

Court of Appeals of the State of Georgia

PROPOSED ORDER (A96I0015.91) October 17, 1995	
AGREE	DISAGREE

ATLANTA,

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A96I0015. HOME DEPOT, U.S.A., INC. V. ROTH.

Upon consideration of the motion for protective order filed by petitioner Home Depot, U.S.A., Inc. with the consent of respondent Max M. Roth, this Court finds that good cause exists for the protection of confidential information that will be provided to the parties and to this Court during the course of this action. Therefore, it is hereby ORDERED that the motion for protective order be GRANTED in the following particulars:

1.

The provisions of the protective order signed by Judge Cynthia Wright of the State Court of Fulton County in this action is incorporated by reference herein in its entirety. The parties are hereby expressly ordered to follow the provisions of said order with respect to all proceedings before this Court.

2.

The documents deemed confidential by the parties as listed in Exhibit C of the trial court's protective order shall remain confidential and the Clerk of this Court is hereby directed to designate such portions of the record listed in Exhibit C and previously filed with this court as: CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

Pursuant to Georgia Court of Appeals Rule 28 (a) (2), it is further Ordered that should the application for discretionary appeal in this action be granted and should oral argument be granted, this case shall be placed at the end of the oral argument calendar. No confidential material shall be referred to during oral argument without prior notice to the Court and opposing counsel of such intention, which shall be made in advance of oral argument in writing.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ALPHA,)
)
 Plaintiffs,)
)
 vs.) CIVIL ACTION FILE NO. _____
)
 BETA,)
)
 Defendant.)

PROTECTIVE ORDER

The undersigned having considered the record and the Joint Motion for Protective Order presented by the parties, **IT IS HEREBY ORDERED THAT:**

1.

The parties may designate as confidential for the purposes of this Order documents, answers to interrogatories, deposition testimony, and other information produced through the discovery proceedings which may contain confidential or proprietary information. [. . . which fall within the following categories: . . .]

2.

Any information or material so designated shall be considered "Confidential Information" for the purposes of this Order. Any information so designated which is obtained by the parties through the discovery process shall be used by the receiving parties solely in connection with this action and may not be used or disclosed except as provided for in this Order.

Any such designation shall be without prejudice to the rights of the Plaintiffs to apply to the Court for a determination of whether said designation is proper. Nothing in this Order shall be construed to adjudicate the actual confidentiality of any such material, but rather the order is entered solely for purpose of facilitating the discovery process in the above-styled litigation.

3.

The designation of discovery material as "Confidential Information" for purposes of this Order shall be made as follows:

a. In the case of documents, answers to interrogatories, or other written materials (apart from depositions, other pretrial testimony, transcripts thereof and exhibits thereto) by stamping in a conspicuous place on each page containing such Confidential Information the term "Confidential - Subject To Protective Order".

b. In the case of depositions, other pretrial testimony, the transcripts thereof, and exhibits thereto, by a statement on the record of counsel for the party making the disclosure at the time of such disclosure.

4.

Whenever any Confidential Information is disclosed or used at a deposition or other pretrial testimony in this action, (i) each portion of any such testimony in which the Confidential Information is disclosed or used shall be conducted with only those persons in attendance who are authorized under this Order

such other safeguards as this Court may require at any pretrial or post-trial hearing herein [but see U.S.C.R. 21];

b. to counsel for the parties in this action actually working on this action (including general counsel for the parties) and paralegals, legal assistants, and secretaries of such counsel actually working on this action;

c. to any independent experts, consulting firms, or other independent contractors employed to advise or assist counsel for any party in the preparation or trial of this action, provided that such expert, consultant or contractor to whom the disclosure is to be made shall consent in writing (by executing the form of certificate attached hereto) to be bound by the terms of this Order;

d. to court reporters actually recording proceedings in this action provided that the court reporter consents in writing (by execution of the form of the Certificate attached hereto) to be bound by the terms of this Order;

e. to the parties themselves and to any employees or independent contractors of a party to whom the party's attorney reasonably believes disclosure is necessary in connection with preparation for discovery or trial in this action, provided that such employees or independent contractors consent in writing (by executing the form of certificate attached hereto) to be bound by the terms hereof;

f. to the author of the Confidential Information, the addressee(s) or other recipient(s) thereof, or any person

employed in a confidential position by the party producing the Confidential Information at the time the confidential document was created and who in fact had access, or authority to access, the specific Confidential Information at issue;

g. to any witness or prospective witness in this action provided, however, that any such witness or prospective witness consents in writing (by executing the form of the certificate attached hereto) to be bound by the terms hereof;

h. to all persons deposed, but only if the deponent (1) is another party in this litigation who has consented to or is otherwise bound by the terms and restrictions of this Order; or (2) has, as a non-party, agreed in writing to be bound by the terms and restrictions of this Order and has executed the Certificate attached hereto.

j. to other persons as agreed by the parties or as ordered by the Court.

