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**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

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BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS
CLERMONT COUNTY, OH

TERRY HAMILTON :
Plaintiff : **CASE NO. 2017 CVH 00446**
vs. : **Judge McBride**
WENDELL KELCH, ET AL. : **DECISION/ENTRY**
Defendants :

Dagger, Johnston, Miller, Ogilvie & Hampson, LLP, D. Joe Griffith, counsel for the plaintiff Terry Hamilton, 144 E. Main Street, P.O. Box 667, Lancaster, Ohio 43103

John Woliver, counsel for the defendants Wendell Kelch and Kelch's Repair Service, 204 North Street, Batavia, Ohio 45103

This cause is before the court for consideration of (1) the plaintiff Terry Hamilton's motion filed on July 26, 2017 seeking a protective order and (2) the defendants Wendell Kelch and Kelch's Repair Service's motion filed on August 1, 2017 seeking an order to compel discovery responses.

The court scheduled and held a hearing on the motions on August 17, 2017, during which counsel made oral arguments on the motions. At the conclusion of the hearing, the court took the issues raised by the motions under advisement.

Upon consideration of the motions, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTUAL AND PROCEDURAL BACKGROUND

The present case stems from a dispute over the costs the defendants Wendell Kelch and Kelch's Repair Service charged the plaintiff Terry Hamilton for the restoration of the plaintiff's Farmall International Harvester 560 Turbo Fwd. tractor (the "Tractor"). The plaintiff collects antique tractors. The defendant Mr. Kelch owns the defendant business Kelch's Repair Services, where he restores antique tractors. The plaintiff claims that the defendants agreed to restore his Tractor for between \$10,000 and \$15,000, but the defendants instead charged him \$34,647.27.

The defendant Mr. Kelch is alleged to have quoted the Tractor restoration cost to Justin Grandstaff, an employee of the plaintiff. Mr. Kelch allegedly made the quote to Mr. Grandstaff while attending a tractor fest on the plaintiff's property located at 3209 Headleys Mill Road in Licking County, Ohio. The day of tractor fest, September 23, 2016, the Tractor had been on display.

The plaintiff alleges that he later had an oral agreement with the defendants that they would restore the Tractor for between \$10,000 and \$15,000. Once the restoration was underway, the defendants billed the plaintiff for \$8,918.78. The plaintiff paid the invoice using a check from a third party, Fleco Attachments, Inc. ("Fleco"), which sells tractor parts. The plaintiff is the president of Fleco. Notably, Fleco also pays Mr.

Grandstaff's salary, although he purports to be the plaintiff's employee. After the first invoice, the defendants sent several more bills to the plaintiff in the amounts of \$1,658.52, \$2,386.71, and \$17,254.19, which the plaintiff has not paid.

On January 12, 2017, the plaintiff filed the present action in the Licking County Court of Common Pleas. It was later transferred to this court after the Licking County Court of Common Pleas entered a change of venue order. The complaint contains the following causes of action against the defendants: (1) breach of contract, (2) promissory estoppel, (3) unjust enrichment, (4) conversion, (5) Ohio Consumer Sales Practices Act violations, and (5) fraud.

On May 1, 2017, the defendants filed their answer along with a counterclaim against the plaintiff. In their counterclaim, the defendants include the following causes of action: (1) breach of contract, (2) unjust enrichment, and (3) promissory estoppel.

On July 26, 2017, the plaintiff filed a motion for protective order against the defendants. As discussed in more detail below, there are specific interrogatories and requests for documents that the plaintiff does not want to respond to. On August 1st, the defendants filed a motion to compel the plaintiff to respond to the discovery requests at issue. On August 14th, the plaintiff filed a combined response in opposition to the defendants' motion to compel and a reply in support of his motion for a protective order. On August 17th, the court held a hearing on the motions, and at the conclusion of the hearing, the court took the motions under advisement.

