

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

Case No. 12-034123 (07)
Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

Plaintiffs,

vs.

STEVEN F. JACOB, et al.,

Defendants.

**PLAINTIFFS' MOTION TO COMPEL DEFENDANT
FRANK AVELLINO TO PRODUCE DOCUMENTS**

P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) (S&P and P&S are collectively the “Partnerships”), and Philip J. Von Kahle, as Conservator for P&S and S&P (the “Conservator”, and together with the “Partnerships”, the “Plaintiffs”), hereby file this motion to compel seeking an order overruling Defendant Frank Avellino’s (“Avellino”) improper assertions of privilege and requiring him to produce those documents that he has improperly asserted are privileged, and in support states:

I. Defendant Avellino’s Privilege Assertion Should Be Overruled

1. On May 12, 2015, this Court granted Plaintiffs’ motion to compel and ordered Avellino to provide (1) amended responses to Plaintiffs’ Fourth Request for Production of Documents on Defendant Avellino and (2) a privilege log.

2. On May 20, 2015, Avellino provided a privilege log to Plaintiffs that identifies one document – “Quickbooks General Ledger of 27 Cliff, LLC” (the “Quickbooks”) – and

asserts the alleged privilege of “Private and confidential financial information. See, Art. I, section 23, Florida Constitution.” A copy of the privilege log is attached hereto as **Exhibit A**.

3. As set forth in Plaintiffs’ prior motion to compel, Plaintiffs are seeking documents related to 27 Cliff, LLC because that entity is related to Avellino and it received payments and transfers from the former managing general partner of the Partnerships and entities that are related to the improper kickbacks alleged in the Complaint.

4. Art. I, section 23 of the Florida Constitution states that “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” Fla. Const. art. I, § 23

5. First, Avellino’s invocation of Art. I, section 23, Florida Constitution as to the Quickbooks should be overruled because it is Plaintiffs that are seeking the Quickbooks from Avellino and thus there is no “governmental intrusion”, which is required to assert the right to privacy. *See Bd. of County Com'rs of Palm Beach County v. D.B.*, 784 So. 2d 585, 591 (Fla. 4th DCA 2001) (“Florida’s right to privacy provision protects individuals from governmental intrusion, not public intrusion . . . There can be no violation of a right to privacy where there has been no governmental intrusion”) (citing Art. I, § 23, Fla. Const.).

6. Second, Art. I, section 23, Florida Constitution protects only the information of “natural person.” In this case, the document that Avellino claims privilege over is the Quickbooks ledger of 27 Cliff, LLC (“27 Cliff”), 27 Cliff is not a “natural person”, and Art. I, section 23, Florida Constitution does not apply to 27 Cliff. *See Bianchi & Cecchi Services, Inc. v. Navalimpianti USA, Inc.*, 159 So. 3d 980, 983 fn 2. (Fla. 3d DCA 2015).

7. Accordingly, this Court should overrule Avellino’s assertion of privilege as to the Quickbooks and compel him to produce the Quickbooks to Plaintiffs.

Certification of Good Faith and CLP 5.3

On July 23, 2015, counsel for Avellino, Gary Woodfield, and for the Plaintiffs, Steven D. Weber and Thomas Zeichman, participated in a meet and confer in a good faith attempt to resolve the issues addressed in the instant Motion. At that time, Avellino's counsel did not agree to withdraw his objections. Accordingly, the filing of this Motion was necessary.

WHEREFORE Plaintiffs respectfully request the entry of an Order: (i) overruling Avellino's assertions of privilege with respect to the Quickbooks; (ii) ordering Avellino to produce the QuickBooks to Plaintiffs; and (iii) for such other and further relief as this Court deems just and proper.

Dated: July 27, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2015, a true and correct copy of the foregoing document was served on the following parties:

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EXHIBIT "A"

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.

Defendants.

**DEFENDANT FRANK AVELLINO'S PRIVILEGE LOG
TO HIS RESPONSE TO PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION**

Defendant, Frank Avellino serves this privilege log in connection with his Second Amended Response to Plaintiffs' Fourth Request for Production of Documents served on April 23, 2015 and Order Granting Plaintiffs' Motion to Compel, dated May 12, 2015, as follows:

Documents:

1. Quickbooks General Ledger of 27 Cliff, LLC.

Privilege:

Private and confidential financial information. See, Art. I, section 23, Florida Constitution.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 20th day of May, 2015.

By: /s/ Gary A. Woodfield
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