

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEPKE J. WILS : CIVIL ACTION  
 :  
 v. :  
 :  
 RICHARD G. PHILLIPS, et al. : NO. 98-5752

MEMORANDUM AND ORDER

HUTTON, J.

December 16, 1999

Presently before the Court is the proposed Stipulation and Order of Confidentiality (Docket No. 16) of Plaintiff Gepke J. Wils and Defendant Richard G. Phillips and Pilot Air Freight. For the reasons stated below, approval of the Joint Stipulation and Order is **DENIED**.

I. BACKGROUND

This case arises out of a sexual harassment action brought by Plaintiff, Gepke J. Wils. Plaintiff alleges the following facts in her complaint. In August 1995, Defendant Pilot Air Freight, Inc. ("Pilot Air") hired Plaintiff as an executive secretary for the chief operating officer. In November 1995, Pilot Air promoted Plaintiff to Director of Human Resources. During her employment as Director of Human Resources, Plaintiff alleges that Pilot Air's President and Board Chairman, Richard G. Phillips, sexually harassed her. Plaintiff alleges that she rejected Phillips' sexual advances and complained about his conduct.

Subsequently, in September 1997, Defendants removed Plaintiff from her position and assigned her to the position of International Collection Specialist. On October 3, 1998, Plaintiff filed a discrimination charge against Defendant with the Pennsylvania Human Relations Commission (PHRC) and the Equal Employment Opportunity Commission (EEOC). In October 1997, Plaintiff also informed Defendants that she filed a PHRC charge against them. In December 1997, Plaintiff received an unfavorable written evaluation.

In January 1998, Plaintiff went on short term disability leave. When Plaintiff's leave ended in July 1998, Plaintiff went on unpaid leave under the Family Medical Leave Act (FMLA). Plaintiff alleges that Defendants then constructively discharged her, and she filed a ten (10) count complaint against Defendants on October 29, 1998. On April 9, 1999, the Court dismissed Counts III and IV of Plaintiff's Complaint to the extent that those counts stated a Title VII claim against Richard G. Phillips (Docket No. 8). The court also dismissed Counts I, III, and IV of the Complaint to the extent that those counts stated a claim for punitive damages under the PHRA (Docket No. 8). Finally, on November 17, 1999, the Court Granted in Part and Denied in Part Plaintiff's Motion to Compel Answers to Interrogatories and Requests for Production of Documents (Docket No. 15).

Plaintiff and Defendant now jointly present to the Court a Stipulated Confidentially Order (Docket No. 16). The Parties

request that the Court approve and enter said Order; which, inter alia, proposes to "govern confidential information produced in this case during [discovery], the pendency [of the matter], and after the dismissal or conclusion of [the] action." (See Stipulation at 1).

## II. DISCUSSION

### A. Standard

Federal Rule of Civil Procedure 26(c)(7) allows a court, "upon good cause shown," to order that "a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994) (quoting Fed. R. Civ. P. 26 (c)(7)). Nevertheless, such orders of confidentiality cannot be granted arbitrarily. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994). "Disturbingly, some courts routinely sign orders which contain confidentiality clauses without considering the propriety of such orders, or the countervailing public interests which are sacrificed by the orders." Id. It is therefore incumbent upon this Court to carefully scrutinize the parties' request for a confidentiality order.

A party wishing to obtain a confidentiality order over discovery materials must demonstrate that "good cause" exists for the order of protection. Pansy, 23 F.3d at 786; Miles, 154 F.R.D. at 114. "Good cause is established on a showing that disclosure

will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984)); see also Aetna Casualty & Surety Co. v. George Hyman Const. Co., 155 F.R.D. 113, 115 n.3 (E.D. Pa. 1994). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a good cause showing. Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986), cert. denied, 484 U.S. 976 (1987); see also Frupac Intern. Corp. v. MV "CHUCABUCO", Civ.A. No.92-2617, 1994 WL 269271, \*1 (E.D. Pa. Jun. 15, 1994). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order. Id. at 1122. Pansy, 23 F.3d at 786-87 (footnote omitted).

In determining whether "good cause" exists, the federal courts have adopted a balancing approach, under which the following factors may be considered:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;

5) whether the sharing of information among litigants will promote fairness and efficiency;

6) whether a party benefitting from the order of confidentiality is a public entity or official; and

7) whether the case involves issues important to the public. Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995); Pansy, 23 F.3d at 788-89. "Whether this disclosure will be limited depends on a judicial balancing of the harm to the party seeking protection (or third persons) and the importance of disclosure to the public." Pansy, 23 F.3d at 787 (citing Arthur R. Miller, Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv. L. Rev. 427, 435 (1991)).

#### **B. Analysis & Conclusion**

Applying the Pansy test in this case is a simple matter. The Stipulation and Order submitted by the Parties utterly fails to address any consideration under the required "good cause" standard. The Parties fail to show with any specificity that disclosure will cause a defined and serious injury and they articulate no justification for requesting the Court to enter such an Order.

An appropriate Order follows.

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O R D E R

AND NOW, this 16<sup>th</sup> day of December, 1999, upon consideration of the Plaintiff and Defendants' proposed Joint Stipulation and Order of Confidentiality (Docket No. 16), IT IS HEREBY ORDERED that the Parties' Request is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.