

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:)	Case No: 8:20-BK-07637
)	Chapter 7
FAITH ELYZABETH ANTONIO,)	
)	
Debtor.)	
_____)	
DGP PRODUCTS INC. D/B/A NUMERIC)	
RACING,)	
Plaintiff,)	
)	
vs.)	Adversary Case No:
)	8:20-ap-00537-CPM
FAITH ELYZABETH ANTONIO,)	
)	
Defendant.)	
_____)	

**DGP PRODUCTS INC.'S
OBJECTION TO AND MOTION FOR PROTECTIVE ORDER OF SUBPOENAS
DIRECTED TO INTUIT, INC, MORGAN STANLEY, AND BLUEHOST, INC.
[Doc# 446]**

DGP Products Inc. d/b/a Numeric Racing (“DGP”) files this Objection to and Motion for Protective Order regarding the Notice of Service of Subpoenas to Produce Documents regarding the subpoenas directed to Intuit, Inc, Morgan Stanley, and Bluehost, Inc. (the “**Notice of Subpoenas**”) as proposed by Faith Elyzabeth Antonio (“**Debtor**”) pursuant to Federal Rule of Civil Procedure 26 (c). Full compliance with the subpoena is unreasonable because it seeks irrelevant and/or duplicative records.

In support DGP states as follows:

1. On November 23, 2021, Debtor filed her Notice of Subpoenas [Doc# 446].
2. The Notice of Subpoenas intends to issue subpoenas to Intuit, Inc (“**Intuit**”), Morgan Stanley, and Bluehost, Inc. (“**BlueHost**”).
3. In addition, Debtor seeks all records regarding DG Auto Sales and Service, LLC (“**DG Auto**”) and the personal records of DGP’s owner, Daniel Geberth (“**Geberth**”).
4. Debtor’s subpoena is nothing more than a fishing expedition to seek personal and private records that are irrelevant and would never lead to admissible evidence.
5. Debtor has been emboldened by the continued free and unlimited access that she has been provided to Geberth’s personal records that she is now demanding completely irrelevant information for her own ulterior motives that has nothing to do with this litigation.

Debtor is Not Entitled to Any Records Related to Geberth’s Other Business Entities

6. Geberth is the owner of DG Auto. DG Auto is not a party to this litigation, neither is Geberth in his personal capacity. Despite Debtor’s accusations and mistaken beliefs, nothing in this lawsuit is personal. Instead, it is an attempt to recover business losses as the result of Debtor’s embezzlement.
7. Debtor is seeking personal records that are irrelevant to this lawsuit, or any lawsuit pending in any court of law between the parties for that matter. The requested production is merely an attempt to harass, annoy, and embarrass DGP’s owner, Geberth.

8. A court must limit discovery if the information sought is unreasonably cumulative or duplicative or can be obtained from some other source more convenient, less burdensome, or less expensive. Fed. R. Civ. P. 26(b)(2)(C). A party may request a protective order to prevent discovery that results in "annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c)(1). *See also Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, 231 F.R.D. 426 (M.D. Fla. September 28, 2005), ("As parties, Defendants clearly have standing to move for a protective order if the subpoenas seek irrelevant information."). The standard for issuance of a protective order is good cause. *Fox v. Lake Erie College of Osteopathic Med., Inc.*, 2020 U.S. Dist. LEXIS 225668 (D.D. Fla. December 2, 2020).

9. Good cause exists for this Court to issue a protective order. Debtor's requests are definitely cumulative as records for BlueHost and Intuit have already been provided to Debtor, in fact more than once. Furthermore, the subpoenas seek information that is outside the scope of discovery. Last, the subpoenas seek information that violate the privacy rights of non-parties to this action. Debtor is clearly not entitled to any records pertaining to non-party DG Auto.

10. Any document regarding the production of Geberth's personal bank accounts during the year of 2020, and later are irrelevant. Any bank records relating to Geberth's personal investment accounts are also irrelevant.

MORGAN STANLEY DOCUMENTS ARE IRRELEVANT

11. Geberth is the sole owner of the Morgan Stanley account ending in 8656.

12. Under information and belief, Debtor obtained details of the Morgan Stanley through her access to DGP's Synovus bank records that reflect DGP's shareholder distributions to his personal Morgan Stanley account.

13. Any records that could be obtained from Morgan Stanley are irrelevant and any transactions on the Morgan Stanley account has absolutely nothing to do with these proceedings.

14. To grant Debtor access to these records would be a total invasion of privacy and yet another opportunity for Debtor to harass, annoy and embarrass Mr. Geberth.

