

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

TIM WRIGHT, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 02 CH 22086
)	
FORD MOTOR COMPANY,)	
)	
Defendant.)	

ORDER

This cause comes before the Court on plaintiffs'¹ Motion to Remove Confidential Designation of Discovery Documents. The Court has reviewed the Motion, plaintiffs' December 22, 2005 letter (and exhibits) in support of the Motion, Ford's January 18, 2006 letter (and exhibits) in opposition to the Motion, and a sampling of the more than 5,000 pages of documents at issue.

Background

The documents, Bates numbered ECK1 10000 through at least ECK1 16127, apparently represent Ford's relevant internal memoranda produced in response to discovery requests. The entire production was designated confidential, *en bloc* (including at least one blank page, ECK1 14499), pursuant to paragraph 3 of the Protective Order entered herein, by agreement, on June 3, 2003. Paragraph 5 of the Protective Order precluded the named plaintiffs, among others, from seeing documents marked confidential.

In June 2005, plaintiffs' counsel, pointing to ECK1 14499, complained of Ford's "blanket labeling" and asked that Ford base its confidentiality classification on a "document by document review." Ford responded by proposing an amendment to the Protective Order which would allow two of the plaintiffs with engineering backgrounds (Messrs. Eck and Wright) to review the documents. Unsatisfied, in November 2005 plaintiffs' counsel filed the present Motion. But neither plaintiffs nor Ford has undertaken any detailed parsing of the 5,000-plus documents.

1. The named plaintiffs have undergone changes. Larry Eck, whose name the caption bore, is no longer a named plaintiff. In plaintiffs' proposed Fifth Amended Complaint, he has been replaced as the first (and thus captioned) named plaintiff by Tim Wright, previously one of the named plaintiffs. Ford opposes the filing of the Fifth Amended Complaint; that issue is pending.

Discussion

Ford does not claim that the documents in question are privileged. There is no privilege log. Nevertheless, Ford argues that this Court has broad discretion under SCR 201(c) to enter protective orders “designed to encourage the problem-free flow of discovery.” Ford asserts a privacy interest in the documents, citing 6-26 MOORE’S FEDERAL PRACTICE -- CIVIL, ¶ 26.101, and *May Centers, Inc. v. S.G. Adams Printing & Stationery Co.*, 153 Ill.App.3d 1018, 1023 (5th Dist. 1987).

Both federal and Illinois practice recognize that discovery may implicate privacy interests. See *May Centers, Inc., supra*, 153 Ill.App.3d at 1023 (“discovery may also implicate privacy interests of litigants and third parties”); MOORE, *supra*, ¶ 26.101 (discovery materials, though produced in a dispute that will be publicly tried, “are nonetheless private”).

Privacy concerns are of great importance. But there are limits. *May Centers, Inc., supra*, 153 Ill.App.3d at 1022, points out that “by its own terms, Rule 201(c) requires the party seeking a protective order [here, Ford] to show good cause.” Further, *May Centers* concerned only a limitation on disclosure of *specifically identified* sensitive information “to third parties or for purposes unrelated to the lawsuit,” a type of protection for which “[t]here is ample [precedent.]” *Id.* at 1021.

In *May Centers*, moreover, it was plaintiff’s sensitive information that was at risk. The Court was concerned that “rather than expose themselves to unwanted abusive use of discovered matters,” plaintiffs might “forgo the pursuit of their just claims,” *Id.* at 1023, a concern echoed in *Kunkel v. Walton*, 179 Ill.2d 519, 532 (1997). Here, by contrast, plaintiffs argue that Ford, as defendant, wants to use the Court’s SCR 201(c) power to aid it in covering up wrongdoing. Nothing in *May Centers*, nor in *Kunkel*, contemplates such a use of protective orders.

The Court therefore rejects Ford’s blanket claim of a privacy interest which shields all of the documents at issue from discovery. First, in December 2005, after being challenged on the point by plaintiffs, Ford itself decided -- if grudgingly -- that roughly 600 of the documents (over 10% of the total) are not, in fact, truly confidential. Second, Ford’s December 2005 “declassification” is not the end of the matter. It does not cover any of the seven documents attached to plaintiffs’ Motion (ECK1 14647, 15432, 15446, 15460, 15537, 15568, and 15600), none of which appears to contain any competitively confidential, trade secret, or otherwise proprietary information. Dissemination of those documents may be embarrassing to Ford. But the Supreme Court and the Appellate Court have both declined to recognize an anti-embarrassment privilege as a ground for sealing files. *Skolnick v. Alzheimer & Gray*, 191 Ill.2d 214, 234-35 (2000); *A.P. v. M.E.E.*, 354 Ill.App.3d 989, 997 (1st Dist. 2004). Though dictum in *A.P., supra*, distinguishes in this regard between pleadings and “information that surfaces during pretrial discovery,” see *Id.*, the underlying principle cannot be wholly shunted aside in evaluating protective orders of the kind at issue here.

