

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
N.D.C. Atlanta  
*[Signature]*  
MAR - 7 2003

CHEP USA, a New York Partnership, )

Plaintiff, )

v. )

MOCK PALLET COMPANY, )  
a Georgia Corporation, )

Defendant. )

CASE NO. 1:02-CV-2053

LUTHER D. THOMAS, Clerk  
By: *[Signature]*  
Deputy Clerk  
**BBM**

**CHEP USA'S UNOPPOSED MOTION AND MEMORANDUM OF LAW TO  
FILE AFFIDAVIT OF ELTON POTTS UNDER SEAL**

NOW COMES plaintiff CHEP USA and files this Unopposed Motion and Memorandum of Law for an Order permitting it to file the affidavit of Elton Potts under seal, showing the Court as follows:

1.

Defendant Mock Pallet Company has filed a Motion to Compel against CHEP seeking the production of additional information in response to discovery requests. CHEP is filing concurrently with this Motion and Memorandum its Response in Opposition to Mock's Motion. CHEP's Response opposing Mock's Motion relies upon information contained in and attached to the Affidavit of Mr. Elton Potts, the Vice President of Asset Management for CHEP, attached hereto as Exhibit "A" [Potts Affidavit].

2.

The Potts Affidavit discloses sensitive and confidential business information about CHEP, including the manner in which CHEP conducts its business. The disclosure of this information was necessary for CHEP to oppose Mock's motion but the disclosure of this information without limitation could cause CHEP competitive harm.

3.

Currently pending before this Court is CHEP USA's Motion for Protective Order, which was filed February 14, 2003. Mock filed its response to CHEP's motion on February 25, 2003. Both CHEP and Mock agree that a protective order should be entered in this lawsuit to govern the production and use of documents containing confidential and highly confidential business information. The parties, however, have been unable to agree on the scope of disclosure of *highly confidential business information*: Mock seeks to limit disclosure to outside counsel only, while CHEP seeks access of confidential information to outside and a single inside counsel. The Potts Affidavit and its attachments constitute confidential material (as opposed to highly confidential material) under the terms of the protective orders proposed by both CHEP and Mock.

4.

Because the parties have agreed in principal to the form of protective order that would govern the confidential information contained in the Potts Affidavit and its attachments, CHEP requests permission to file the Potts Affidavit and its attachments under seal consistent with the terms of the protective orders proposed by CHEP and Mock in this litigation. See Fed. Civ. R. P. 26(c) (noting that court has discretion to enter order limiting dissemination of confidential commercial information). Such an order would not prejudice any party to this litigation because Mock and its counsel would have access to the Potts Affidavit and its attachments. A proposed order is attached hereto.

5.

Counsel for CHEP has conferred with counsel for Mock about this Motion and states that Mock does not oppose this Motion.

WHEREFORE, CHEP respectfully requests that this Court grant it permission to file the Affidavit of Elton Potts and its attachments under seal consistent with the proposed protective orders pending before the Court.

This 7<sup>th</sup> day of March, 2003.

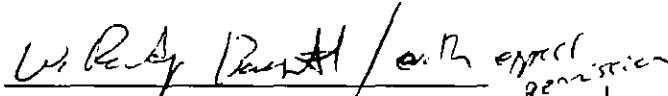
*W. Randy Bassett / with express permission*  
Chilton Davis Varner *CDV*  
Georgia Bar No. 725450  
W. Randall Bassett  
Georgia Bar No. 041525  
Attorney for the Plaintiff

KING & SPALDING LLP  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1763  
(404) 572-4600  
(404) 572-5144

**CERTIFICATE OF COMPLIANCE WITH L.R. 5.1B**

I hereby certify that the foregoing CHEP USA'S MOTION AND MEMORANDUM OF LAW TO FILE AFFIDAVIT OF ELTON POTTS UNDER SEAL has been computer processed with 14 point New Times Roman font in compliance with N.D.G.A. Local Rule 5.1B.

This 7<sup>th</sup> day of March, 2003.

  
Chilton Davis Varner  
Georgia Bar No. 725450  
W. Randall Bassett  
Georgia Bar No. 041525  
Attorney for the Plaintiff

KING & SPALDING LLP  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1763  
(404) 572-4600  
(404) 572-5144

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

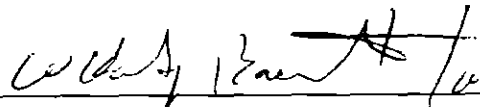
CHEP USA, a New York Partnership,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 02-CV-2053-BBM
	)	
MOCK PALLET COMPANY,	)	
a Georgia Corporation,	)	
	)	
Defendant.	)	


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **CHEP USA'S MOTION AND MEMORANDUM OF LAW TO FILE AFFIDAVIT OF ELTON POTTS UNDER SEAL** was served upon counsel for defendant by depositing same in the United States mail, with sufficient postage thereon to insure delivery, and addressed as follows:

Eugene D. Butt, Esq.  
Ballard, Stephenson & Waters, LLP  
P.O. Box 29  
Covington, GA 30015.

This 7<sup>th</sup> day of March, 2003.

  
 W. Randall Bassett  
 Georgia Bar No. 041525

*with express permission*  


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CHEP USA, a New York Partnership,	)	
	)	
Plaintiff,	)	
	)	CASE NO. 1:02-CV-2053-BBM
v.	)	
	)	
MOCK PALLET COMPANY,	)	
a Georgia Corporation,	)	
	)	
Defendant.	)	

**ORDER**

Plaintiff CHEP USA has filed a Motion for permission to file the Affidavit of Elton Potts and its attachments under seal to prevent the dissemination of confidential business information.

Having considered the Motion and for good cause shown, the Court orders that the Affidavit of Elton Potts and its attachments shall be filed under seal and shall remain under seal consistent with the Protective Order entered by this Court when it rules on CHEP USA's Motion for Protective Order.

This \_\_\_ day of March, 2003.

---

Judge Beverly B. Martin  
United States District Court  
Northern District of Georgia