

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, ON
BEHALF OF ITSELF AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

- against -

HOUSEHOLD INTERNATIONAL, INC., ET AL.,

Defendants.

Lead Case No. 02-C5893
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

**MEMORANDUM OF LAW IN SUPPORT OF THE HOUSEHOLD
DEFENDANTS' MOTION FOR PARTIAL
RECONSIDERATION OF THE COURT'S SEPTEMBER 28, 2005 ORDER**

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This memorandum is respectfully submitted on behalf of Defendants Household International, Inc., Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, "Defendants"), in support of their motion for partial reconsideration of the Court's September 28, 2005 Order regarding Defendants' Motion to Amend the Protective Order (the "September 28 Order").

INTRODUCTION

The Court's September 28 Order granting Defendants' motion to amend the Protective Order contains a direction to Defendants to review and redesignate, if necessary, the confidentiality designations of more than three million pages of documents already produced to Plaintiffs. *See* September 28 Order at 8. Defendants respectfully move this Court to reconsider that limited part of its September 28 Order insofar as it was based upon patent misrepresentations of Plaintiffs and would permit Plaintiffs to circumvent the Protective Order's express terms.

Plaintiffs misled this Court. In response to Defendants' motion to amend the Protective Order to add the category of Household organizational charts (which this Court's September 28 Order granted), Plaintiffs asserted that an "ongoing" review of documents produced to Plaintiffs demonstrated that Defendants "completely ignored the Protective Order's good faith requirement in making their designations." *See* Lead Plaintiffs' Response to Household Defendants' Supplemental Submission in Support of Their Motion to Amend Protective Order dated March 11, 2005 ("Plaintiffs' Mem." or "Plaintiffs' Memorandum") at 8. The proffered "evidence" of "bad faith" consisted entirely of confidential designations that preceded the referenced Protective Order by *more than four months* (and preceded current counsel for Defendants' representation of them) and were produced pursuant to the Interim Stipulation and Order Governing

the Confidential Treatment of Discovery Material (the “Interim Order”) which expressly provided that *all discovery material was to be deemed confidential*.¹ Plaintiffs know this. In any event, the procedures for dealing with challenges to “confidential” designations are set forth in detail in the Protective Order,² which requires, as this Court has repeatedly urged, prior consultation and cooperation among all counsel before such issues are raised with the Court. It is instructive that in the more than 11 months since the Protective Order was entered by this Court, Plaintiffs have only *once* questioned the confidential treatment of documents, and the issue was promptly resolved pursuant to the procedure set forth in the Protective Order.³ The directive, therefore, that Defendants review more than three million pages of documents circumvents the procedures set forth in the Protective Order entered by this Court, will lead to needless expense, and inevitably will discourage the very meet and confer process the Court correctly seeks to encourage.

STANDARD FOR RECONSIDERATION

Although this Court has broad discretion as to the adjudication of discovery-related issues, it is proper to entertain motions to reconsider non-dispositive orders for certain

¹ A copy of the Interim Order, which was entered by the Court on June 22, 2004, is annexed hereto as Exhibit 1.

² The Protective Order was entered by the Court on November 5, 2004 and now governs the production of documents in this matter.

³ Following Plaintiffs’ June 22, 2005 inquiry regarding several documents that had been designated confidential when produced to Plaintiffs on or about November 1, 2004 (also before the Protective Order was entered by the Court), Defendants re-produced non-confidential copies of those documents to Plaintiffs. *See* Letter of Azra Z. Mehdi, Esq. to Landis C. Best, Esq. dated June 22, 2005; Letter of David Owen, Esq. to Azra Z. Mehdi, Esq. dated June 30, 2005; Letter of Craig S. Kesch, Esq. to Azra Z. Mehdi, Esq. dated June 30, 2005, all of which are annexed hereto as Exhibit 2.

purposes. See *Douglas Press, Inc. v. Tabco, Inc.*, 2003 WL 1395073 (N.D. Ill. Mar. 19, 2003). Significantly, the Court need not find an error in its own reasoning or judgment to grant a motion for reconsideration. Rather, the Court of Appeals has stated that a court should entertain a motion for reconsideration where “the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.”⁴ *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (quoting *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). In other words, the motion for reconsideration provides a remedy for the “misunderstood litigant.” *Id.*

ARGUMENT

Plaintiffs’ claim that an “ongoing” review of documents demonstrates that Defendants have “ignored” the Protective Order is just plain false.

The documents cited at page 8 of Plaintiffs’ Memorandum were part of a 1.8 million page production made to Plaintiffs on June 23, 2004 by Defendants’ prior counsel Milbank, Tweed, Hadley & McCloy LLP as responsive to Plaintiffs’ request for documents produced to the Securities & Exchange Commission (the “June 23 production”). See Letter of Stacey J. Rappaport, Esq. to Azra Z. Mehdi, Esq. dated June 23, 2004, annexed hereto as Exhibit 3.⁵ This pro-

⁴ The other grounds recognized by the Court of Appeals for granting a motion to reconsider, namely a significant change in the law and/or the discovery of significant new facts since the submission of the issue to the court, are not applicable here. See *Bank of Waunakee*, 906 F.2d at 1191.