7.

If the deponent who is being provided confidential information is a non-party, it shall be the responsibility of the party taking the deposition to inform the deponent, prior to any question premised upon, containing or referencing confidential information, that the questions may be premised upon, contain or reference information that has been designated as confidential and that is subject to this Order. If a deponent has not previously executed a confidentiality agreement, a copy of the agreement and this Order shall be provided to the deponent or the

deponent's counsel prior to such questioning and absent good cause for refusing to be bound by the terms and restrictions of this Order, the deponent shall execute the confidentiality agreement prior to such questioning.

8.

Nothing in this Order, however, shall prevent the use of any Confidential Information at trial or the disclosure of that information to any jury. If the Defendant believes that disclosure of the Confidential Information at trial would be harmful to him, he may apply to the Court for special handling of the Confidential Information at trial.

9.

All Confidential Information produced by any party during the course of the proceeding of this action, and all copies thereof, upon request, shall be promptly returned to the producing party at the conclusion of this action. In addition, upon request, each party shall promptly destroy, in whatever form stored or reproduced, all of the materials that contain or refer to Confidential Information of another person or party. The party receiving a request to return or destroy the above-referenced material may instead make the materials available to the requesting party for retrieval.

10.

If a party believes that information or material requested in discovery is of such a sensitive nature that it would not be adequately protected by this Order, that party shall remain free

to move this Court for the entry of a more restrictive Protective Order, the right to so move not being waived or prejudiced by the entry of this Order.

11.

Confidential documents, or information produced or disclosed during this litigation which the producing party did not designate as confidential at the time of production or disclosure, but which that party later desires to designate as confidential, may be so designated by notifying in writing each of the parties to whom the information was given [. . . within ___ working days of its disclosure]. Each recipient of this notice shall then promptly stamp or mark the documents or information as confidential and notify all others to whom the recipient has conveyed the documents or information of its designation as confidential. Once notified, each recipient shall treat the documents or information as confidential and subject to the terms and restrictions of this Order.

12.

Should any party object to the designation of any information as confidential, that party shall notify in writing the parties producing the information of its objection. The producing and objecting party shall then confer pursuant to Local Rule 225.4 of the Northern District of Georgia and attempt in good faith to resolve the disagreement. Following this conference, if the disagreement remains, the party objecting to the confidentiality designation may apply to the Court for

determination of whether the designated information should remain confidential; provided, however, that the party claiming confidentiality shall have the burden of proof as to the confidential nature of the information. Until the Court rules on the objecting party's application, any information which has been produced and designated as confidential shall be treated as confidential and subject to the terms and restrictions of this Order.

13.

Failure by any party to challenge a particular claim of confidentiality at the time the information is designated confidential shall not constitute a waiver of the right subsequently to challenge such claim of confidentiality.

14.

Nothing contained in this Order shall apply to:

a. Information which at or prior to disclosure thereof in this action is or was in the public domain or which, after disclosure thereof to the persons bound by this Order, becomes public without action on their part; and

b. Information which was rightfully possessed by the party receiving it prior to its production in the proceedings of this action.

15.

The provisions of this Order shall continue to be binding upon conclusion of this action. The Court retains jurisdiction

over the parties for enforcement of the provisions of this Order following conclusion of the action.

SO ORDERED THIS _____ DAY OF _____, 1994.

HONORABLE _____
UNITED STATES DISTRICT JUDGE

CONSENTED TO BY:

Attorneys for Plaintiff

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ALPHA,)
)
 Plaintiffs,)
)
 vs.) CIVIL ACTION FILE NO. _____
)
 BETA,)
)
 Defendant.)

CERTIFICATE

I hereby certify that I have read and understand (or have been advised by counsel of the contents of) the Protective Order dated _____, 1994, and agree to abide by its terms and conditions. I also understand that any violation of said Protective Order by me or anyone acting under my direction may subject me to penalties for contempt of court.

Dated: _____

Signature

Address