

Exhibit J

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

vs.

Estate of James Brown and The James Brown
2000 Irrevocable Trust,

Defendants.

IN THE CIRCUIT COURT

Civil Action No. 2013-CP-02-1337

**ORDER GRANTING MOTION TO CONFIRM
CONFIDENTIALITY DESIGNATIONS**

Before the Court is the Estate of James Brown and The James Brown 2000 Irrevocable Trust's ("Defendants") Motion to Confirm Confidentiality Designations. The documents that Defendants have produced and labeled confidential all relate to the Philpot Ball and Werner Valuation and Appraisal (the "appraisal") and the estate tax return of James Brown (the "estate tax return"). Courts regularly conclude that these types of documents are confidential. Indeed, this Court has already held, in its August 30, 2016 Administrative Order, "that the appraisal shall remain confidential." (Administrative Order, p. 4; *see also id.* at 5 (noting that Plaintiff is entitled to a copy of the appraisal, "however, she must keep it confidential and not disseminate the document to anyone outside of this litigation.")). For the reasons discussed herein, the Court grants Defendants request to Court confirm all confidential designations.

I. BACKGROUND AND OPERATION OF THE ORDER

On August 30, 2016, this Court signed a Confidentiality Order for this case (the "Order"). Under the terms of the Order, "[a]ny party may designate documents as confidential, . . . after review of the documents by an attorney who has, in good faith, determined that the documents contain . . . sensitive personal information, trade secrets, . . . or business/commercial information that justifies protection from disclosure." (Order, ¶3).

Under the terms of the Order, a party may challenge a confidential designation. (Order, ¶8). “A party who contends that documents designated confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation” (*Id.* at ¶8(b)). Once the party that designated the document as confidential receives the challenge, it has fifteen days to attempt to resolve the dispute. If it cannot resolve the dispute, then the party that designated the document must “move for an Order confirming the confidential designation.” (*Id.*)

II. PLAINTIFF’S CHALLENGE TO THE DESIGNATIONS

On January 24 and January 30, Plaintiff sent e-mail correspondence challenging Defendants’ confidential designations. Defendants subsequently sought to resolve the challenge. Defendants’ efforts included acknowledging that some of the estate tax return confidential designations may need to be removed. Defendants also requested that Plaintiff withdraw the challenges to the appraisal documents. The parties were unable to resolve this issue.

III. PHILPOTT BALL AND WERNER APPRAISAL AND UNDERLYING DOCUMENTS ARE CONFIDENTIAL

Defendants have labeled all documents relating to the appraisal as confidential, and the designation will be confirmed by this Court.

A. This Court Previously Held the Appraisal is Confidential

As noted above, in this Court’s Administrative Order, it noted “that the appraisal shall remain confidential,” that Plaintiff is entitled to a copy of the appraisal, but “she must keep it confidential and not disseminate the document to anyone outside of this litigation.” (Administrative Order, pp. 4-5). Accordingly, this Court’s prior ruling forecloses Plaintiffs efforts to challenge the confidential designations related to the appraisal.

B. The Appraisal and the Underlying Documents Contain Confidential Financial and Commercial Information

The appraisal is a private document that is owned and controlled by the Estate. The appraisal was created for the purpose of valuing the Estate of James Brown (a private citizen), and for the purpose of determining whether the Estate owed any taxes to the federal government.¹ The appraisal is not a public document. It contains confidential financial and commercial information, and has been treated as confidential since its inception. For decades, courts across this Nation have recognized that these types of business documents are confidential and should be accorded the shield of a protective order. *See, e.g., Landco Equity Partners, LLC, v. City of Colo. Springs, Colo.*, 259 F.R.D. 510, 515 (D. Colo. 2009) (recognizing that “protective orders issued pursuant to Rule 26(c) are common in litigation to protect sensitive information exchanged during the course of discovery, particularly when the documents reflect confidential financial information”); *Nutratch, Inc. v. Syntech (SSPF) Int’l*, 242 F.R.D. 552, 554 (C.D. Cal. 2007) (noting that **both parties agreed** to the need for a protective order but disagreed whether the information (“sales and revenue figures”) should be afforded protection of “attorney’s eyes only”); *Palmer v. Reader’s Digest Assoc.*, 122 F.R.D. 445, 447 (S.D.N.Y. 1988) (recognizing the confidential nature of a company’s financial information and the requirement that its production requires “strict non-disclosure provisions”). Accordingly, Defendants have met their burden. The appraisal and all underlying documents are confidential.

C. Irreparable Harm Will Result if the Valuation Report is Turned into a Public Document

The appraisal analyzes copyright royalty details and sources of royalty payments, among other confidential business information. The appraisal also projects future revenues of the Estate

¹ The Internal Revenue Service independently reviewed the appraisal and agreed with its findings regarding the date of death valuation for the James Brown Estate.

and Trust in an effort to arrive at the final business value of the James Brown music empire. That information is highly confidential. It is highly confidential because it completely exposes the strengths and the weaknesses of the music catalog, and discloses confidential future revenue projections of the Estate and Trust. If made public, that information will likely be used against the Estate and Trust during future business negotiations. Moreover, dissemination of this confidential information could damage James Brown's vision of providing charitable scholarships to deserving and needy students by decreasing the amount of funds available for those scholarships.

Courts have defined confidential commercial information as "information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained." *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697 (D. Nev. 1994); *Massey Coal Services, Inc. v. Victaulic Co. of Am.*, 249 F.R.D. 477, 482 (S.D.W. Va. 2008) (same). Defendants' have met their burden; the appraisal and all underlying documents are confidential.

IV. THE ESTATE TAX RETURN AND UNDERLYING DOCUMENTS ARE CONFIDENTIAL

The Defendants have produced the estate tax returns and underlying documents of the late James Brown, and have designated those documents confidential. Accordingly, Defendants do not dispute that the estate tax returns are discoverable. Rather, they submit that the estate tax returns of an individual are confidential and should not be made public. *See Minter v. Wells Fargo Bank, NA*, 675 F. Supp. 2d 591, 597 (D. Md. 2009) (noting that "tax returns are not privileged, but that courts should order discovery of them only under a protective order" (citing MUELLER & KIRKPATRICK, Federal Evidence §5:5)). "Where tax returns are produced in discovery, protective orders are the norm, not the exception." *Closed Joint Stock Co. "CTC Network" v. Actava TV, Inc.*, 2016 WL 1364942, at *4 (S.D.N.Y. 2016). Indeed, "[c]ertain categories of information and documents are 'presumptively confidential,' including tax returns." *Id.* The Court finds that all

confidential designations related to the estate tax returns are proper under the Order. Accordingly, the Court finds that Defendants' have met their burden.

V. CONCLUSION

Defendants have met their burden to show that the documents produced and labeled confidential are, in fact, confidential and should maintain that designation under the Order. Accordingly, this Court hereby finds that the documents that have been designated as confidential shall remain confidential pursuant to this Court's August 30, 2016 Confidentiality Order.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III

June ____, 2017

_____, South Carolina



Aiken Common Pleas

Case Caption: Adele Jeffords Pope VS James Estate Of Brown , defendant, et al

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So Ordered

s/D.A. Early III 2136

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