

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-23363 CIV-COOKE/BANKSTRA

SILVIA WILHELM,

Plaintiff,

vs.

CHRIS SIMMONS,

Defendant.

**DEFENDANT'S RESPONSE TO MOTION
FOR PROTECTIVE ORDER AND OBJECTION TO
SUBPOENA DUCES TECUM DIRECTED TO COCONUT GROVE BANK**

Defendant, CHRIS SIMMONS (hereinafter "Simmons"), by and through undersigned counsel, responds to Plaintiff's, SILVIA WILHELM (hereinafter "Wilhelm"), Motion for Protective Order and Objection to Subpoena Duces Tecum Directed to Coconut Grove Bank and states as follows:

1. On or about June 23, 2009, Wilhelm filed a Motion for Protective Order and Objection to Subpoena Duces Tecum Directed to Coconut Grove Bank ("Motion for Protective Order") incorrectly stating that Simmons is not entitled to pertinent financial information related to Silvia Wilhelm, Puentes Cubanos¹, or Cuba Puentes². A copy of the Motion for Protective Order is attached hereto as Exhibit "A."

¹ Silvia Wilhelm was the Executive Director of Puentes Cubanos since 1999. Carlos Alvarez, a self-confessed, unregistered Cuban agent, traveled to Cuba four times on trips organized through Puentes Cubanos. The organization even hired Carlos Alvarez as a facilitator of dialogue between American and Cuban professionals.

² This is a for-profit company incorporated in May of 2009 in which Silvia Wilhelm is one of its officers. The corporation will be used to assist Americans in traveling to Cuba once the travel restrictions to the island are lifted by the U.S. government.

2. First and foremost, Wilhelm claims her right to privacy outweighs Defendant's entitlement to the production of her financial information since the requested documents are irrelevant to the claims against Simmons. See Exhibit "A", page 2.
3. However, all of the information subpoenaed by Simmons is pertinent to his defense of truth against Wilhelm's claim of defamation against him. Additionally, all of the financial information requested is essential in determining the extent of the damages Wilhelm declares in her Complaint. See the Complaint attached hereto as Exhibit "B", see paragraphs 12-13.
4. Full disclosure of discovery is preferred according to the Federal Rules of Civil Procedure; however, certain circumstances limit the extent of discovery. See *Armor Screen Corp. v. Storm Catcher, Inc.*, 2009 WL 455428 (S.D.Fla.)(citing *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1548 (11th Cir. 1985). For instance, subpoenas may be quashed or modified to protect a party from "annoyance, embarrassment or oppression, or undue burden or expense" as provided by Rule 26(c), Fed.R.Civ.P. *Armor Screen Corp. v. Storm Catcher, Inc.*, 2009 WL 455428 (S.D.Fla.). Under other circumstances, a court may quash or modify a subpoena if it "requires disclosure of a trade secret or other confidential research, development, or commercial information." See Fed.R.Civ.P. Rule 45. None of these circumstances are applicable to this case. Neither Wilhelm's financial records nor the organizations' records should reveal oppressive information or any type of commercial development project which is meant to keep hidden from competitors. Furthermore, disclosure of the documents sought are not meant to annoy, embarrass nor to oppress Ms. Wilhelm.

5. According to Fed.R.Civ.P. 26(b)(1), “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.” In order to issue a protective order, a court must “balance the party’s interest in obtaining” the requested material “against the other party’s interest” in protecting their privacy of information. *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1313 (11th Cir. 2001).
6. With regards to the relevance of both Wilhelm’s, Puentes Cuban’s, and Cuba Puentes’ financial information, this information is vital in determining the extent of damages Wilhelm allegedly has incurred thus far and will allegedly incur in the future. In Plaintiff’s Answers to Defendant’s First Set of Interrogatories (“Plaintiff’s Response to Interrogatories”), Wilhelm stated that her damages were a culmination of attorney’s fees, a “[l]oss of funding for projects” associated to the Puentes Cuban’s organization, and an eventual loss of employment compensation from the closing of Puentes Cuban’s. See Plaintiff’s Response to Interrogatories attached hereto as Exhibit “C”, see paragraphs 23-25.
7. In Wilhelm’s June 15, 2009 deposition, she claimed that foundations refused to continue funding Puentes Cuban’s “because of the stain that has been put on [her] organization as a result of this suit that [she is] involved in.” See excerpts of Silvia Wilhelm’s Deposition attached as Exhibit “D”, see pages 107-110.
8. Moreover, Wilhelm claimed that the Defendant would be able to see a significant decline in Puentes Cuban’s bank records as of November 2008 and that she, personally, would

be losing \$2,000.00 a month in employment compensation due to the organization's closing in June of 2009. See Exhibit "D", see pages 110-111.