ALL RELEVANT BLUE HOST AND INTUIT RECORDS HAVE ALREADY BEEN PRODUCED

15. Debtor is seeking duplicative, already produced records from BlueHost and Intuit [Doc# 446].

16. Debtor is seeking records concerning third party applications from BlueHost [Doc# 446-1].

17. Debtor is also seeking not only Intuit documents related to DGP but also irrelevant Intuit data pertaining to DG Auto [Doc# 446-1].

18. DGP has gone through a long and expensive process to secure documents from both BlueHost and Intuit to produce to Debtor.

19. In December of 2020, DGP issued a subpoena to BlueHost [Doc# 15].

20. On February 16, 2021, all attorneys, including Debtor's prior attorney, were provided access to the BlueHost records.

21. On March 26, 2021, DGP provided Debtor with copies of the information requested from QuickBooks/Intuit (the “**Intuit Production**”).

22. In support, DGP produced the following Intuit documents [Doc#422]:

- (a) Auth QB Online (All Other Reports 2014 - 2019) DGP01576 – DGP02555;
- (b) Auth QB Online (Audit Log 03.19.19 – 11.30.19) DGP02556 – DGP02787;
- (c) Auth QB Online (Bank Reconciliation Statements 01.03.17 - 12.17.19) DGP02788 - DGP02978;
- (d) Auth QB Online (Deleted Voided Transactions 03.19.19 – 11.28.19) DGP02979 – DGP02980;
- (e) QB Desktop Backup 1 (06.01.14 – 11.16.20) DGP02981 – DGP05562;
- (f) QB Desktop Backup 2 (Synovus Bank Period Ending 02.28.17) DGP05563 – DGP06050;
- (g) QB Desktop Backup 3 (Synovus Bank Period Ending 02.28.17) DGP06051 – DGP06540;
- (h) QB Desktop Backup 4 (Synovus Bank Period Ending 02.28.17) DGP06541 – DGP07028;
- (i) QB Desktop Backup 5 (Synovus Bank Period Ending 01.31.15) DGP07029 – DGP08783;
- (j) QB Desktop Backup 6 (Synovus Bank Period Ending 01.31.15) DGP08784 – DGP10538;
- (k) QB Desktop Backup 7 (Synovus Bank Period Ending 01.31.15) DGP10539 – DGP12050;
- (l) QB Desktop Backup 8 (Synovus Bank Period Ending 01.31.15) DGP12060 – DGP13620;
- (m) QB Payments (08.31.14 – 11.30.19) DGP13684 - DGP13777.

23. On May 14, 2021, all records received from BlueHost were provided directly to Debtor [Doc# 422].

24. After receiving the production on March 26, 2021, Debtor alleged that she had not received any documents from DGP. The Court held hearings regarding the alleged lack of production on May 24, 2021 and July 21, 2021. The Court then cited all parties to appear in August to address specifically the Intuit data.

25. On August 26, 2021, DGP appeared before this Court ready, willing and able to produce and show the Court all of the Intuit Production in its native format. Despite the Court's prior instruction that the parties appear in court on August 26, 2021 live in-person and with their computers, DGP's attorney appeared in person with the computer and the data but Debtor appeared via Zoom. Consequently, the Court was not able to review with the parties and the Court intended the Intuit Production in its native format.

26. On August 26, 2021, DGP also re-produced the following audit history on several checks [Doc# 259]:

- (a) Intuit Check 2027 History of Modifications
- (b) Intuit Check 1925 History of Modifications
- (c) Intuit Check 1961 History of Modifications
- (d) Intuit Check 2004 History of Modifications
- (e) Intuit Check 1973 History of Modifications
- (f) Intuit Check 1955 History of Modifications
- (g) Intuit Check 1964 History of Modifications
- (h) Intuit Check 1980 History of Modifications
- (i) Intuit Check 2011 History of Modifications
- (j) Intuit Check 2017 History of Modifications
- (k) Intuit Check 1909 History of Modifications
- (l) Intuit Check 2024 History of Modifications
- (m) Intuit Check 1968 History of Modifications
- (n) Intuit Check 2006 History of Modifications

27. On October 18, 2021, this Court then announced in open Court that the parties were to reattempt the in-court review of the Intuit Production on November 16, 2021.

28. On October 19, 2021, upon learning that DGP had to again provide access to the Intuit Production in its native format, DGP contacted Brad Kanter (“**DGP Expert**”) to assist. At that time, DGP learned for the first time that after the August hearing before the Court, a new update was made to the entire QuickBooks Online program, limiting access to all client accounts to the most recent two-year period.

