

App. 9

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,)
) Adv. No. 8:20-ap-00537-CPM
vs.)
)
FAITH ELYZABETH ANTONIO,)
)
Defendant.)
_____/)
_____)

CONFIDENTIALITY AGREEMENT

DGP Products Inc. d/b/a Numeric Racing (“DGP”) and Faith Elyzabeth Antonio (“Antonio”) hereby enter into this Confidentiality Agreement that shall bind the parties and all other persons and firms affiliated or associated with the parties for purposes of the above-styled case or adversary.

Background

- (a) DGP has alleged that Antonio has committed theft and misappropriation of its business assets during her employment with DGP.
- (b) DGP seeks discovery of Antonio’s personal records, including her financial records, in order to determine the extent of Antonio’s theft.
- (c) Antonio seeks to prevent public disclosure of such personal information outside

of the context of this case or adversary proceeding or related criminal charges, investigations, or proceedings.

Terms

1. Accordingly, the parties hereby agree that the restrictions and procedures set forth herein shall govern discovery in this case or adversary proceeding, absent a subsequent written and manually-signed agreement by the parties or the entry of an Order in this case or adversary proceeding.

2. The third parties to whom discovery requests have been served or may hereafter be served by Plaintiff in this adversary proceeding shall comply with all subpoenas duces tecum served by Plaintiff by producing and delivering to counsel of record for Debtor [to wit: Samantha L. Dammer, P.A., 620 E. Twiggs Street, Suite 110, Tampa, Florida 33602-3938] of the documents and materials encompassed by and responsive to the respective subpoenas duces tecum in a prompt and timely manner, and shall contemporaneously provide to counsel of record for Plaintiff [to wit: The Solomon Law Group, P.A., 1881 West Kennedy Boulevard, Suite D, Tampa, Florida 33606-1611] an inventory listing identifying with reasonable particularity the documents and other materials produced and provided to Debtor's counsel of record pursuant to the respective subpoenas duces tecum.

3. The producing party may identify documents as confidential as provided below:

(1) Confidential Information. "Confidential Information" means and includes all information and documents designated as "CONFIDENTIAL" by the producing party that the producing party reasonably and in good faith believes to constitute or to encompass: (a) matters prohibited from disclosure by law or by contract; (b) financial information that a party considers to be confidential; (c) financial information relating to non-parties; (d) income tax returns

(including attached schedules and forms relating to non-parties); and (e) personnel or employment records.

(2) Designation.

(a) A party may designate a document as Confidential Information for protection under this Agreement by placing on or affixing to the document (and all copies) the word “CONFIDENTIAL” in a manner that will not interfere with the legibility of the document or, in the case of electronic spreadsheets produced in native form, on the CD/DVD case or on the transmittal correspondence. “Copies” include electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking “CONFIDENTIAL” shall be applied before or at the time the documents are produced or disclosed.

(b) A third-party providing information or producing documents, and a party upon receipt of such documents, may designate such information or documents as “CONFIDENTIAL”.

(3) Special Procedures for HIPAA-Protected Information. DGP and Antonio acknowledge that some material designated as “CONFIDENTIAL” could contain information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including but not limited to the name(s) of health care providers, information regarding health condition and diagnoses, and the name and dosage of medication(s) taken by Antonio. To the extent that any document designated as “CONFIDENTIAL” could contain information protected by HIPAA, a party may redact such HIPAA-protected information prior to production to DGP.

(4) Special Procedures for Confidential Information unrelated to HIPPA. Antonio waives any objections related to customer identification, product or transaction

Exhibit “C”

identification, and scope/breadth of information requested.

(5) Special Procedures for First Amendment Rights. Antonio waives any objections based on First Amendment rights, including any demands for customer purchase histories which could include expressive content, such as books, music, and other media, that may be protected from disclosure by the First Amendment.

(6) Special Procedures for the Video Protection Act. Antonio waives any objections based on the Video Privacy Protection Act, 18 U.S.C.A. § 2710 (“VPPA”).

