**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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| IN RE THE MARRIAGE OF JOHN DOE AND JANE DOE | |
| Upon the Petition of  JOHN DOE,  Petitioner,  And Concerning,  JANE DOE,  Respondent. | CASE NO. \*\*\*\*\*\*\*\*  **RESISTANCE TO MOTION TO QUASH** |

COMES NOW Petitioner, by and through his undersigned attorney, and for his Resistance to Smith’s Motion to Quash, states as follows:

1. **EXHIBITS.**

The following Exhibits are attached hereto and offered in support of this resistance:

1. May 10, 2015, Deposition Transcript of Jane Doe;
2. March 16, 2015, Stock Purchase Agreement for Farm Corp.;
3. January 25, 2016, Letter from John Smith;
4. January 20, 2016, Subpoena served on John Smith;
5. February 17, 2016, Letter from Respondent’ Law Firm;
6. Jane Doe’s Farms, LLC (“JDF”) Transaction Report for Smith Farms;
7. Cargill Incorporated Records;
8. December 7, 2015, Hills Bank Account Statement for JDF;
9. JDF Transaction Report for John Smith;
10. FMH Ag Risk Insurance Reports.

**II. STATEMENT OF FACTS.**

On or about August 7, 2015, Jane Doe (hereinafter “Jane”) caused to have filed a Petition for Dissolution of Marriage in the above referenced matter. As part of the action Jane requested an equitable distribution of that parties’ real and personal property. In response, John Doe (hereinafter “John”) requested an equitable distribution of the parties’ property, spousal support, and child support. Jane runs the parties’ family farm under Jane Doe’s Farms, LLC (hereinafter “JDF). As part of the operation, Jane historically farmed approximately 1,400 acres. Jane would frequently employ John Smith (hereinafter “Smith”) to custom farm a portion of his land.

On or about March 16, 2016, Smith purchased Farm Corp. from the Smith Revocable Trust (hereinafter “Smith Trust”). Farm Corp. owns 746 acres of farmland located in Muscatine and Louisa counties.

In the Spring of 2016, witnesses reported to John that Jane was farming half of the 746 acre tract of land. Witnesses also reported that Jane was clearing some of the land to erect hog buildings. Based on the credible reports, Jane was expressly asked about his involvement in the 746 acres at her deposition on May 10, 2015, where she indicated as follows:

*Q. (John’s Attorney) Do you have an deals going on with John Smith concerning 750 acres of farm ground?*

*A. (Jane) No.*

*Q. And you have no future interest in it?*

*A. No.*

On or about December 21, 2015, John caused to have a subpoena served on John Smith requesting in pertinent part, “[a]ny and all documents evidencing any business and/or contractual relationship(s) with Jane Doe, Jane Doe’s Farms, LLC, or any other entity in which Jane Doe is or was involved, including but not limited to the 750 acre tract of land recently purchased from the Smith estate.”

On or about January 25, 2017, John Smith sent a letter to the undersigned indicating, “I have no written documents pertaining to Farm Corp and Jane Doe. I have a verbal agreement, with a hand shake.” Confronted with John Smith’s letter, Jane admitted to having a cash rent agreement on 312 acres of the land in question. Through counsel she indicated that she has a year-by-year gentleman’s agreement where she pays cash rent to Farm Corp. in the amount of $250.00 per acre for a total of $78,000.00 per year. Reviewing the general ledger entries for JDF it shows three cash rent payments to Smith Farms in 2015. The payments were as follows: 1) April 19, 2015, $8,860.00; 2) November 30, 2015, $51,523.88; and 3) December 30, 2015, $17,616.12.

In order to verify the agreement between Jane and the Smith. John caused to have a subpoena served on Cargill Inc. On or about March 29, 2017, Cargill Inc. provided all of its records in relation to Jane Doe. The subpoena to Cargill Inc. did not make any mention of the Smith or Farm Corp.. Despite this, Cargill Inc. produced a check in the amount of $31,402.11 made out to Farm Corp. on December 2, 2016. **See** Exhibit L at p. 8. Interestingly the check was sent to 112 Main St, Des Moines, Iowa, which is Jane’s address. Jane’s Bank records and general ledger statements provided through discovery are devoid of any deposit in said amount.