LEGAL STANDARD

The Civil Rules of Procedure afford parties “* * * a right to liberal discovery of information * * *.”¹ The scope of discovery is provided for in Civ.R. 26:

“Parties 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. * * * It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”²

Thus, under Civ.R. 26, the concept of relevancy for discovery is “not limited to the issues in the case, but to the subject matter of the action, the latter being broader than the former.”³ “Generally, a party may obtain discovery regarding any matter concerning the pending litigation.”⁴ “In the discovery phase, documents are irrelevant when the information sought will not reasonably lead to the discovery of admissible evidence.”⁵

¹ *Ward v. Summa Health Sys.*, 128 Ohio St.3d 212, 2010-Ohio-6275, ¶ 9, citing *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 661-662, 635 N.E.2d 331 (1994).

² Civ.R. 26(B).

³ *Nilavar v. Osborn*, 137 Ohio App.3d 469, 499, 738 N.E.2d 1271 (2d Dist. 2000), quoting Klein & Darling, *Civil Practice* (1997) 6, Section 26-1. See *Moskovitz*, 69 Ohio St.3d at 661, citing Civ.R. 26(B)(1) (“The purpose of Civ.R. 26 is to provide a party with the right to discovery all relevant matters, not privileged, that are pertinent to the subject of the pending proceeding.”).

⁴ See *Crosby v. Rose*, 4th Dist. Pike No. 97CA594, 1998 WL 51603, *5 (Feb. 11, 1998), citing Civ.R. 26(B)(1). See *First Bank of Marietta v. Mitchell*, 4th Dist. Washington No. 82 X 5, 82 X 14, 1983 WL 3307, *12 (Nov. 29, 1983) (Citation omitted.) (“The Civil Rules and the commentators are in unanimous agreement that the scope of discovery under Civ.R. 26(B)(1) is not limited to matters which are admissible into evidence, but extend to all matters not privileged, which is relevant to the subject matter involved in the pending action.”).

⁵ *Fifth Third Bank v. Jones-Williams*, 10th Dist. Franklin No. 04AP-935, 2005-Ohio-4070, ¶ 13, citing *Tschantz v. Ferguson*, 97 Ohio App.3d 693, 715, 647 N.E.2d 507 (8th Dist. 1994).

Although the discovery rules are liberal, the trial court "is vested with authority to limit pretrial discovery in order to prevent an abuse of the discovery process."⁶ Indeed, the "regulation of discovery is committed to the sound discretion of the trial court * * *."⁷ The court may order a protective order under Civ.R. 26(C) to prevent "fishing expeditions," where a discovery request is broad and the party requesting the discovery fails to demonstrate a likelihood that relevant evidence will be obtained.⁸

Civ.R. 26(C) provides:

"Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; * * * (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters * * *."⁹

Civ.R. 26(C) requires the movant to make "a reasonable effort to resolve the matter through discussion with the attorney or unrepresented party seeking discovery."¹⁰ In doing so, the motion for a protective order must "be accompanied by a

⁶ *Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc.*, 134 Ohio App.3d 673, 680, 731 N.E.2d 1209 (8th Dist. 1999), citing *Arnold v. Am. Natl. Red Cross*, 93 Ohio App.3d 564, 575, 639 N.E.2d 484 (8th Dist. 1994).

⁷ *Air-Ride, Inc. v. DHL Express (USA), Inc.*, 12th Dist. Clinton No. CA2008-01-001, 2008-Ohio-5669, ¶ 7, quoting *Henderson Elec. Co. of Ohio, Inc. v. Elan Constr. Mgt. Serv.* 92 Ohio App.3d 98, 101, 634 N.E.2d 267 (1st Dist. 1993). See *Nilavar*, 137 Ohio App.3d at 499, citing Klein & Darling, *Civil Practice* (1997) 6, Section 26-1.

⁸ *Drawl v. Cleveland Orthopedic Ctr.*, 107 Ohio App.3d 272, 277-278, 668 N.E.2d 924 (11th Dist. 1995).

⁹ Civ.R. 26(C).