29. On October 20, 2021, DGP filed an Expedited Motion for Entry of Order Instructing Intuit to Produce Archived Files in Native Format (the “**Intuit Motion**”) [Doc# 354]. The sole purpose of the Intuit Motion was to obtain a court order directing Intuit to produce archived files in native format for the Court’s inspection.

30. Ironically, Debtor filed a response to the Intuit Motion requesting that the Court deny DGP’s request for an Order to obtain the QuickBooks/Intuit records alleging in part that DGP had all the QuickBooks/Intuit data needed and that therefore, “Plaintiff should have the ability to demonstrate any activity with the assistance of the Solomon Law Group’s IT, William Kent¹ and a QuickBooks expert” [Doc## 357 and 358 at ¶8].

31. On or about November 4, 2021, after the Order was entered by this Court over Debtor’s objection granting the Intuit Motion [Doc# 370], DGP then issued its subpoena and served the Court Order upon Intuit [Doc## 384 and 385].

32. On November 9, 2021, Intuit produced to DGP all documents responsive to the Intuit Subpoena.

¹ On October 18, 2021, Debtor sought to exclude Mr. Kent from any hearings but thereafter sought to include Mr. Kent in the proceedings when Debtor could use his services to her advantage [Doc# 347].

33. On November 10, 2021, DGP produced again the hundreds of pages of documents received from Intuit in response to the Second Intuit Subpoena [Doc# 400].

34. On November 16, 2021, the parties and W. Keith Fendrick from Holland & Knight, LLP (attorneys for Intuit) attended a hearing regarding the Intuit records. At the conclusion of the hearing this Court determined that: (1) Intuit had complied with the Intuit Subpoena and produced all documents in its possession; and (2) Debtor was in possession of the Intuit records produced in March and August of 2021 despite Debtor's repeated allegations that she had not received "any records" from DGP.

35. In an abundance of caution, this Court directed Mr. Fendrick to also forward the same disclosures DGP provided to Debtor on November 10, 2021 directly to Debtor. On November 17, 2021, Mr. Fendrick re-sent the Intuit data to Debtor. Thus, Debtor received for a **FOURTH** time the Intuit records.

36. It is important to note that it was evident at the hearing that Debtor had not even bothered to look through the Intuit documents produced by DGP in March and August of 2021 in order to truly ascertain specifically what documents had not been provided. When asked by the Court, Debtor could not point to a single transaction to which the Intuit/QuickBooks audit trail data had not been provided by DGP.

37. Moreover, this Court stated it was satisfied with DGP's Intuit production and that the Intuit production could finally be "put to bed".

38. Despite the multiple hearings, subpoenas, and thousands and thousands of pages of production from Intuit, Debtor is once again seeking records from Intuit.

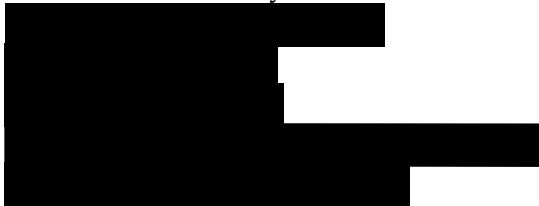
39. Likewise, despite receiving the existing records from BlueHost, Debtor is seeking the same records already received and also expanding the scope of the request to include third party applications [Doc# 446-1].

40. Debtor should not have free access to irrelevant and private information concerning Geberth and DG Auto.

41. DGP requests that this Court put an end to Debtor's endless duplicative requests and deny Debtor's additional request for records from Intuit and BlueHost. Intuit and BlueHost should not have to re-produce the same documents. Furthermore, that Debtor be denied access to the irrelevant and private financial records of Geberth's Morgan Stanley account and any records from DG Auto.

WHEREFORE, DGP requests that the Court will enter a protective order limiting any discovery to be obtained by Debtor's Notice of Subpoenas.

/s/ Stanford R. Solomon
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Certificate of Service

I hereby certify that I am admitted to the bar of this Court. I further certify that the foregoing **DGP PRODUCTS INC.'S MOTION FOR PROTECTIVE ORDER OF SUBPOENAS DIRECTED TO INTUIT, INC, MORGAN STANLEY, AND BLUEHOST, INC.** was filed through the CM/ECF system and served by e-mail and standard first-class mail on December 3, 2021 upon:

Faith Elyzabeth



Pro Se Defendant

/s/ Stanford R. Solomon

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Attorneys for **DGP PRODUCTS INC.**
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