Further, triggering a red flag in Jane’s relationship with Farm Corp. is her classification of the payments made to the Smith. On November 30, 2015, Jane transferred $51,523.88 to the Smith. The bank statement associated with the transfer notes that the transfer was for “custom hire.” **See** Exhibit M. However, the general ledger statement provided by Jane for JDF classifies the transfer as a cash rent payment. **See** Exhibit K.

Also troubling in the relationship is the issue of crop insurance. Through discovery John obtained all of JDF’s Production Reports from JDF Ag Risk Insurance. See Production reports attached as Exhibit O. The records are remarkably devoid of any mention of the 312 acres.

**III. SUBPOENA DUCES TECUM**

1. **Background.**

Smith contend that their bank records requested in the Subpoena are not discoverable on the grounds that: 1) the documents are irrelevant; 2) John Smith and Farm Corp are not parties to the action; and 3) non-party corporations cannot be required to produce their books and records for inspection.

1. **Legal Standards.**

Defendant failed to state the authority by which a subpoena may be quashed. Pursuant to Iowa R. Civ. P. 1.1701(4)(d), “[o]n timely motion the court, the issuing court must quash or modify a subpoena that: 1) [f]ails to allow a reasonable time to comply; 2) [r]equires a person who is neither a party nor a party’s officer to travel more than 50 miles from where that person resides, is employed, or regularly transacts business in person, except that a person may be ordered to attend trial anywhere within the state in which the person is served with a subpoena; 3) [r]equires disclosure of privileged or other protected matter, if no exception or waiver applies; or 4) [s]ubjects a person to undue burden. In lieu of quashing a subpoena, the court may modify the subpoena or order the parties to enter into a confidentiality agreement to address the requested parties’ concerns. *Id.* Here such an agreement or order would be sufficient to overcome Smith’ objections and could adequately address the issues of use of such documents at trial, limitation of reproduction of the items and eventual destruction post trial or settlement.

Smith correctly state that under Iowa R. Civ. P. 1.503(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, including the existence, description, nature, custody, condition, and locations of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Smith further correctly state that under 1.514, a party to a lawsuit may obtain discovery from persons not a party to a lawsuit if the documents are relevant to the subject matter of the pending litigation.

1. **Argument.**

1. **Smith’s Motion is not supported by the affidavit required by Iowa R. Civ. P. 1.517(5).** This ground of resistance is not a mere technical objection. Rather it serves to highlight the incompleteness of the efforts made by Smith prior to seeking intervention of the Court. Pursuant to Iowa Rule of Civil Procedure 1.517(5)(2016),

“[n]o motion relating to depositions, discovery, or discovery sanctions may be filed with the clerk or considered by the court unless the motion alleges that the movant has in good faith personally spoken with or attempted to speak with other affected parties in an effort to resolve the dispute without court action. The certification must identify the date and time of any conference or attempts to confer.”

On March 22, 2016, counsel for Smith called the undersigned at or about 4:27 p.m. and left a message. On or about March 23, 2016, at 11:59 a.m. counsel for Smith filed his Motion to Quash. On or about March 23, 2016, the undersigned called Smith’s counsel back. Further, the undersigned sent Smith’s counsel a proposal to resolve the discovery conflict. Counsel for Smith then responded that they would call the undersigned on March 27, 2016, to discuss. Counsel for Smith finally called on April 5, 2016, to address the dispute. Smith under no set of circumstances or conditions will agree to the release of their bank records.

Petitioner is willing to continue to work with Smith’s counsel to find middle ground on the issues related to Smith’s privacy concerns. This includes, but is not limited, to an agreement to mark the documents for attorneys’ eyes only and/or to have any documents produced fall under the Bank protective order that is already in place.

