

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN**

)	
In re:)	
)	
Express Grain Terminals, LLC,)	Case No. 21-11832-SDM
)	Chapter 11
Debtor(s))	
)	

UMB BANK, N.A.’S MOTION TO ENFORCE PROTECTIVE ORDER AND FOR AN ORDER TO SHOW CAUSE

UMB Bank, N.A. (“UMB”), by and through its undersigned attorneys, hereby seeks to enforce this Court’s *Protective Order* [Dkt. 1801]. UMB believes that Attorney Don Barrett violated this Court’s express orders on March 17, 2022. In support of this Motion, UMB states:

1. The Court issued its *Section 557 Procedures – Phase 2 Scheduling Order* [Dkt. 1789] on January 28, 2022, and issued an amended order on January 31, 2022 [Dkt. 1800] (the “Section 557 Discovery Procedures”).

2. The Phase 2 Scheduling Order outlined expedited discovery procedures leading up to the Final Determination Hearing, which is set to begin on April 1, 2022.

3. Given the likelihood that the Section 557 discovery would involve protected and sensitive information that needed to be produced on an expedited basis, this Court issued a *Protective Order* [Dkt. 1801]. The Protective Order stated:

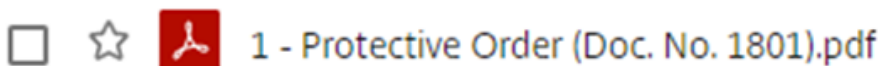
- a. “[A]ll parties receiving Documents [produced pursuant to the Section 557 Discovery Procedures] must treat those Documents as confidential.” Dkt. 1801 at 1-2.
- b. “Documents and the substantive information contained within such Documents **shall not be given, shown, made available to, disclosed or communicated in any way, except to those individuals and entities with a need to access such Documents for purposes of the Section 557**

Procedures and shall be limited to attorneys for, employees of, or agents of the Participating Parties.” Dkt. 1801 at 2 (emphasis added).

- c. “Due to the sensitive nature of the documents propounded and uploaded to the Interest Data Room, the Court wants to stress to any party with access to the Interest Data Room the importance of complying with the Court’s *Amended Section 557 Procedures – Phase 2 Scheduling Order* (Dkt. #1800) regarding the prohibition on sharing the access information to outside parties.” Dkt. 1801 at 2 n.2.
- d. **“Documents must be used and disclosed solely for purposes of the discovery and hearing contemplated by the Section 557 Discovery Procedures.”** Dkt. 1801 at 2 (emphasis added).
- e. “This Order will take effect when entered and is binding upon all counsel of record and their law firms, all Participating Parties and all parties that filed an Official Form for Assertion of Interest in Grain and their respective counsel and employees, any Agents of any Participating Parties, and anyone else that receives any Documents pursuant to the Section 557 Discovery Procedures.” Dkt. 1801 at 2.

4. The Section 557 Discovery Procedures also reminded anyone with access to the Interest Data Room about the obligation to limit access: “The Participating and Non-Participating Parties that may have access to the Interest Data Room shall not disclose the access information to any party not contemplated under this Order. The Court recognizes that documents uploaded to the Interest Data Room may contain sensitive information, and the Court is, therefore, prohibiting the sharing of the access information.” Dkt. 1800 at 14 n.8.

5. The Protective Order is on the home page of the Interest Data Room:



6. Attorney Don Barrett represents three farmers in a civil case pending in the Southern District of Mississippi (collectively, “Plaintiffs”). Mr. Barrett has also appeared in this bankruptcy case on behalf of Plaintiffs. On February 11, 2022, Mr. Barrett joined a *Motion for Partial Reconsideration and/or Clarification of Discovery Orders* [Dkt. 1967]. This Motion asked

for the Court to eliminate the requirement for farmers to complete a discovery questionnaire or, in the alternative, to give them an additional 60 days to complete the questionnaire (which would have made it due after the Final Determination Hearing). The Court denied the request to eliminate or postpone the deadline for the farmer questionnaires. [Dkt. 1990].

7. Mr. Barrett has access to and should be aware of the Protective Order. Mr. Barrett and his colleagues filed for relief from the Section 557 Discovery Procedures [Dkt. 1800] in their Motion for Partial Reconsideration, but they never sought relief from the Protective Order [Dkt. 1801].

8. UMB believes that Mr. Barrett violated the Protective Order when, during the morning of March 17, 2022 (shortly before the parties were set to begin mediation, Dkt. 2543), he participated in an interview on a radio show. That interview contained numerous false accusations about UMB, so UMB will share the link to the interview with the Court under seal. During that interview, Mr. Barrett referenced “documents that we have seen that are filtering out,” which UMB believes related to documents produced in the Interest Data Room pursuant to the Section 557 Discovery Procedures and subject to the Protective Order.¹ He also purported to paraphrase some of those documents and proclaimed that UMB made certain statements in those documents. Then, Mr. Barrett launched into numerous unfounded and false accusations about the bank’s intentions. UMB will address the substance of those false accusations in due course, at the appropriate time contemplated by the Section 557 Discovery Procedures.

9. At this time, UMB seeks an order from the Court reminding Attorney Don Barrett of his obligations to abide by the Protective Order and compelling Mr. Barrett to show cause as to whether he believes his conduct did not violate the Protective Order and why he believes the

¹ There has been no discovery in the civil case to date, so Mr. Barrett has not received those documents outside the Section 557 Discovery Procedures.

violation should not warrant sanctions under Fed. R. Civ. P. 37(b). *See Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 489 (5th Cir. 2012) (“There is thus significant authority in support of the imposition of Rule 37(b) sanctions for violation of Rule 26(c) protective orders.”).

10. UMB reserves all rights to seek fees and pursue other remedies in connection with any violation of the Protective Order.

WHEREFORE, UMB requests the Court enforce the Protective Order, order Attorney Don Barrett to abide by the Protective Order, order Mr. Barrett to show cause as to whether he believes his conduct did not violate the Protective Order and why he believes the violation should not warrant sanctions under Fed. R. Civ. P. 37(b), remind all other parties who received documents via the Interest Data Room and the Section 557 Discovery Procedures of the requirements of the Protective Order, and grant such other and further relief as is justified under the circumstances.

Date: March 22, 2022

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

/s/ R. Spencer Clift, III

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically through the Court's CM/ECF system and served electronically on all parties enlisted to receive service of electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to all parties in interest.

SO CERTIFIED, this the 22nd day of March 2022.

/s/ R. Spencer Clift III