

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASSOCIATED SURGICAL CENTER OF
DEARBORN, LLC, et al,

Plaintiffs,

v

UHG 2, LLC, et al,

Defendants.

Case No. 14-141946-CZ
Hon. Wendy Potts

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR PROTECTIVE ORDER OR IN
THE ALTERNATIVE FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan
On

~~NOV 14 2014~~

The matter is before the Court on Defendants' request that the Court enter a protective order allowing the individual Defendants to designate their personal financial information as "highly confidential," which is in essence a request for an "attorneys' eyes only" (AEO) designation. Defendants assert that the personal financial information Plaintiffs seek contains irrelevant and confidential information that warrants the highly restrictive designation. In the alternative, Defendants ask the Court to reconsider its decision allowing Plaintiffs to discover the individual Defendants' personal financial information.

At the hearing on the motion, the Court decided to enter Plaintiffs' proposed protective order without a highly confidential or AEO designation and ordered the entity Defendants to respond to Plaintiffs' discovery requests. The Court allowed the parties to submit supplemental

briefs on whether an AEO designation is needed and whether the Court should reconsider its ruling that the individual Defendants' financial information is relevant and discoverable.

As for Defendants' motion for reconsideration, they fail to demonstrate palpable error in the Court's conclusion that the individual Defendants' personal financial information is relevant. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Plaintiffs allege that the individual Defendants misappropriated money from Plaintiffs and assert claims for fraud, conversion, and embezzlement. Plaintiffs further allege that the individual Defendants commingled their personal finances with the finances of their corporate entities. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Because the individual Defendants' personal financial information would have a tendency to make Plaintiffs' allegations of misappropriation and commingling more or less probable, it is relevant. Thus, the Court will not reconsider its decision that Plaintiffs are entitled to discover the individual Defendants' personal financial information.

Regarding Defendants' request for a protective order with an AEO designation, the Court acknowledges and understands Defendants' concern about releasing the information. Plaintiffs are seeking a large amount of personal information about the individual Defendants, including credit, bank, and retirement account statements, paychecks and other income records, and tax documents. However, the Court is not convinced that all of the information sought is so highly confidential that Plaintiffs' counsel cannot be allowed to share it with their clients or experts. As Plaintiffs' counsel notes and this Court is all too aware, an AEO designation is problematic and can be abused to thwart discovery. Such designations should be limited to exceptional cases where the party being asked to release highly confidential information to the opposing party

demonstrates that doing so will cause identifiable and certain harm. Defendants' claims of harm are generalized and nonspecific – other than concerns about invasions of their personal privacy, they fail to identify any particular, definite harm that would result if Plaintiffs are allowed to view their personal financial information. Further, given the allegations in this case, the Court will not allow Defendants to use privacy concerns to protect potential evidence of their alleged wrongdoing.

Nonetheless, given the personal nature of the information sought, the Court will allow Defendants an opportunity to make a specific showing of harm warranting an AEO designation through the following procedure:

1. Defendants must carefully review all of the information that is responsive to Plaintiff's discovery requests and make a good faith effort to produce documents or other information that is sufficiently protected under the existing protective order.
2. To the extent that Defendants deem certain information so personal or confidential that they believe it should be produced under an AEO only designation, Defendants may redact that information. Defendants must make a good faith effort to produce documents or other information by redacting only the highly confidential information. For example, if the only confidential information in a document is a Social Security number, Defendants should produce that document redacting only that number.
3. Defendants must create a log with a detailed description of the redacted information and a particularized explanation of why Defendants believe that information needs to be subject to an AEO designation.
4. Defendants must serve Plaintiffs with their responses to the discovery and the AEO log within 14 days.

5. After Defendants serve their discovery responses and AEO log, Plaintiffs may contest Defendants' AEO designations.

Dated:

NOV 14 2014

IT IS SO ORDERED.

Hon. Wendy Potts