¹⁰ Civ.R. 26(C).

statement reciting the effort made to resolve the matter in accordance with this paragraph.”¹¹

As with discovery generally, the “decision whether to grant or deny the protective order is within the trial court’s discretion * * *.”¹² If the court denies the motion for a protective order in whole or in part, then the court may order that a party provide discovery on “terms and conditions as are just.”¹³ Moreover, Civ.R. 26(C) states that awards for expenses incurred from the motion for a protective order are governed by Civ.R. 37(A)(5), which is discussed below.

While Civ.R. 26 provides a mechanism to protect a responding party from answering interrogatories or producing documents, Civ.R. 37 provides a mechanism for the party seeking discovery to compel the responding party to answer interrogatories or produce documents.¹⁴ A party may make a motion to move the court to compel an opposing party to respond to discovery requests when the opposing party fails to answer an interrogatory or fails to permit the inspection of documents.¹⁵ For purposes of a motion to compel, “an evasive or incomplete answer or response shall be treated as a failure to answer or respond.”¹⁶

The procedure for moving the court to compel discovery is provided for in Civ.R. 37:

¹¹ Civ.R. 26(C).

¹² *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653, 2003-Ohio-7257, 802 N.E.2d 732, ¶ 9 (6th Dist.), citing *Ruwe v. Springfield Twp. Bd. of Trustees*, 29 Ohio St.3d 59, 61, 505 N.E.2d 957 (1987).

¹³ Civ.R. 26(C).

¹⁴ See *Papadelis v. Charter One Bank, F.S.B.*, 8th Dist. Cuyahoga No. 84581, 2005-Ohio-288, ¶ 16 (“Civ.R. 37(A) authorizes motions to compel discovery.”).

¹⁵ Civ.R. 37(A)(3).

¹⁶ Civ.R. 37(A)(4).

“On notice to other parties and all affected persons, a party may move for an order compelling discovery. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.”¹⁷

Courts may deny a motion to compel where the movant fails to attempt to “resolve the matter prior to filing the motion to compel,” as required in Civ.R. 37.¹⁸ The purpose of this requirement is “to endorse and enforce the view that, in general, discovery is self-regulating and should require court intervention only as a last resort.”¹⁹ Moreover, the party opposing the discovery bears “the burden of demonstrating to the trial court that the required information would not reasonably lead to the discovery of admissible evidence.”²⁰

If the court grants a motion to compel, the court shall require the opposing party that necessitated the motion, and/or the party’s counsel, to pay for the movant’s “reasonable expenses incurred in making the motion, including attorney’s fees.”²¹ However, the court shall not order payment if the movant filed the motion before attempting in good faith to obtain the discovery without judicial intervention, the opposing party’s response or objection was substantially justified, or other circumstances would make the award unjust.²² If the movant’s motion to compel is

¹⁷ Civ.R. 37(A)(1).

¹⁸ See *Image Sciences, Inc. v. Design Linc Corp.*, 12th Dist. Warren No. CA95-07-074, 1996 WL 56049, *3 (Feb. 12, 1996). See *Crosby*, 1998 WL 51603 at *6 (finding that in the absence of efforts by the movant to resolve the discovery dispute, a trial court may properly deny a motion to compel).

¹⁹ *Studer v. Seneca County Humane Society*, 3d Dist. No. 13-99-59, 2000 WL 566738, *6 (May 4, 2000), citing 1994 Staff Note, Civ.R. 37.

²⁰ *Bennett v. Martin*, 186 Ohio App.3d 412, 2009-Ohio-6194, 928 N.E.2d 763, ¶ 44 (10th Dist.), citing *Patterson v. Zdanski*, 7th Dist. No. 03 BE 1, 2003-Ohio-5464, ¶ 19.

²¹ Civ.R. 37(A)(5).

