

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al</i>,</p> <p style="text-align: center;"><i>Plaintiffs</i>,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants</i></p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Defendants' Joint Motion to Redact Confidential or Privileged Information from Transcript of February 15, 2024, Hearing</p>
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On February 15, 2024, the Court held hearing on the inadvertent disclosure of the deposition transcript of Julie Ghoubril ("Deposition Transcript") taken in a divorce proceeding with Defendant Sam Ghoubril, which the Court was holding for in camera review since March of 2020, based on claims of privilege by the Ghoubrils. The Court stated that it filed the transcript under seal with the Clerk of Courts with the intention that the attorneys and the public not be permitted access to the arguably privileged information, unless and until the Court of Appeals upheld certification of Class A (the medical expenses class). However, the Clerk of Courts sent counsel an electronic notice containing a link to access the transcript. The Court is issuing a Nunc Pro Tunc entry to correct any misunderstanding with regard to the Court's intentions in filing the Deposition Transcript under seal, and requiring counsel to destroy all copies of the inadvertently disclosed Deposition Transcript and precluding further dissemination.

However, during the telephone hearing of February 15, 2024, counsel for Plaintiffs stated that he was in possession of the transcript and summarized his interpretation of the content of the Deposition Transcript on the record. The purpose of this Motion is to prevent public dissemination of the arguably privileged information, while balancing the needs of the Parties while litigating

issues related to the transcript. With these competing interests in mind, Defendants propose the Court enter the following Order:

If a party desires to file The Transcript of the February 15, 2024, in its entirety, The Transcript of the Hearing shall be filed under seal and the clerk shall be instructed that the transcript is for “attorneys’ eyes only” until such time as the summary of the confidential or privileged information subject to the Nunc Pro Tunc entry can be properly redacted from the transcript. Thereafter, an appropriately redacted transcript may be filed with the Clerk of Courts.

The Ohio Supreme Court has held that while completely denying the public access to the docket record of a case may violate the Constitution, appropriate redaction of confidential information is appropriate. *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, ¶ 53. Although Floyd dealt with confidential juvenile information, the interest in protecting privileged information is no less compelling. See, *Adidas Am., Inc. v. Payless Shoesource, Inc.*, D.Or. No. CV 01-1655-KI, 2008 U.S. Dist. LEXIS 13688 (Feb. 22, 2008) (privileged information redacted from court order). The privilege has not been waived by the Ghoubrials, and the Court’s inadvertent disclosure of the Deposition Transcript cannot operate as a waiver of the privilege.

Therefore, in an effort to balance the interests of the parties and protect the Ghoubrials from public dissemination of arguably privileged and confidential information, Defendants propose that this Court enter the Proposed Order attached as Exhibit A to this Motion.

Respectfully submitted,

/s/ Bradley J. Barmen

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Counsel for Defendants

CERTIFICATE OF SERVICE

The foregoing Defendants' Joint Motion to Redact Confidential or Privileged Information from Transcript of February 15, 2024, Hearing has been electronically filed with the Court on this 16th day of February, 2024. The parties may access this document through the Court's electronic docket system.

/s/ Bradley J. Barmen
Bradley J. Barmen
James M. Popson (0072773)



User Name: Christopher J Van Blargan

Date and Time: Thursday, February 15, 2024 5:13:00PM EST

Job Number: 217205411

Document (1)

1. *Adidas Am., Inc. v. Payless Shoesource, Inc., 2008 U.S. Dist. LEXIS 13688*

Client/Matter: -None-

A Neutral

As of: February 15, 2024 10:13 PM Z

Adidas Am., Inc. v. Payless Shoesource, Inc.

United States District Court for the District of Oregon

February 22, 2008, Decided

CV 01-1655-KI

Reporter

2008 U.S. Dist. LEXIS 13688 *

ADIDAS AMERICA, INC. and ADIDAS-SOLOMON AG,
Plaintiffs, v. PAYLESS SHOESOURCE, INC.,
Defendant.

Subsequent History: Motion denied by Adidas Am., Inc. v. Payless Shoesource, Inc., 540 F. Supp. 2d 1176, 2008 U.S. Dist. LEXIS 18689 (D. Or., Mar. 10, 2008)

Prior History: Adidas Am., Inc. v. Payless Shoesource, Inc., 546 F. Supp. 2d 1029, 2008 U.S. Dist. LEXIS 14063 (D. Or., Feb. 22, 2008)

Core Terms

Seal, protective order, confidential, pages, advice of counsel, legal advice, attorney-client, quotations, adidas, inadvertent, disclosure, documents, parties

Counsel: [*1] For Adidas America, Inc, Adidas Solomon, AG, Plaintiffs: Stephen M. Feldman, LEAD ATTORNEY, Thomas R. Johnson, Perkins Coie, LLP, Portland, OR; Jerre B. Swann, R. Charles Henn, Jr., William H. Brewster, Kilpatrick Stockton, LLP, Atlanta, GA.

For K-Swiss Inc., Intervenor Plaintiff: Neil D. Greenstein, TechMark, Carlsbad, CA.

For Payless Shoesource, Inc., Defendant: Bridget A. Short, William R. Hansen, LEAD ATTORNEYS, Lathrop & Gage L.C., New York, NY; Craig D. Bachman, Kenneth R. Davis, II, Milo Petranovich, LEAD ATTORNEYS, Lane Powell, PC, Portland, OR; David R. Barnard, Gerald M. Kraai, R. Cameron Garrison, Travis W. McCallon, LEAD ATTORNEYS, David V. Clark, William A. Rudy, Lathrop & Gage, LC (Kansas City), Kansas City, MO; Michael G. Martin, Michael J. Roche, Phillip S. Lorenzo, LEAD ATTORNEYS, Lathrop & Gage LC, Denver, CO; Stephen J. Horace, LEAD ATTORNEY, Lathrop & Gage, LC, Boulder, CO; William B. Crow, LEAD ATTORNEY, Schwabe Williamson & Wyatt, PC, Portland, OR.

Judges: Garr M. King, United States District Judge.

Opinion by: Garr M. King

Opinion

OPINION AND ORDER

KING, Judge:

On February 4, 2008, Payless Shoesource, Inc. ("Payless") filed a Motion (doc. 673) to Seal Portions of the December 21, 2007 Opinion and [*2] Order. In its February 15, 2008 Reply Memorandum, Payless narrowed the Motion to Seal "to only the advice of counsel information identified on pages 3 and 4 of Exhibit A to its Motion" (i.e., the advice of counsel quotations from the Declaration of Stephen Horace, which appear on pages 20 and 21 of the Opinion and Order). See Reply Mem., at 1. For the reasons set forth below, the Motion to Seal is GRANTED as to the advice of counsel quotations on pages 20 and 21 of the Opinion and Order.

Throughout the course of this litigation, the parties have sought to protect confidential attorney-client communications and sensitive proprietary business information. The parties agreed to conduct pre-trial proceedings under the shelter of a protective order. See Second Amended Stipulated Protective Order Regarding Confidentiality ("Protective Order") (doc. 431). The parties' recent motions for summary judgment and most of the accompanying documents were filed under seal pursuant to that Protective Order.

On pages 20 and 21 of the December 21, 2007 Opinion and Order, however, the court inadvertently disclosed confidential legal advice given to Payless by outside counsel. Publication of that legal advice [*3] was not the result of Payless' inadvertent or purposeful

Christopher J Van Blargan

2008 U.S. Dist. LEXIS 13688, *3

disclosure, but the result of the court's Opinion and Order. The quoted material came from documents that Payless filed under seal and marked as "attorney-client communication-privileged and confidential," pursuant to the Protective Order. adidas does not seriously dispute that designation.

Payless is concerned that the court's disclosure of Payless' confidential legal advice will effect a broader waiver of the attorney-client privilege than Payless intended. Redacting those quotations from the Opinion and Order may help remedy any prejudice to Payless. adidas, on the other hand, is not prejudiced by the sealing of this material.

Accordingly, Payless' Motion (doc. 673) to Seal Portions of the December 21, 2007 Opinion and Order is GRANTED as to the quoted advice of counsel material that appears on pages 20 and 21 of the Opinion and Order. The court will seal the December 21, 2007 Opinion and Order and file a Redacted Opinion and Order. The court further orders that adidas' Memorandum in Opposition (doc. 674), and the Declaration of R. Charles Henn Jr. (doc. 675) be sealed.

IT IS SO ORDERED.

Dated this 22nd day of February, 2008.

/s/ [*4] Garr M. King

Garr M. King

United States District Judge

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Christopher J Van Blargan

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

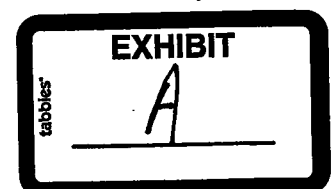
NUNC PRO TUNC ORDER

The Court, having been made aware of a clerical error relative to its February 12, 2024, Order directing that the deposition transcript of Julie Ghoubrial be filed under seal in this matter, enters this Order, Nunc Pro Tunc, to correct the record and to ensure the full compliance of all Parties relative to the Court's February 12, 2024 Order.

Wherefore, when the Court issued its February 12, 2024, Order directing that the deposition transcript of Julie Ghoubrial be filed under seal, it intended that the transcript remain private and not available to the public, the Parties, and/or their counsel.

Wherefore, when the deposition of Julie Ghoubrial was filed on the docket on February 12, 2024, pursuant to this Court's Order to file it under seal, the Notice of Filing sent to counsel made the transcript available for download, by inadvertence or mistake, for a period of approximately thirty (30) minutes, until the issue was brought to the attention of the Clerk and the Court. Once the Clerk and the Court were made aware that the deposition transcript was accessible to counsel in contravention of the intention of the Court when it issued its February 12, 2024, Order directing that the transcript be filed under seal and not be available to anyone, including counsel, the Notice was corrected so that the transcript could no longer be accessed by anyone.

Wherefore, during the limited time the deposition transcript was accessible to counsel through the Notice of Filing, in contravention of the Court's intent when it issued its February 12,



2024, Order to file the transcript under seal, counsel for Plaintiffs obtained a copy of the deposition transcript. Lead counsel for Plaintiffs confirmed that he is possession of, and has reviewed, the deposition transcript of Julie Ghoubrial during a telephone hearing on February 15, 2024.

Wherefore, to ensure compliance with the Court's February 12, 2024, Order that the deposition transcript of Julie Ghoubrial be filed under seal and not available or accessible to anyone, including counsel, until further Order of the Court, all counsel are directed to refrain from distributing any copy or copies of the deposition transcript of Julie Ghoubrial to any person or entity. All counsel are further directed to destroy any and all copies of the deposition transcript currently in their possession, as well as any copies in the possession of their partners, associates, agents, employees, or assigns. This Order applies to any and all electronic copies of the deposition transcript saved, downloaded, or emailed, which are to be deleted.

Wherefore, to ensure compliance with this Nunc Pro Tunc Order, as well as this Court's February 12, 2024, Order, lead counsel for all Parties are directed to submit an affidavit to Court, no later than 3 pm est. on Wednesday, February 21, 2024, certifying that all copies of the deposition transcript of Julie Ghoubrial, including all electronic copies, have been destroyed and/or deleted.

IT IS SO ORDERED.

JUDGE JAMES BROGAN