9. Wilhelm put her personal bank statements, canceled checks, and the organization's financial records at the center of dispute by claiming her organization's financial downturn and her loss of employment compensation on Simmons' alleged defamation of her reputation. Despite Plaintiff's assertions that the Defense is using the process to conduct a "fishing expedition" as the Plaintiff has place her finances and alleged damages at issue, Simmons is entitled to determine whether the organization's lack of funding and her alleged damages relate more to the downturn in the nation's economy rather than a statement he made about the organization's executive director. Furthermore, Simmons is also entitled to verify the accuracy of his allegations and explore his defense of truth to verify that Wilhelm is a Cuban spy by reviewing Wilhelm's sources of compensation³.
10. Relevancy is broadly interpreted to encompass any evidence "reasonably calculated to lead to the discovery of admissible evidence" according to the Federal Rules of Civil Procedure Rule 26(b)(1). *Pinilla v. Northwings Accessories Corp.*, 2007 WL 2826608 (S.D.Fla.). So long as the requests seek materials relevant to Plaintiff's claims and Defendant's defenses, then the subpoena is valid and the requests should not be quashed or modified. *See Id.*
11. The case at hand is similar in the sense that Plaintiff has declared financial damages in several aspects related to the claim of defamation. Simmons' right to defend the allegations against him and verify the extent of Wilhelm's damages outweighs her right to privacy, especially since pled and testified to being damaged.

³ In her deposition, Wilhelm admitted to receiving income from 1999 to the present for escorting people or groups on humanitarian trips to Cuba. See Exhibit "D" pages 69-71.

12. Secondly, Wilhelm claims a right to privacy on behalf of the supporters of Puentes Cubanos and Cuba Puentes by stating that disclosing the organizations' bank statements is tantamount to revealing the organizations' membership lists and their right to free speech and association. See Exhibit "A", see pages 3-4.
13. It is true that the Supreme Court has recognized that a court's order to compel membership lists may constitute "a restraint on freedom of association." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958); *see also Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 543-44 (1963). However, Plaintiff's reliance on cases such as these are misplaced. In the cases cited above, the parties withholding information explicitly showed how disclosing the membership lists would infringe on their first amendment rights. For instance, in *NAACP v. Alabama*, they showed how previously disclosed members were physically threatened or fired from employment, inter alia. *Id.* at 462.
14. Wilhelm has failed to explain how the bank's disclosure of her personal records and the organizations' records will encroach on her members' First Amendment rights. Therefore, Simmons' discovery rights still outweigh any interests Wilhelm or her organizations' members have in keeping their names hidden.
15. Lastly, Plaintiff claims the subpoena is overbroad in its requests for "any and all" financial documents associated to her and her organizations and that such information is not likely to lead to the discovery of admissible evidence. See Exhibit "A", see pages 4-5.

16. Plaintiff argues that the reason Defendant's requests are overbroad is because he "seeks an expansive amount of information." This is the same argument used by the court in the *Goodbys Creek, LLC v. Arch Ins. Company*, 2008 WL 4279693 (M.D. Fla. 2008).
17. However, Plaintiff also fails to mention that Defendant narrowed the requested amount of information from Coconut Grove Bank by specifically requesting bank statements belonging to Wilhelm or her organizations for the limited period of January 2007 to the present. This would enable Simmons to determine Wilhelm's sources of income with regards to her agent activities and what the organizations' funding was like prior to Simmons' allegedly defamatory statements.

WHEREFORE, Defendant requests that this Court deny Plaintiff's Motion for Protective Order and Objection to Subpoena Duces Tecum Directed to Coconut Grove Bank and any other relief this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing:

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