²² Civ. R. 37(A)(5)(a).

denied, the court shall require the movant and/or the movant's counsel to pay the party "who opposed the motion its reasonable expenses incurred, including attorney's fees."²³ "If the motion is granted in part and denied in part, the court may * * * apportion reasonable expenses for the motion."²⁴

LEGAL ANALYSIS

In turning to the present matter, both Civ.R. 26(C), pertaining to a protective order, and Civ.R. 37, pertaining to a motion to compel, require that the movant make a reasonable effort to resolve the discovery dispute via discussion with the opposing party before filing a discovery motion. Neither party was particularly clear in detailing the efforts they made before filing the two motions at issue. Based on the plaintiff's statement that "Plaintiff has offered, in an attempt to compromise this situation, to dismiss the 1345 claim in exchange for Defendant's agreement to withdraw requests that certainly have no relevance * * *,"²⁵ the court infers that counsel for the parties did have a discussion regarding the discovery requests at issue before filing with the court.

Many of the interrogatories and document requests at issue center on whether the requested information is sufficiently relevant to warrant the intrusion of privacy into the plaintiff's and Fleco's finances. Much of the relevancy question turns on what the plaintiff must show to prevail on a claim under the Consumer Sales Practices Act ("CSPA"). The defendants posit that the plaintiff does not qualify as a consumer under

²³ Civ.R. 37(A)(5)(b).

²⁴ Civ.R. 37(A)(5)(c).

²⁵ Pls. Mot. pg. 2.

the CSPA, while the plaintiff contends that he does. Accordingly, the court will briefly examine the CSPA to assist in the relevancy inquiry.

The CSPA, set forth in Chapter R.C. 1345, was designed to protect consumers from suppliers who engage in deceptive and unconscionable sales practices.²⁶ “The CSPA applies to consumer transactions.”²⁷ Per R.C. 1345.01(A), a consumer transaction is defined as “* * * a service * * * to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. * * *”²⁸ In turn, the statute goes on to define a consumer as “a person who engages in a consumer transaction with a supplier.”²⁹

“[T]he purchase of goods or services primarily for business reasons is not a consumer transaction.”³⁰ Generally, courts determine “whether purposes are primarily personal, family, or household by examining the ‘objective manifestations’ of the buyer at the time of the agreement regarding how he or she intended to use the goods or services purchased.”³¹

²⁶ *Sterling Constr., Inc. v. Alkire*, 12th Dist. Madison Nos. CA2013-08-028, CA2013-08-030, 2014-Ohio-2897, ¶ 11, quoting *Burdge v. Kerasotes Showplace Theaters, L.L.C.*, 12th Dist. Butler No. CA2006-02-023, 2006-Ohio-4560, ¶ 39.

²⁷ *Sterling Constr., Inc.*, 2014-Ohio-2897 at ¶ 12.

²⁸ R.C. 1345.01(A).

²⁹ R.C. 1325.01(D).

³⁰ *J & D Rack Co., Inc. v. Kreimer*, 194 Ohio App.3d 479, 2011-Ohio-2358, 957 N.E.2d 39, ¶ 6 (1st Dist.), quoting *Ford Motor Credit Co. v. Ryan*, 189 Ohio App.3d 560, 2010-Ohio-4601, 939 N.E.2d 891, ¶ 77 (10th Dist.) See *Estate of Hersh v. Schwartz*, 195 Ohio App.3d 295, 2011-Ohio-2994, 959 N.E.2d 1061, ¶ 12, fn. 13 (1st Dist.), quoting *Ford Motor Credit Co.*, 2010-Ohio-4601 at ¶ 77 (“Purchases of goods for primarily business purposes are not ‘consumer transactions,’ and thus cannot support a [CSPA] claim”).

³¹ *J & D Rack Co., Inc.*, 2011-Ohio-2358 at ¶ 6, quoting *Griffin v. Crestview Cadillac*, 10th Dist. No. 09AP-278, 2009-Ohio-6569, ¶ 22.

