

So Ordered.



Frederick P. Corbit

Dated: February 9th, 2017

Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

Case No. 16-00656-FPC7

JEFFREY ALAN LANGE and MARY ALICE LANGE,

Debtors.

FRANK HALBICH and ANITA HALBICH,

Plaintiffs,

Adversary No. 16-80043-FPC

v.

PROTECTIVE ORDER

JEFFREY ALAN LANGE and MARY ALICE LANGE,

Defendants.

THIS MATTER came before the court on January 5, 2017 for a status conference on discovery issues. Based on the files and records herein, the court enters a protective order as provided below with the following provisos:

1. If the Office of the U.S. Trustee, in its sole discretion, determines that “reasonable grounds” appear for reporting a violation of Title 18 or any other laws

1 of the United States, nothing in the protective order limits the U.S. Trustee from
2 reporting the violation to appropriate law enforcement authorities.

3 2. Assuming any facts or issues are referred to the U.S. Attorney's
4 Office or FBI, nothing in the protective order limits the U.S. Attorney, the U.S.
5 Trustee or the FBI from involving other law enforcement or regulatory agencies
6 depending on the circumstances and facts of the case.

7 3. Consistent with 11 U.S.C. § 107, nothing in the protective order limits
8 the U.S. Trustee's, the Department of Justice's, or the Chapter 7 Trustee's access
9 to the documents.

10 4. Paragraph 10 of the protective order is not applicable to the U.S.
11 Trustee, the Department of Justice, or the Chapter 7 Trustee.

12 **PROTECTIVE ORDER**

13 1. **PURPOSES AND LIMITATIONS**

14 Discovery in this action is likely to involve production of confidential
15 proprietary or private information for which special protection may be warranted.
16 It does not confer blanket protection on all disclosures or responses to discovery,
17 the protection it affords from public disclosure and use extends only to the limited
18 information or items that are entitled to confidential treatment under the applicable
19 legal principles and it does not presumptively entitle parties to file confidential
20 information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential material” shall include the following documents and tangible
3 things produced or otherwise exchanged:

4 a. Federal and state tax returns of Lightning Tool & Manufacturing, Inc.
5 (“Lightning”) (2004 – present);

6 b. Information pertaining to customers of Lightning; and

7 c. Personal information, including tax related information pertaining to
8 the shareholders, officers, directors, and employees of Lightning (2004 – present).

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential
11 material (as defined above), but also (1) any information copied or extracted from
12 confidential material, (2) all copies, excerpts, summaries, or compilations of
13 confidential material, and (3) any testimony, conversations, or presentations by
14 parties or their counsel that might reveal confidential material. However, the
15 protections conferred by this agreement do not cover information that is in the
16 public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that
19 is disclosed or produced by Lightning in connection with this case only for
20 prosecuting, defending, or attempting to settle this litigation. Confidential material

1 may be disclosed only to the categories of persons and under the conditions
2 described in this agreement. Confidential material must be stored and maintained
3 by a receiving party at a location and in a secure manner that ensures that access is
4 limited to the persons authorized under this agreement.

5 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by Lightning a receiving
7 party may disclose any confidential material only to:

8 (a) the receiving party's counsel of record in this action, as well as
9 employees of counsel to whom it is reasonably necessary to disclose the
10 information for this litigation;

11 (b) the officers, directors, and employees (including in house
12 counsel) of the receiving party to whom disclosure is reasonably necessary for this
13 litigation, unless the parties agree that a particular document or material produced
14 is for Attorney's Eyes Only and is so designated;

15 (c) experts and consultants to whom disclosure is reasonably
16 necessary for this litigation and who have signed the "Acknowledgment and
17 Agreement to Be Bound (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the
20 duplication of confidential material, provided that counsel for the party retaining

1 the copy or imaging service instructs the service not to disclose any confidential
2 material to third parties and to immediately return all originals and copies of any
3 confidential material;

4 (f) during their depositions, witnesses in the action to whom
5 disclosure is reasonably necessary and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
7 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
8 to depositions that reveal confidential material must be separately bound by the
9 court reporter and may not be disclosed to anyone except as permitted under this
10 agreement;

11 (g) the author or recipient of a document containing the
12 information or a custodian or other person who otherwise possessed or knew the
13 information; and

14 (h) the United States Bankruptcy Trustee or the Chapter 7 Trustee.

15 4.3 Filing Confidential Material. Before filing confidential material or
16 discussing or referencing such material in court filings, the filing party shall confer
17 with Lightning to determine whether Lightning will remove the confidential
18 designation, whether the document can be redacted, or whether a motion to seal or
19 stipulation and proposed order is warranted.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Lightning must take care to limit any such designation to specific material that
4 qualifies under the appropriate standards. Lightning must designate for protection
5 only those parts of material, documents, items, or oral or written communications
6 that qualify, so that other portions of the material, documents, items or
7 communications for which protection is not warranted are not swept unjustifiably
8 within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations
10 that are shown to be clearly unjustified or that have been made for an improper
11 purpose (e.g., to unnecessarily encumber or delay the case development process or
12 to impose unnecessary expenses and burdens on other parties) expose the
13 designating party to sanctions.