2. **Smith’s bank records are relevant to the subject matter of the litigation**. Smith claim that the information requested would not be relevant nor reasonably calculated to lead to the discovery of admissible evidence without little if any knowledge of the nature or scope of the case. Discovery rules are to be liberally construed to effectuate the disclosure of relevant information to the parties. *Schroedl v. McTague*, 169 N.W.2d 860, 865 (Iowa 1969). The court has wide discretion in ruling upon the discoverable nature of requested information. *Jones v. Iowa State Highway Commission*, 157 N.W.2d 86, 87 (1968). John seeks inspection of Smith’s and Farms Corp.’s records for the reduced period of 2014 to present, part of the time they were conducting business with Jane.

The sworn testimony to date has been that Jane has no deals in place relating to the 746 acre tract of land owned by Farm Corp. However, John Smith discredited that testimony in his January 25, 2016, letter to the undersigned. From the information requested, John believes he will be able to show the true dealings between Jane and the Smith and/or Farm Corp. Therefore, the bank records of the Smith and Farm Corp. are relevant to valuing Jane’s farming operation, a point John presently contests. Thus, the documents fall within the scope of discovery set forth under Iowa R. Civ. P. 1.503(1). The Iowa Supreme Court has held that the discovery is designed to enable preparation for trial, as well as to aid in the development of proof. *Allen v. Lindemann*, 148 N.W.2d 610, 617 (1967).

3. **Smith’s and Farm Corp.’s bank records do not constitute confidential and proprietary information.** The supreme court had the opportunity to examine Iowa R. Civ. P. 1.504 which allows a protective order when good cause is shown that a trade secret or other confidential commercial information not be disclosed or be disclosed in a designated way. In examining the rule, the supreme court identified certain factors to be considered in determining whether information is a trade secret or confidential which include: (1) the extent to which the information is known outside of [the party’s] business; (2) the extent to which it is known by [those] involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease of difficulty with which the information could be properly acquired or duplicated by others*. Farnum v. G.D. Searle & Co*., 339 N.W.2d 384, 289 (Iowa 1983).

Smith claims that his bank records are confidential information. Given the above listed factors, it is questionable whether this information qualifies as confidential information – certainly there is no such showing by affidavit or otherwise. The amount paid for various farming inputs (the bulk of what these records will contain) and the amounts received for cash rent would be known extensively outside of the business. The value of this information to competitors would be questionable as pricing information in the farming market is well known and fairly uniform. Finally, this information can be easily obtained by competitors from their independent dealings with farming cooperatives and seed dealers. To obtain a protective order or have the subpoena quashed, Smith must show good cause that the disclosure of the confidential information should be prevented or restricted. *Farnum*, 339 N.W.2d at 389. Smith must demonstrate facts as distinguished from stereotyped and conclusory statements in order to establish good cause. *Id.* Smith have offered merely conclusory statements and no facts to support their claim that the information requested is confidential. Therefore, their Motion to Quash should be denied.

In addition, Smith assertion that John is simply on a fishing expedition to obtain confidential information is unfounded. The documents requested almost certainly contain information to assist him in framing his claims as previously discussed. Accordingly, John has a substantial need for and an inability to obtain the substantial equivalent of the withheld documents.

4. **Smith’s request for sanctions is wholly misplaced and inappropriate.** Iowa R. Civ. P. 1.1701(4) provides that sanctions may be imposed by the court if an attorney or party subject a party to undue burden or expense. Further, as attorneys we have a duty to each other to not seek court sanctions without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client’s lawful interests. Smith’s Motion to Quash is completely devoid of any argument that John’s request is unduly burdensome or expensive. John has simply requested that Bank provide Smith’s and Farm Corp.’s bank records in electronic format. Further, John has agreed to these records falling under the Bank protective order. The only burden related to this request is born by Bank. Sanctions are far from appropriate in this matter.

In conclusion, John has a substantial need for the requested documents that cannot otherwise be met without undue hardship to John’s case. Counsel for John has agreed to the documents being marked for attorneys’ eyes only. Further, counsel has offered to have the documents subjected to the Bank protective order. There is no reason why Smith and Farm Corp. should not be compelled to produce the requested documents.

WHEREFORE, Petitioner respectfully requests that this court: (1) deny Smith’s request Motion to Quash Subpoena; (2) enter an Order compelling Bank to produce the documents; and (3) order Bank to make available the requested documents within 7 days of entry of the court’s Order for inspection and copying.

Respectfully submitted,

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