However, when the "objective manifestations of the parties are unclear at the time of the agreement," courts look to how the buyer used the item after the purchase.³² When such a situation occurs, the court views the "transaction in its entirety, including the period between purchase and complaint."³³ One of the factors considered is whether there exists "evidence of compensation for business use either from an employer or by way of deduction * * *."³⁴

In turning back to the case at bar, the court has identified several overarching principles that will guide the following discovery orders. First, how the plaintiff used the Tractor is likely relevant to determining whether the alleged agreement between the plaintiff and the defendants qualifies as a consumer transaction under the CSPA. Although courts generally look only to the objective manifestations of the buyer at the time of the agreement, as discussed, extraneous facts are considered when an item has a dual purpose or when the buyer's objective manifestations are not clear at the time of the agreement.

The court will not decide which test will ultimately apply to determine whether the plaintiff is a consumer, but it observes that extraneous facts may need to be considered based on what the parties have presented to the court thus far. Mr. Grandstaff, who

³² *Jackson v. Krieger Ford, Inc.*, 10th Dist. Franklin No. 88AP-1030, 1989 WL 29351, *4 (Mar. 28, 1989). See *Griffin*, 2009-Ohio-6569 at ¶¶ 25-26 (explaining that the principal use test is employed when the parties' objective manifestations are unclear at the time of the agreement; in that case, courts look at how the item was used after the purchase, including whether there was evidence of compensation for business use either from an employer or by way of deduction).

³³ *Jackson*, 1989 WL 29351 at *3.

³⁴ *Id.* at *4. See *Lesco v. Toyota of Bedford, Inc.*, 8th Dist. Cuyahoga No. 86144, 2005-Ohio-6724, ¶ 2 (noting in a CSPA case that the plaintiff reported the item at issue, a vehicle, on her tax returns as a deduction); *Devine v. Calanni Ents., Inc.*, 8th Dist. Cuyahoga No. 90840, 2008-Ohio-5103, ¶ 13 (finding that the plaintiff could not succeed on a CSPA claim for services he had done on his truck because the truck was used primarily for business purposes, the court cited the fact that the defendant deducted the truck as a work vehicle under his businesses name in his tax return).

acted on the plaintiff's behalf at the time the alleged agreement was reached with the defendants, is a purported employee of the plaintiff, but is wholly paid by Fleco. Moreover, the defendants received a partial payment from Fleco for the services on the Tractor, not from the plaintiff. Further, there is no evidence before the court indicating whether Mr. Grandstaff told Mr. Kelch at the time of the alleged agreement whether the Tractor would be used for the plaintiff's personal use or for Fleco. There is also no evidence about what the transaction was like when the plaintiff originally purchased the Tractor.³⁵ Thus, under the broad scope of discovery allowed pursuant to Civ.R. 26, the court finds that evidence related to Mr. Grandstaff's employment and how the Tractor was paid for are reasonably calculated to lead to the discovery of admissible evidence.

Second, the parties generally disagree as to whether all of the plaintiff's tractors are relevant to the CSPA claim. The defendants are seeking information about how the plaintiff's other tractors were paid for, how their restorations were paid for, and whether they are claimed as tax deductions. The court has not found any Ohio case law that looks at the plaintiff's collection of like items to determine whether the good at issue was used for a personal or commercial purpose. Additionally, the defendants have not identified for the court any such cases. Given the sensitive nature of the financial documents that the defendants seek regarding the other tractors, given the time and expense and that would be required of the plaintiff to review all of those records for 35 tractors, and given their low relevance to this case, the court finds that financial records related to other tractors are generally not discoverable.

³⁵ At the hearing, the plaintiff indicated that the Tractor was paid for, in part, by him directly through a check. The plaintiff was not sure as to how the remaining cost for the Tractor was paid and is still investigating it.

Based on the above principles, the court sets forth below specific orders for each individual discovery request at issue.

INTERROGATORY NO. 4(c)

The defendants' Interrogatory No. 4(c) states: "identify the named owner of any financial account from which funds for the purchase or any repair or restoration work on each of said tractor [referring to tractors identified in 4(a)] were paid.