14 If it comes to Lightning's attention that information or items that it
15 designated for protection do not qualify for protection, Lightning must promptly
16 notify all other parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in
18 this agreement, or as otherwise stipulated or ordered, disclosure or discovery
19 material that qualifies for protection under this agreement must be clearly so
20 designated before or when the material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic
2 documents and deposition exhibits, but excluding transcripts of depositions or
3 other pretrial or trial proceedings), the designating party must affix the word
4 “CONFIDENTIAL” to each page that contains confidential material. If only a
5 portion or portions of the material on a page qualifies for protection, the producing
6 party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins);

8 (b) Testimony given in deposition or in other pretrial or trial
9 proceedings: Counsel for Lightning must identify on the record, during the
10 deposition, hearing, or other proceeding, all protected testimony, without prejudice
11 to its right to so designate other testimony after reviewing the transcript. Lightning,
12 within 15 days after receiving a deposition transcript, may designate portions of the
13 transcript, or exhibits thereto, as confidential; and

14 (c) Other tangible items: Lightning must affix in a prominent place
15 on the exterior of the container or containers in which the information or item is
16 stored the word “CONFIDENTIAL.” If only a portion or portions of the
17 information or item warrant protection, the producing party, to the extent
18 practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive

1 Lightning's right to secure protection under this agreement for such material. Upon
2 timely correction of a designation, the receiving party must make reasonable
3 efforts to ensure that the material is treated in accordance with the provisions of
4 this agreement.

5 6. CHALLENGING CONFIDENTIAL DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge
7 designation of confidentiality at any time. Unless a prompt challenge to Lightning's
8 confidentiality designation is necessary to avoid foreseeable, substantial
9 unfairness, unnecessary economic burdens, or a significant disruption or delay of
10 the litigation, receiving party does not waive its right to challenge a confidentiality
11 designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any motion
15 regarding confidential designations or for a protective order must include a
16 certification, in the motion or in a declaration or affidavit, that the movant has
17 engaged in a good faith meet and confer conference with other affected parties in
18 an effort to resolve the dispute without court action. The certification must list the
19 date, manner, and participants to the conference. A good faith effort to confer
20 requires a face-to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
2 court intervention, the receiving party may seek an order from the court
3 determining the confidentiality of the information. The burden of persuasion in any
4 such motion shall be on Lightning. Frivolous challenges and those made for an
5 improper purpose (e.g., to harass or impose unnecessary expense and burdens on
6 other parties) may expose the challenging party to sanctions. All parties shall
7 continue to maintain the material in question as confidential until the court rules on
8 the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
10 IN OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
13 "CONFIDENTIAL," that party must:

14 (a) promptly notify the designating party in writing and include a
15 copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena
17 or order to issue in the other litigation that some or all of the material covered by
18 the subpoena or order is subject to this agreement. Such notification shall include a
19 copy of this agreement; and
20

1 (c) cooperate with respect to all responsible procedures sought to
2 be pursued by the designating party whose confidential material may be affected.

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
5 confidential material to any person or in any circumstance not authorized under
6 this agreement, the receiving party must immediately (a) notify in writing the
7 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
8 all unauthorized copies of the protected material, (c) inform the person or persons
9 to whom unauthorized disclosures were made of all the terms of this agreement,
10 and (d) request that such person or persons execute the "Acknowledgment and
11 Agreement to Be Bound" that is attached hereto as Exhibit A.

12 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

14 When Lightning gives notice to receiving parties that certain inadvertently
15 produced material is subject to a claim of privilege or other protection, the
16 obligations of the receiving parties are those set forth in Federal Rule of Civil
17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
18 procedure may be established in an e-discovery order or agreement that provides
19 for production without prior privilege review. Parties shall confer on an
20 appropriate non-waiver order under Federal Rule of Evidence 502.

1 10. NON TERMINATION AND RETURN OF DOCUMENTS

2 Within 60 days after the termination of this action including all appeals, each
3 receiving party must return all confidential material to the producing party,
4 including all copies, extracts and summaries thereof. Alternatively, the parties may
5 agree upon appropriate methods of destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival
7 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
8 correspondence, deposition and trial exhibits, expert reports, attorney work
9 product, and consultant and expert work product, even if such materials contain
10 confidential material.

11 The confidentiality obligations imposed by this agreement shall remain in
12 effect until a designating party agrees otherwise in writing, or a court orders
13 otherwise.

14 ///END OF ORDER///

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ (print or type full name) of
_____ (print or type full address), declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States Bankruptcy Court for the Eastern District of Washington on February 9, 2017 in the case of *Frank and Anita Halbich v. Jeffrey and Mary Lange*, Adversary Case No. 16-80043-FPC. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States Bankruptcy Court for the Eastern District of Washington for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____