(7) Depositions. Deposition testimony may be designated as confidential orally on the record immediately before or after the testimony to be so designated is advanced. Up to 30 days following receipt of a deposition transcript, a party may serve to all parties a Notice of Designation to designate specific portions of the testimony that the party desires to be designated as Confidential Information; thereafter, those portions of testimony identified in the Notice of Designation (or designated contemporaneously on the record) shall be protected from disclosure or use by this Agreement. The failure to designate on the record during the deposition or thereafter serve a timely Notice of Designation constitutes a waiver of any designation of testimony taken in that deposition as Confidential Information, unless otherwise agreed or as provided in any Order entered in this case or adversary proceeding.

(8) Protection of Confidential Material.

(a) General Protections. Confidential Information shall not be used or disclosed or disseminated at any time in any manner by a party, by counsel for a party, or by any other person identified in subparagraph (b) below, for any purpose whatsoever other than for proper purposes or directly related to this case or adversary proceeding or to any criminal charges, investigations, or related proceedings. Confidential Information

shall not be filed in this case or adversary proceeding with the court or otherwise made part of the court record except pursuant to a court order entered pursuant to the Middle District of Florida's Local Rule 1.09.

(b) **Limited Third-Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure or dissemination of any Confidential Information to any third person or entity except as set forth hereinbelow. Subject to these requirements, the following categories of persons may be allowed to review Confidential Information:

- (i) **Counsel.** Counsel for the parties and employees of counsel who have responsibility in connection with this case or adversary proceeding.
- (ii) **Parties.** Confidential Information may be disclosed to individual parties and employees of a party, but only to the extent counsel determines in good faith that the employee's assistance is reasonably necessary to the conduct of a proceeding in this case or adversary proceeding.
- (iii) **Court personnel.** The court and persons employed directly by the court.
- (iv) **Court Reporters and Recordors.** Court reporters engaged or retrained to provide services in connection with this case or adversary proceeding.
- (v) **Contractors.** Those persons specifically engaged or retrained to provide services in connection with this case or adversary proceeding, for the limited purpose of making copies of documents or organizing or

processing documents, including outside vendors hired to process electronically stored information and documents.

(vi) **Law Enforcement.** All law enforcement officers and associated personnel that may be involved in any criminal charges, investigations, or related proceedings.

(vii) **Outside Consultants and Experts.** Outside consultants, investigators, or experts specifically engaged, retained or employed by the parties or by counsel of record in this case or adversary proceeding to assist in the preparation and trial of this case or adversary proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment and Agreement to Be Bound that is attached hereto.

(viii) **Witnesses at depositions.** Before and during their respective depositions, witnesses in this case or adversary proceeding to whom disclosure is reasonably necessary. Witnesses shall not retain a copy of documents containing Confidential Information; provided, however, that witnesses may receive but not retain a copy of all exhibits marked at their respective depositions solely for purposes of and in connection with witness review of the transcripts for use in court. Pages of transcribed deposition testimony or exhibits to depositions that are designated as Confidential Information pursuant to the process set forth in this Agreement must be bound separately by the court reporter and shall not be disclosed to anyone except as expressly permitted by this Agreement.

Exhibit “C”

(ix) **Author or recipient.** The author or initially-designated recipient of the document (not including a person who received the document in connection with this case or adversary proceeding).

(x) **Others by Consent.** Other persons by prior written consent of the producing party or pursuant to an Order of the court.

(9) **Control of Documents.** Counsel of record for the parties shall make diligent efforts to prevent unauthorized or inadvertent disclosure of Confidential Information.

(10) **Inadvertent Failure to Designate.**

(a) **Non-Privileged Documents.** An inadvertent failure to designate information or a document as Confidential Information does not waive the right to so designate the document. If a party designates a document as Confidential Information after it was initially produced, the receiving party, on notification of the designation, must make a sincere effort to assure that the information and document is protected from disclosure in accordance with this Agreement. No party shall be found to have violated this Agreement for failing to maintain the confidentiality of material during a time when that material has not been designated as Confidential Information, even where the failure to so designate was inadvertent and where the material is subsequently designated Confidential Information.