Order: The plaintiff need not answer Interrogatory No. 4.

INTERROGATORY NO. 5(c)

The defendants' Interrogatory No. 5(c) states: "identify the name of the owner of any financial account from which funds were used to pay for such work."

Order: The plaintiff shall answer No. 5(c) only as it relates to the Tractor. The plaintiff need not answer regarding other tractors the plaintiff owns.

INTERROGATORY NO. 6

The defendants' Interrogatory No. 6 states: "For the calendar years 2015 and 2016, state whether the Tractor or any other tractors listed above were subject of depreciation expenses claimed by any person or entity for purposes of Internal Revenue Service Tax Returns."

Order: The plaintiff shall answer with respect to the Tractor. The plaintiff need not answer with respect to other tractors the plaintiff owns.

INTERROGATORY NO. 7.

The defendants' Interrogatory No. 7 states: "If the answer to the preceding question is affirmative, provide copies of the tax returns of each such person or entity's tax return in which the Tractor or any tractors were used for depreciation expenses."

Order: If the answer to No. 6 is affirmative regarding the Tractor, the plaintiff shall provide copies of the tax deduction schedule in which the Tractor was used as a depreciation expense. If the plaintiff cannot produce the tax deduction schedule because it is not within its reasonable control (e.g. Fleco used the Tractor as a tax deduction), then the plaintiff shall so state. "[A] party cannot produce what it does not possess."³⁶

INTERROGATORY NO. 9

The defendants' Interrogatory No. 9 states: "Describe all compensation of any kind you received from Fleco Attachments, Inc. for the calendar years of 2015 and 2016."

Order: The plaintiff shall answer Interrogatory No. 9 as it relates to any compensation he received to pay for the Tractor or any costs associated with the Tractor, including its restoration.

DOCUMENT REQUEST NO. 1

The defendants' Document Request No. 1 states: "Provide copies of all federal income tax returns for the calendar years 2015 and 2016 which would include income or expenses for any business or activity which either generated income or claimed losses

³⁶ *Wallace v. Nally*, 7th Dist. Columbiana No. 14 CO 32, 2015-Ohio-4146, ¶ 52, citing *Cireddu v. Clough*, 11th Dist. No. 2013-L-092, 2014-Ohio-2454, ¶ 46.

as a result of a business or commercial activity occurring on the property located at 3209 Headleys Mill Road.”

Because the plaintiff indicated in his answer to Interrogatory No. 2 that there was no business or commercial activity of any kind at 3209 Headleys Mill Road, this request should not be burdensome or overly broad for the plaintiff to comply with.³⁷ It is relevant because this is the location where the plaintiff kept the Tractor, and where the Tractor was kept may relate to whether it was used for the plaintiff’s personal use or his commercial use. As such, whether commercial or business activity occurred at 3209 Headleys Mill Road is probative of whether the Tractor was put to commercial or personal use.

Order: The plaintiff shall respond to Document Request No. 1 as it relates to 2016. If the plaintiff cannot produce a tax return because it is not within its reasonable control (e.g. Fleco had commercial or business activity at the address), then the plaintiff shall so state.

Any tax returns that the defendants may receive as a result of this document request shall be used solely for purposes of the prosecution or defense of this action and shall not be used by the defendants for any business, commercial, competitive, personal or other purpose. The defendants shall not disclose any such tax returns to anyone except counsel of record, the parties, outside experts or consultants retained by counsel for purposes of this action, support personnel employed by the parties, the

³⁷ In oral argument the plaintiff argued that this document request was broader than the question posed in Interrogatory No. 2 because Interrogatory No. 2 did not ask about business activity. However, Interrogatory No. 2 did ask about business activity, and the plaintiff answered that none occurs at that address.

court and court personnel, any witnesses deposed or testifying under oath, and vendors retained by the parties to assist in this action.

DOCUMENT REQUEST NO. 2

The defendants' Document Request No. 2 states: "Provide all W-2 statements or 1099 statements which you or any entity which you control provided to Justin Grandstaff for the calendar years 2015 and 2016."