Ford also suggests that some injured Taurus SHO owners might attempt reprisals against Ford personnel identified in the documents. But the same persons figure in the “declassified” documents as well, and the material from SHOForum.com which Ford offers to support that fear

falls in the category of rhetoric (sometimes apparently intended as quasi-humorous) rather than palpable threats. In any event, that concern can be addressed, if need be, by redacting names rather than suppressing documents wholesale. The least suppressive remedy should be preferred. *See A.P., supra*, 354 Ill.App.3d at 995 (“general conclusory assertions” not sufficient), 996 (court should have “address[ed] the option of sealing portions of the record as opposed to all the files”).

On the other hand, the Court is equally unimpressed by plaintiffs’ sweeping assertion that they should be free to use all of the documents in whatever way they wish. There is no general right “to spread (as opposed to gather) the information freely.” *May Centers, supra*, 153 Ill.App.3d at 1023. To the contrary, *May Centers* stands squarely for the proposition that discovery ought ordinarily to be used “only for purposes of the lawsuit,” *Id.* at 1022, 1023, not for gaining collateral advantage in the public forum. Merchandising lawsuits is not a proper purpose of discovery.

In the present posture of this case, it does not appear that plaintiffs need to disclose the information publicly in order to obtain named plaintiffs to replace those who have dropped out. Currently pending before the Court is plaintiffs’ motion to amend their Complaint by adding more than twenty new named plaintiffs. Nor does it appear that plaintiffs need to disclose (as opposed to obtain) the information for purposes of class certification. Plaintiffs’ lengthy class certification motion is also now pending before the Court, and regardless of the outcome of this “declassification” motion the Court and counsel will have access to all of the documents at issue.

Thus the Court rejects the extreme positions asserted on both sides of this question. The Court also declines both sides’ invitation to do their work for them by slogging through 5,000-plus documents with no guidance save generalities. Even though the last Taurus SHO came off the production line some seven years ago, some specific documents may contain proprietary or competitive information. Some specific documents, though not within the ambit of proprietary information *per se*, may warrant analysis in light of the “self-critical examination privilege” suggested by some commentators. *See, e.g., Mosby-Scott, “Protecting Evidence of Self-Critical Analysis,”* 88 Ill. Bar. Journal 648 (2000). Even if the foregoing considerations do not apply, on the other hand, the Court is not prepared generally to authorize the documents’ use as merchandising tools, a purpose for which many if not most of the documents would be tangential at best.

Under both SCR 201(c) and ¶ 6 of the June 3, 2003 Protective Order, it is Ford’s burden to show good cause for nondisclosure. For the reasons given above, Ford has not done so in a way which would justify its blanket attempt to immunize its entire production. On the other hand, plaintiffs appear to raise the issue at this juncture in order to enlist the Court’s aid in a collateral use of the documents which seems unnecessary to this litigation and which therefore would be dubious, to say the least, under *May Centers, supra*. Neither a defendant nor a plaintiff should be able to obtain an advantage in a lawsuit by threats of broadcast disclosure. Plaintiffs’ Motion will therefore be granted, but only in part and subject to the restrictions described below.

* * * * *

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. Plaintiffs' Motion to Remove Confidential Designation of Discovery Documents is GRANTED as to documents ECK1 10000-16127 (the "Documents"), but subject to ¶¶ 2-5 below.

2. Plaintiffs shall not disclose any Documents to third parties (except as specified in ¶ 5 of the June 3, 2003 Protective Order herein), nor publicly disseminate (on a website or otherwise) any Documents, without specific prior leave of Court. Any request for leave shall specify (i) the Documents dissemination of which is sought, and (ii) to whom, how, and for what purpose plaintiffs seek to disseminate those Documents. Notwithstanding the filing of such a request, the Documents shall not be disseminated unless and until (and only to the extent that) the request is granted.

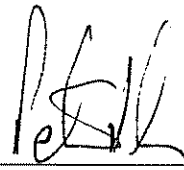
3. Ford may by motion assert that any specified Documents are confidential because (i) they are privileged (in which case the privilege log required by SCR 201(n) shall be provided), or (ii) though not actually privileged, they contain specific proprietary engineering or technical information the disclosure of which might give Ford's competitors an advantage, or (iii) though not falling within (i) or (ii), they represent steps in a process of self-critical internal evaluation which under the circumstances should be protected from widespread dissemination.

4. Ford shall have 28 days to file and serve a response to any request for leave under ¶ 2 above. Plaintiffs shall have 28 days to file and serve a response to any motion under ¶ 3 above. In either instance, the movant shall have 14 days to reply. The movant shall provide the Court with courtesy copies of the motion papers and of the specific documents at issue. Unless otherwise directed by the Court after reviewing the motion papers, the Court will rule on the request or motion without oral argument.

5. The procedure specified in ¶¶ 2-4 above is subject to SCR 201(k) and to the Court's Standing Order.

DATED: February 21, 2006

ENTER:



Circuit Judge