(b) **Privileged Documents.** If information or a document subject to a claim of attorney-client privilege, work product protection, or any other privilege or immunity (other than financial privilege) is or has been produced inadvertently in this case or adversary proceeding, such production shall not prejudice or otherwise constitute a waiver of or an estoppel as to any claim of privilege, work product protection, or other

ground for withholding production or disclosure to which any producing party would otherwise be entitled. Instead, the information and document shall be treated as if there were no disclosure. If any producing party or producing non-party identifies production materials as privileged information that was produced inadvertently, the recipient of the materials shall forthwith: (1) return, or destroy the specified information or document and any copies in his/her possession or control; (2) delete any versions of the materials on any database maintained; (3) retrieve all electronic and paper copies of the materials provided to any third parties, including experts; (4) destroy any notes that reveal the substance of the protected information; and (5) make no use or dissemination of the information or document contained in the materials. After returning/destroying all of the materials other than one paper copy, the party returning/destroying the materials may challenge the privilege designation by application to the court.

(11) Filing of Confidential Information. This Agreement does not itself authorize the filing of any document under seal. A party shall not file a document under seal without first addressing the continued reasonable protection of the confidentiality of the filed materials, making a showing of particularized need, and obtaining an order under Middle District of Florida's Local Rule 1.09.

(12) Challenges by a Party to Designation as Confidential Information. The designation of any material or document as Confidential Information is subject to challenge by any party at any time. The following procedure shall apply to any such challenge:

(a) **Meet and Confer.** A party challenging the designation of Confidential Information must do so in good faith and must begin the process by conferring directly with counsel of record for the designating party. The challenging party must explain the

basis for the belief that the confidentiality designation was not proper and must give the designating party an opportunity to review the designated material, to reconsider the designation and, if no change in designation is offered, to explain the basis for the designation.

(b) **Judicial Intervention.** A party that elects to challenge a confidentiality designation may apply to the court by verified motion that identifies the challenged material and sets forth in detail the basis for the challenge to the confidentiality designation. Each motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements hereof. The burden of persuasion in any such challenge shall be on the challenging party. Until the court rules on the challenge, all parties shall continue to treat the materials as Confidential Information pursuant to this Agreement.

(13) **Use of Confidential Documents or Information at Trial.** Nothing in this Agreement shall be construed to affect the use of any document, material, or information at any trial or hearing. A party that intends to present or that anticipates that another party may present Confidential Information at a hearing or trial shall first bring that issue to the court's attention by motion or in a pre-hearing memorandum without disclosing the Confidential Information. The court may establish the procedure governing the use of such documents or information at trial.

(14) **Confidential Information Subpoenaed or Ordered Produced in Other Civil Litigation.**

(a) If a receiving party is served with a subpoena or an order entered in another civil case that would compel disclosure of any information or document designated as Confidential Information in this case or adversary proceeding, the receiving

party shall so notify the designating party, in writing, within three business days after receiving the subpoena or order. Such notification shall include a copy of the subpoena or order.

(b) The receiving party also shall inform in writing the party who caused the subpoena or order to issue in the other civil case that some or all of the material covered by the subpoena or order is the subject of this Agreement, and must transmit a copy of this Agreement to the party in the other civil case that caused the subpoena or order to issue.

(c) The purpose of imposing these duties is to alert the interested persons to the existence of this Agreement and to afford the designating party in this case or adversary proceeding an opportunity to try to protect Confidential Information in the civil court from which the subpoena or order issued. The designating party shall bear the burden of seeking protection from that civil court of Confidential Information, and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this case or adversary proceeding to disobey a lawful directive from another court, civil or criminal. The obligations set forth in this paragraph remain in effect while the party has in his/her possession, custody or control Confidential Information designated by another party to this case or adversary proceeding.

