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CHARLOTTE, N.C.

FEB 24 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
W. Dist. of N. C.
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.

FEB 28 2000

U.S. DISTRICT COURT
W. DIST. OF N.C.

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
THE GEHL CORPORATION d/b/a)
THE GEHL GROUP,)
)
Defendant.)
_____)

CIVIL ACTION NO.
3:99CV74-MU

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CONSENT PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, upon motion by Defendant, The Gehl Corporation d/b/a The Gehl Group ("Defendant"), with the consent of the Plaintiff, Equal Employment Opportunity Commission, and it appearing that the discovery process in this action may involve the production of information that Defendant may contend is confidential and/or proprietary and that good cause exists for the entry of an Order limiting the disclosure of such information;

IT IS THEREFORE ORDERED that:

1. "Confidential Information" as used herein means all financial records or other proprietary information of Defendant, The Gehl Corporation d/b/a The Gehl Group, whether documentary or otherwise, designated as "Confidential" and delivered, produced or disclosed by Defendant in this action in response to an interrogatory, a request for production of documents, a deposition question or otherwise. The designation of documents or information as "Confidential Information" shall not be conclusive.

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2. The use or disclosure of "Confidential Information" by any party shall be governed by the terms of this Protective Order, provided that the party producing or otherwise disclosing such documents or information designates such documents or information as "Confidential" at the time of production or disclosure or in accordance with the terms set out in paragraph 14 below.

3. Confidential Information, including copies or summaries thereof, shall be used only for the prosecution or defense of this action (including, but not limited to, any mediation, arbitration, or other settlement process, as well as appeals of this action) and shall not be used or employed for any other purpose whatsoever. Confidential Information shall not be disclosed or made available to anyone except:

- a. the Court;
- b. the parties to this action and officers, directors or employees of the parties who are actively participating in the prosecution or defense of this action;
- c. counsel for the parties to this action and employees of said counsel;
- d. court reporters engaged to record depositions, hearings or trials in this action;
- e. experts or consultants specifically retained by the parties or their attorneys to assist them in the preparation of this case or to serve as expert witnesses at the trial of this action; and
- f. third-party witnesses or potential witnesses whom counsel reasonably deem necessary for the preparation and trial of this action.

4. Disclosure of Confidential Information pursuant to this Order shall be handled as follows:

- a. Any person described in subparagraphs 3(a), (b), (c) and (d) of this Order is bound by the provisions of this Order without the necessity of executing a confidentiality agreement;

- b. Before Confidential Information is disclosed to any person set forth in subparagraphs 3(e) and (f) of this Order, the party disclosing the information shall inform the person to whom the disclosure is to be made that Confidential Information shall be used for the purposes of the prosecution or defense of this action only, and shall obtain from the person to whom the disclosure is to be made a signed confidentiality agreement in the form attached hereto as Exhibit A;
- c. As long as Confidential Information is handled in accordance with this Order, this Order shall not be construed as prohibiting or restricting the use of Confidential Information during depositions, any hearing, the trial of this matter, or any appellate proceeding. Similarly, no party shall be deemed to have waived any objections as to the admissibility of any Confidential Information into evidence in connection with any proceeding in this action.

5. Any Confidential Information which is filed with the Court (in any form whatsoever) shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title in this action, an indication of the nature and contents thereof, the legend "Confidential" and a statement substantially in the following form:

This envelope is sealed pursuant to an order of the Court and contains confidential information. This envelope is not to be opened or the contents thereof to be displayed or revealed by any person other than the Court or the attorneys for the parties except by order of the Court or pursuant to stipulation of the parties to this action.

The document or information shall not be placed in the Court file available to the general public unless otherwise agreed by the parties or otherwise ordered by the Court upon proper motion brought.

- 6. If Defendant desires to designate any portion of a deposition as Confidential

Information, Defendant shall notify the court reporter and opposing counsel of record within thirty (30) days after the deposition that it intends to designate certain portions of the deposition transcript as Confidential Information. Defendant shall have thirty (30) days after receipt of the transcript to designate portions of the transcript as Confidential Information and inform counsel of record in writing of such designation.

7. All documents for which confidential status is claimed under this Order shall be stamped "Confidential" on each page of each such document, including each page of transcripts of depositions or other proceedings.

8. Nothing in this Order shall prevent the disclosure of Confidential Information beyond the terms of this Order if the party that produced the information consents in advance in writing.