Order: The plaintiff shall comply with Document Request No. 2 as it relates to 2016. If the plaintiff cannot produce the W-2 or 1099 statements because they are not within his reasonable control (e.g. Fleco provided them), then the plaintiff shall so state.

Any tax returns that the defendants may receive as a result of this document request shall be used solely for purposes of the prosecution or defense of this action and shall not be used by the defendants for any business, commercial, competitive, personal or other purpose. The defendants shall not disclose any such tax returns to anyone except counsel of record, the parties, outside experts or consultants retained by counsel for purposes of this action, support personnel employed by the parties, the court and court personnel, any witnesses deposed or testifying under oath, and vendors retained by the parties to assist in this action.

DOCUMENT REQUEST NO. 3

The defendants' Document Request No. 3 states: "Provide all documents which describe your ownership interest, if any, in Fleco Attachments, Inc."

Order: The plaintiff shall comply with the request.

DOCUMENT REQUEST NO. 4

The defendants' Document Request No. 4 states: "For the period of July 1, 2016, through December 31, 2016, provide copies of all checking account statement [sic] from the checking account which was used to pay defendant \$8,918.78 as alleged in the Complaint. In lieu of the actual statements, a list of each check drawn on this account which the payee, date, and amount of each check and date and amount of each deposit is given can be provided."

Order: The plaintiff need only list checks used to pay the defendants for the Tractor restoration, to pay for the purchase of the Tractor, or to pay for other costs related to the Tractor.

DOCUMENT REQUEST NO. 5

The defendants' Document Request No. 5 states: "For the calendar years 2015 and 2016, provide all documents which describe any payments made on your behalf by Fleco Attachments, Inc. Such documents may include copies of checks issues [sic], receipts, invoices, etc."

Order: The plaintiff shall comply with Document Request No. 5 as it relates to payments made on his behalf by Fleco for the purchase of the Tractor, the restoration of the Tractor, costs associated with the Tractor, and the payment of Mr. Grandstaff.

DOCUMENT REQUEST NO. 6

The defendants' Document Request No. 6 states: "For the calendar years 2015 and 2016, provide all documents issued for IRS purposes which describe the income, compensation of any kind, or dividends received by you from Fleco Attachments, Inc., including but not limited to W-2 statements, and 1099 statements."

Order: The plaintiff need not comply with this request.

As discussed above, if a motion to compel or a protective order “is granted in part and denied in part, the court may * * * apportion reasonable expenses for the motion.”³⁸ In the instant case, both parties submitted discovery motions. No party has had its motion fully granted or fully denied. For the most part, the parties were met with fairly even successes and failures in their motions. The plaintiff moved to be protected from releasing most financial or tax information related the Tractor, his other tractors, his compensation, or Mr. Grandstaff’s compensation. The defendants, on the other hand, moved to have the plaintiff compelled to release all of this information.

The court has allowed the defendants to receive limited information regarding financial and tax information related to the Tractor, the plaintiff’s compensation, and Mr. Grandstaff’s compensation. It has also protected the plaintiff from producing overly broad financial and tax information and information related to the plaintiff’s other tractors. Given the balance of the discovery orders, the court finds that neither party shall pay the other party for the reasonable expenses associated with either motion.


CONCLUSION

For the foregoing reasons, the court orders the plaintiff and defendants to comply with its discovery orders, as detailed above, within 28 days from the date of this entry.

³⁸ Civ.R. 37(A)(5)(c). As discussed, Civ.R. 37(A) also governs expenses associated with a protective order as well.

IT IS SO ORDERED.


DATED: 9-11-17



Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Decision/Entry were sent on this 11th day of ~~September~~ September 2017 by e-mail to D. Joe Griffith, attorney for the plaintiff, at djgriffith@daggerlaw.com, and to John Woliver, attorney for the defendant, at jwoliver@fuse.net.



Judicial Assistant to Judge McBride