(15) Challenges by Members of the Public to Sealing Agreements. A non-party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting or designating confidentiality will have the burden of demonstrating the propriety of filing under seal.

(16) Obligations on Conclusion of Proceedings.

Exhibit “C”

(a) **Agreement Continues in Force.** Unless otherwise agreed or ordered, this Agreement shall remain continuously in force without termination after dismissal and after entry of any judgment or other terminating order.

(b) **Obligations at Conclusion of this Case or Adversary Proceeding.** Within 30 days after conclusion of all proceedings pertaining to this case or adversary proceeding, including any appeals and/or related criminal investigations, cases, and appeals, all Confidential Information marked “CONFIDENTIAL” pursuant to this Agreement, including copies, shall be destroyed, and each party shall so certify under oath to the court and to all other parties in writing through their respective counsel.

(c) **Retention of Work Product and Documents Constituting Counsel’s File.** Notwithstanding the above requirements to return or destroy documents, counsel of record may retain attorney work product, including an index that refers or relates to designated Confidential Information and copies of any court filings, deposition or hearing transcripts and exhibits, and documents produced in discovery. Any retained Confidential Information shall continue to be controlled by and subject to this Agreement. An attorney may use his or her work product (but not Confidential Information) or derivatives thereof in subsequent litigation, provided that its use does not use or disclose any Confidential Information.

(17) **No Prior Judicial Determination.** This Agreement is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information by counsel or by the parties is entitled to protection until the court rules on a specific document or matter.

Exhibit “C”

(18) **Persons Bound.** This Agreement shall be binding upon all counsel of record and their respective law firms, the parties, and all persons made subject to this Agreement by its terms. Dated: _____, 2020.

<hr/> <p>DGP PRODUCTS INC. AUTHORIZED REPRESENTATIVE</p> <hr/> <p>Stanford R. Solomon ssolomon@solomonlaw.com Florida Bar No. 302147 Katherine M. Johnson kjohnson@solomonlaw.com Florida Bar No. 1011648 THE SOLOMON LAW GROUP, P.A. 1881 West Kennedy Boulevard, Suite D Tampa, Florida 33606-1611 (813) 225-1818 (Telephone) (813) 225-1050 (Facsimile) Counsel of Record for DGP Products Inc., d/b/a Numeric Racing</p>	<hr/> <p>FAITH ELYZABETH ANTONIO</p> <hr/> <p>Samantha L. Dammer sdammer@attysam.com Florida Bar No. 36953 SAMANTHA L. DAMMER, P.A. 620 E. Twiggs St., Ste. 110 Tampa, FL 33602-3938 (813) 288- 0303 (Telephone) (813) 466-7495 (Facsimile) Counsel of Record for Faith Elyzabeth Antonio</p>
---	---

ATTACHMENT “A”

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

FAITH ELYZABETH ANTONIO,

Debtor.

CASE NO. 8:20-BK-07637

CHAPTER 7

AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Confidentiality Agreement dated _____ in the above-styled case or adversary proceeding, understands fully the terms thereof, and agrees unconditionally to be bound by its terms. The undersigned submits to the jurisdiction of the U.S. District Court for the Middle District of Florida, Tampa Division in matters relating to the Agreement and understands fully that the terms of the Agreement restrict severely the use or dissemination of materials (information and documents) designated as Confidential Information. Specifically, the undersigned commits absolutely to abide by the Confidentiality Agreement and to forever refrain from using or disseminating any information or documents that are designated as Confidential Information. The undersigned promises not to disclose any such Confidential Information, except only as explicitly authorized by this Agreement or by an Order of the Court in the case or adversary proceeding.

Exhibit “C”

The undersigned acknowledges that violation of the Agreement may result in serious penalties and possibly contempt of court.

Date: _____
Name: _____
Job Title: _____
Employer: _____
Business Address: _____
Signature _____

DRAFT

Exhibit "C"