⁵ Cahill Gordon & Reindel LLP replaced Milbank, Tweed as co-counsel for Defendants in or around September 2004, several months after these documents were produced to Plaintiffs.

duction was made the very next day after the Interim Order was entered by the Court and was in full compliance with its terms.

Plaintiffs, however, misled this Court to believe that the documents it cited resulted from a series of productions of documents pursuant to the Protective Order, rather than from a solitary, isolated production made more than a year ago and in accordance with the express terms of the *Interim* Order. Plaintiffs' lack of candor in claiming that Defendants "ignored" a Protective Order that did not even exist at the time of their June 23 production has caused the Court to misapprehend the facts, warranting reconsideration. *See Hobley v. Chicago Police Commander Jon Burge*, 2003 WL 22682362 (N.D. Ill. Nov. 12, 2003) (granting in part motion to reconsider and modifying ruling on motion to compel where plaintiff did not make magistrate judge aware of pertinent information); *Reich v. Local 1, American Postal Workers Union, AFL-CIO*, 1994 WL 33971 (N.D. Ill. Feb. 4, 1994) (granting in part reconsideration where defendant misled the court into believing plaintiff had engaged in dilatory tactics, thus inducing the court to grant its motion to compel without hearing plaintiff's arguments).

There is no basis upon which Plaintiffs can contend that documents produced by Defendants in this case did not reflect good faith compliance with both the Interim Order and the Protective Order. If Plaintiffs' "ongoing" review of documents results in a belief that certain documents should not have been designated confidential, the terms of the Protective Order require that Plaintiffs must first attempt to resolve the issue with Defendants. The Protective Order states, in relevant part:

"20. If any Receiving party believes that Discovery Material that has been designated CONFIDENTIAL should not be so designated, such Receiving Party, after *first attempting in good faith to resolve the disagreement with the Producing Party*, may submit such dispute to the Court for resolution. The Court shall review

the disputed Discovery Material and determine whether particular Discovery Material contains Confidential Information.”

Protective Order at 7 (emphasis added).

No such attempt was made here. Had Plaintiffs simply raised the issue with Defendants, as required by the Protective Order, Defendants would promptly have re-produced non-confidential copies of the now year-old documents cited in Plaintiffs’ Memorandum.⁶ Instead, it was Plaintiffs who ignored the Protective Order in furtherance of their tactics to distract the Court from the actual issue on Defendants’ motion to amend the Protective Order.

Requiring Defendants to re-review and redesignate each of the millions of pages of documents produced in this case would be an extremely burdensome and unnecessary task and would reward Plaintiffs for their disregard of the facts and the express terms of the Protective Order. To date, Defendants have made more than 50 rolling productions of hard copy documents to Plaintiffs consisting of more than 3.2 million pages. Additionally, Defendants have produced thousands of spreadsheets and emails in native format. These documents have been carefully reviewed by counsel for Defendants and good faith confidential designations made where appropriate and necessary. Since the entry of the Protective Order, Defendants have followed the terms of that document, and Plaintiffs have only *once* questioned the confidentiality designations made. If mistakes are made in the designation process, the Protective Order provides the proper means for resolving them. Plaintiffs should not be allowed to circumvent the

⁶ Although Plaintiffs failed to abide by the Protective Order — and passing the obvious fact that the confidential designations of these documents have no impact whatsoever on the ability, *vel non*, of Plaintiffs to prosecute their case — Defendants have produced to Plaintiffs non-confidential copies of the documents cited at page 8 of Plaintiffs’ Memorandum. *See* Letter of Craig S. Kesch, Esq. to Azra Mehdi, Esq. dated October 11, 2005, annexed hereto as Exhibit 4.

express terms of the Protective Order — an Order that was jointly negotiated and agreed to by the parties before being entered by the Court — especially where there exists *no* evidence of an existing dispute.

CONCLUSION

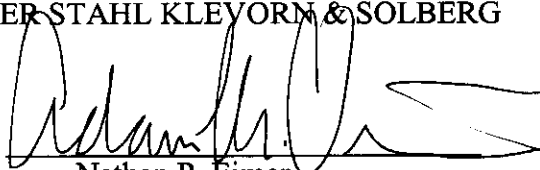
For the foregoing reasons, Defendants respectfully request this Court reconsider that portion of its September 28 Order that directed Defendant to review and redesignate, if necessary, documents produced to Plaintiffs.

Dated: October 12, 2005
Chicago, Illinois

Respectfully submitted,

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