

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

)
In re:)
)
EXPRESS GRAIN TERMINALS, LLC)
)
Debtor(s))
)
_____)

**Case No. 21-11832-SDM
Chapter 11**

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

COMES NOW undersigned counsel, John W. (“Don”) Barrett, and files this his response to UMB Bank, N.A.’s Motion to Enforce Protective Order and for an Order to Show Cause [Dkt. No. 2579] as follows:

I. INTRODUCTION

In an interview with Paul Gallo, the undersigned counsel Don Barrett discussed his clients’ claims against and matters related to UMB Bank, N.A. At no time during the interview did the undersigned reference any particular document or quote any document. In its loosely worded motion asking that the court to “remind[] Attorney Don Barrett of his obligations to abide by the Protective Order... ,” UMB Bank notably does not indicate or assert that the undersigned counsel referenced any particular document; UMB Bank, in fact, cannot make that assertion because the undersigned counsel did not reference or quote from any document.

The fact that documents have been produced is a matter of public record and public knowledge. Also public are the allegations made by the undersigned counsel on his clients’ behalf against UMB Bank. The undersigned revealed no information that violated the Protective Order.

UMB Bank’s motion is an ill-disguised attempt to limit public knowledge and avoid media coverage of the dispute. The undersigned did not reference or quote the substance of any document,

and he is aware of the four corners of the Protective Order in place. UMB Bank's motion should be denied *in toto*.

II. RESPONSE

A. The language of the Protective Order at Issue

The Protective Order states in relevant part as follows: 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 (as defined in the Section 557 Procedures). [Dkt. No. 1801].

B. The Undersigned Counsel Did Not Violate the Protective Order

The undersigned, during his interview with Paul Gallo, discussed the litigation at issue. The fact that documents have been produced is a matter of public record through this court's docket entries. The undersigned did not quote or discuss or paraphrase the content of any document in particular. UMB Bank's motion, which seeks that the undersigned counsel Don Barrett be reminded of the order and for an order to show cause is without merit and must be denied.

UMB Bank's nebulous motion essentially makes three assertive complaints of Don Barrett's interview. None of those complaints evidence violation of any Court order.

First, UMB Bank complains that the undersigned counsel referenced that there are "documents that we have seen that are filtering out." Again, Court documents on file here (including the Protective Order at issue) indicate that documents have been produced. Courts and their dockets are open to the public. Nothing in the Protective Order prohibits discussion that

documents have been produced. This complaint by UMB does not indicate any violation of the Protective Order.

Second, UMB complains that the undersigned counsel—in UMB’s words—“purported to paraphrase some of those documents and proclaimed that UMB made certain statements in those documents.” But the undersigned counsel *did not* reference any document nor state that he had a document that he was paraphrasing. UMB’s motion does not assert that the undersigned did so, because he did not. Notably, UMB *does not* (because it *cannot*) identify any document that was paraphrased nor any specific statement that is somehow in violation of the Protective Order. Absent such an allegation, the motion is hopelessly vague and utterly pointless, as federal courts are not in the business of issuing advisory opinions concerning hypothetical sets of facts that are not before them. UMB’s motion does not indicate or evidence any possible violation of the Protective Order.

Third, UMB complains that the undersigned counsel “launched into numerous unfounded and false accusations about the bank’s intentions.” The Protective Order prohibits parties from disseminating protected information, not from stating views their adversaries disagree with. Thus, even if it were true that the undersigned made statements that were “false,” it would be irrelevant to the Court’s inquiry under the Protective Order. Notably absent from the scope of the Protective Order is any limitation on the undersigned counsel discussing the bank’s intentions. (*See* quote of the Protective Order *supra*). Discussion of the bank’s wicked intentions does not relate to documents and is not protected or covered by the scope of the Protective Order. Moreover, UMB’s claims that the undersigned’s statements were “false” is entirely inconsistent with the (vague) allegation that the statements were based on confidential information. This assertion is self-

defeating, since, if the undersigned's statements are indeed false, then he could not be discussing the documents at issue.

UMB Bank's motion merely seeks to broaden the scope of the Protective Order and inhibit media coverage of this dispute. Notably, UMB does not assert that the undersigned released commercially sensitive information such as would warrant protection. (*See e.g.*, the Scope of Rule 26(c) of the Federal Rule of Civil Procedure). For example, UMB does not complain that the undersigned produced financial information of UMB needing protection, or that UMB was harmed or prejudiced in any way. Rather, UMB merely seeks to protect its tortious misconduct from public knowledge. This is not a sound public purpose warranting a departure from the general rule that the United States' federal courts are, indeed, open to the public.

The undersigned did not discuss any particular document. The undersigned is aware of the Protective Order and its language, intended to comply with it, tried to comply with it, and in good faith believes that he has complied with it. Under no circumstances would the undersigned have willfully or intentionally violated any order of this Honorable Court.

UMB's motion is without merit and should be denied.

Respectfully submitted, this the 24th day of March 2022.

/s/ Don Barrett
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CERTIFICATE OF SERVICE

I, Don Barrett, do hereby certify that a copy of the foregoing was filed electronically through the Court's CM/ECF system and served electronically on all parties listed to receive service of electronic notice.

Dated: March 24, 2022.

/s/ Don Barrett
Don Barrett