necessary to show the misconduct  
25 alleged, while an overwrought inquiry becomes

1 an unfettered fishing expedition." And  
2 that's our position here.

3 If the court would allow us to have  
4 maybe an evidentiary hearing, we also have  
5 case law that says that the showing must be  
6 made at an evidentiary hearing as far as  
7 demonstrating the need to take a third party  
8 deposition and invade their private finances;  
9 I don't know if the court would be amenable  
10 to that.

11 THE COURT: Well, I've already had a  
12 hearing and I've ruled so I'm not sure what  
13 you're asking. Now you want an evidentiary  
14 hearing? I'm not sure where that fits into  
15 this picture.

16 MR. VAZQUEZ: In other words, it's our  
17 position that the case law mandates that the  
18 party requesting the discovery has to request  
19 an evidentiary hearing and prove to the court  
20 and make detailed findings of fact as to  
21 whether or not there is something -- some  
22 deceit or something devious going on as far  
23 as moving the finances between the wife and  
24 husband, and it's our position that they have  
25 not shown that.

1 THE COURT: Well, that's a different  
2 issue because I've ruled and you're making  
3 that argument after I've given a ruling, so I  
4 think you've waived that, as far as I'm  
5 concerned.

6 MR. SAPURSTEIN: Your Honor --

7 THE COURT: So that's my ruling.

8 MR. SAPURSTEIN: Your Honor, from a  
9 timing standpoint, how long for them to  
10 produce and to appear at a deposition? It's  
11 been several months because they requested a  
12 special hearing.

13 THE COURT: I don't know. I mean, was it  
14 because you wanted to wait for this?

15 MR. VAZQUEZ: Yes, Your Honor.

16 THE COURT: Okay, so --

17 MR. VAZQUEZ: We'll cooperate. We'll  
18 prepare a proposed agreed order -- proposed  
19 order based on the court's ruling.

20 THE COURT: I don't know. Within what?  
21 A couple of weeks, a week, ten days? I mean,  
22 I don't know if you're going to take it up.

23 MR. VAZQUEZ: Twenty days.

24 MR. SAPURSTEIN: Twenty days is fine  
25 with me, Your Honor, if they'll produce

1 within 20 days. And how long to appear for a  
2 deposition, Your Honor, a corporate  
3 representative, to appear for a deposition?  
4 Thirty days, an agreed time within 30 days?

5 MR. VAZQUEZ: I don't know whether my  
6 client is available or not, but 30 days is --

7 THE COURT: That sounds more than  
8 reasonable. I'll tell you what, let's make  
9 it 30 days and if there's some extreme  
10 hardship or some problem that -- Mr.  
11 Sapurstein is reasonable as far as I know --  
12 no, you've always been pretty reasonable, so  
13 I can't imagine that if there's is some  
14 legitimate scheduling issue that you wouldn't  
15 be able to work it out, but, you know, I'm  
16 here in case you can't.

17 MR. SAPURSTEIN: Thank you, Your Honor.

18 THE COURT: Thank you. Nice to see you  
19 all. Have a nice day.

20

21 (Thereupon, at 12:00 the hearing was  
22 concluded for the day.)

23

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24

25

CERTIFICATE

STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE    )

I, JOANNE CAUDILL, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the proceedings in the above-styled cause before the Honorable Rosa Rodriguez at the time and place herein set forth and that the foregoing transcript constitutes a true and complete record thereof.

I further certify that I am not an attorney or counsel to any of the parties, nor financially interested in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 29th day of January, 2014.

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JOANNE CAUDILL, COURT REPORTER  
NOTARY PUBLIC, STATE OF FLORIDA  
My Commission Expires: