

FILED FOR RECORD

CAUSE NO. 77924

2009 JUN 16 PM 4:20

IN THE DISTRICT COURT

MELANIE REED
DISTRICT CLERK
ELLIS COUNTY, TX

F.L. MALIK, INC. D/B/A IVY JANE,

Plaintiff,

v.

SHANNON DEMERSE, COMPASS
BANK, CITIBANK TEXAS, N.A., PHILIP
VOGEL & COMPANY, P.C. AND
WILLIAM CUNNINGHAM,

Defendants.

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ELLIS COUNTY, TEXAS

40TH JUDICIAL DISTRICT

AGREED PROTECTIVE ORDER

Plaintiff, F.L. MALIK, INC. D/B/A IVY JANE, ("Plaintiff") and Defendants, SHANNON DEMERSE, COMPASS BANK, CITIBANK TEXAS, N.A., AND PHILIP VOGEL & COMPANY, P.C., (collectively "Defendants"), have agreed to expedite the following information which contain trade secrets and/or confidential or proprietary information. Accordingly, pursuant to the Court's authority under Rule 192.6(b) of the Texas Rules of Civil Procedure, and the parties agreement,

IT IS HEREBY ORDERED THAT:

1. This Order shall govern the handling, disclosure, and disposition of certain documents and information, depositions, interrogatory answers, and admission responses in this action whether received in discovery or from any third-party (hereinafter referred to as the "Material").

2. Any party may designate by written notice, either incorporated in the matter disclosed or separately, any Material as "Confidential" if it believes that such Material contains or reflects its trade secrets and/or other confidential or proprietary information. Material

designated as "Confidential" shall be used by the parties solely for the purposes of conducting this litigation.

a. Either party may designate and mark any documents and information as "Confidential" by placement of an appropriate overlay placed across the face of the document.

b. Any party may designate deposition testimony of a witness as confidential at the time that the deposition testimony is elicited by indicating on the record at the deposition that the testimony is "Confidential" or by notifying all other parties in writing within 30 days of receipt of the transcript.

Confidential information within the deposition transcript may be designated by underlining the portions of the pages that are confidential and marking such pages with the following legend: "Confidential - Subject to Protection Pursuant to Court Order." A deponent may, during the deposition, be shown and examined about Confidential Material.

Deponents shall not retain or copy portions of the transcript of their depositions that contain Confidential Material not provided them or the entities they represent. A deponent who is not a party or a representative of a party shall be furnished a copy of this Order before being examined about, or asked to produce, Confidential Material.

3. No person, firm, corporation, or other entity shall use "Confidential" information in any manner whatsoever except for discovery, motion practice, preparation for trial, trial, and any appeal of this action.

Furthermore, no person, firm, corporation or other entity subject to this Order shall give, show, disclose, make available or communicate "Confidential" information to any person, firm, corporation or other entity not expressly authorized by this Order to receive, respectively, such Confidential Material.

4. Material designated as "Confidential" by any party may be used by any party for purposes of preparing for and conducting pretrial proceedings in this action shall be shown only to the following persons provided that such persons shall be given a copy of this Order, shall be advised that they are bound by it, and if applicable shall execute the "Agreement Concerning Material Covered by Protective Order" attached as Exhibit A:

a. Counsel for any party and agents or employees of such counsel as are required to assist in the preparation or conduct of this action. The execution of this Order by any member of a law firm shall constitute a representation that all persons in or employed by that firm shall observe and comply with this Order.

b. Any party to this litigation, including their employees and representatives.

c. Any person whose testimony is taken in deposition or at trial may only be shown a copy of Confidential Material that has been stamped "Confidential" during their testimony and may not retain any copies of the Confidential Material.

d. This Court or any other court before which this action is pending, including any Court personnel, jurors, and all other persons lawfully present in this Court proceeding.

e. Any expert witness or consultant of a party for whom access to Confidential Material is necessary to perform a duty with respect to this case.

f. Any potential witness only after that witness agrees to be bound to this Order in writing. Any such witness may only be shown a copy of Confidential Material that has been stamped "Confidential" and may not retain any copies of the Confidential Material.

5. Any person having access to Confidential Material shall be prohibited from disclosing any such information to any other person except as provided herein, and each such person shall take appropriate measures to safeguard the confidentiality of the Confidential

Material to prevent the willful or inadvertent disclosure thereof and to assure that the provisions of this Order are accomplished.

6. Any party may request the Court to designate trial testimony as confidential at the time the testimony is elicited or prior to the witness testimony, through agreement of the parties.

7. A party shall file Confidential Material with the Court only after first giving ten (10) days' actual notice to the other party or parties of its intent to do so and an itemization (by Bates number, deposition transcript page, deposition exhibit number, or other identification) of the Confidential Material proposed to be filed. If during the course of trial or any other proceeding before the Court, a party determines that they need to file, or use in court, Confidential Material and it is not possible, in good faith, to give ten (10) business days' notice required by this Order, then that party shall immediately notify the other party or parties and allow a reasonable amount of time to take such action as may be appropriate.

8. Any party may challenge a party's designation of Material as Confidential by requesting an evidentiary hearing on seven (7) days notice to the other parties. The burden to demonstrate that the Material is Confidential shall be on the person designating the Material as Confidential.

9. Bank documents with customer information, including checks, shall be provided to a mutually-agreed copy service for redaction of confidential information and preparation of a master set of documents, which the parties may use without designating as Confidential. The cost for such service shall be party pro-rata by the parties to this Agreement.

10. Upon conclusion of this action, all Confidential Material produced by any party and all copies thereof shall be returned or disposed of in conformity with the law firm's normal document destruction policies.

11. Nothing in this Order shall prevent or prohibit any party from seeking additional protection as it deems necessary for protection of Confidential Material in this action.

12. This Order is without prejudice to any party's right to bring before the Court at any time other objections to the production of any Material.

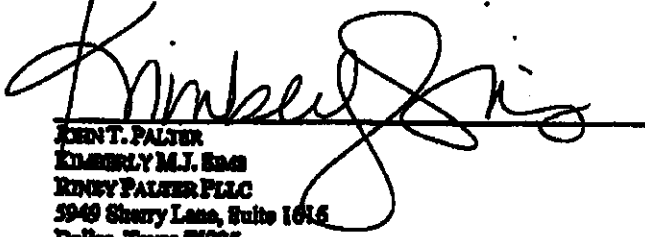
13. This Order shall not be construed by the parties as a waiver by the parties of any objection which might be raised as to the admissibility of any Material.

14. Either party may seek at any time written permission from the other party or an order of the Court regarding a dissolution or modification of this Order.

SIGNED this 15 day of June, 2008.


JUDGE PRESIDING

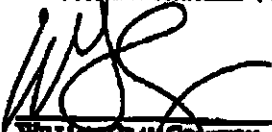
APPROVED AS TO FORM AND SUBSTANCE:



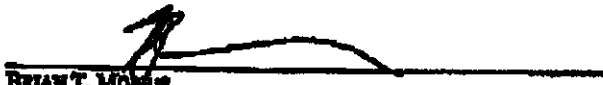
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