9. This order shall not limit or in any way restrict the right of any person or entity to use, disseminate, dispose of, or otherwise benefit from documents or information obtained (i) other than through discovery in this action, or (ii) from any person or entity with authority to provide such documents or information independent of any confidentiality requirement imposed by this Order.

10. If any party hereto disagrees with the designation of any discovery materials as Confidential Information, counsel shall attempt to resolve the disagreement on an informal basis. If it is necessary to present the dispute to the Court for resolution, the material in question shall continue to be treated as confidential under the terms of this Order unless and until the Court issues a final ruling that the material is not of a confidential nature.

11. This Order is without prejudice to the right of any party to seek modification or amendment of the Order by motion to the Court, or to seek and obtain additional protection with respect to Confidential Information as such party may consider appropriate.

12. This Order shall remain in effect for the period of this litigation and subsequent to its termination so as to protect the confidentiality of the Confidential Information.

13. The execution of this Order shall not be construed as a waiver of the right of Defendant or Plaintiff to object to any discovery sought by the other party or as a waiver of any privilege.

14. The failure of Defendant to designate documents as "Confidential" at the time of production shall not be deemed a waiver of its right to later so designate, and is governed by the provisions set out below:

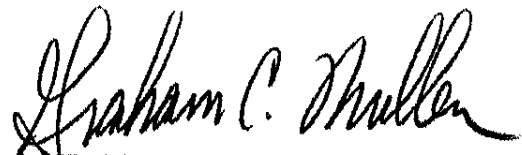
- a. The provisions of this paragraph apply to financial and proprietary documents only. This paragraph does not apply to "information" disclosed in any manner, including in response to written discovery, deposition questions or otherwise. All "Confidential" designations of "information" must be made in accordance with the provisions of paragraph 2 (at the time of production for information other than depositions) and paragraph 6 (governing depositions) or Defendant waives its right to so designate.
- b. Any designation made pursuant to this paragraph shall be considered a *late designation*, and documents identified as "Confidential" pursuant to this paragraph shall be known as *late designation confidential documents*. All late designations shall be made in writing to Plaintiff's counsel, and shall be accompanied by copies of the late designation confidential documents marked "Confidential" in

accordance with paragraph 7 above;

- c. Plaintiff's use or disclosure of late designation confidential documents shall not be governed by the terms of this order until such time as Plaintiff receives the late designation in the form set out in "subpart b" above;
- d. Late designation by Defendant shall not have retroactive effect. Any use or disclosure by Plaintiff (or any person or entity to whom Plaintiff has made a disclosure) made prior to the late designation shall not be governed by, or subject to, the terms of this Order.
- e. Upon receipt by Plaintiff of a late designation from Defendant, Plaintiff may only thereafter use and/or disclose the late designation confidential documents in accordance with the terms of this Order.

15. Ultimate disposition of materials and information protected by this Order is subject to a final order of the Court upon completion of litigation. However, in the absence of a final order of the Court addressing the disposition of Confidential Information, the parties agree to return to counsel of record producing such documents not later than sixty (60) days after the termination of this litigation, any and all documents in their possession or control containing information which is the subject of this Order, including without limitation, any copies or excerpts of such documents.

IT IS SO ORDERED 3rd this day of March, 2000.



The Honorable Graham C. Mullen
Chief United States District Judge
Western District of North Carolina

CONSENTED TO:



Lynette A. Barnes
Senior Trial Attorney
Attorney for Plaintiff,
Equal Employment Opportunity Commission



David Ritter
Chad Moeller
Attorneys for Defendant,
The Gehl Corporation d/b/a The Gehl Group

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
**THE GEHL CORPORATION d/b/a THE)
GEHL GROUP,)
)
 Defendant.)
_____)****

**CIVIL ACTION NO.
3:99CV74-MU**

CONFIDENTIALITY AGREEMENT

I have read and am familiar with the terms of the Protective Order governing the disclosure of confidential information in the case of Equal Employment Opportunity Commission v. The Gehl Corporation d/b/a The Gehl Group, Civil Action No. 3:99-CV-74-MU, and I agree to abide by all the terms of said Order and not to reveal or otherwise communicate any of the information disclosed to me pursuant thereto to anyone except in accordance with the terms of said Order. I agree not to make use of any information or material obtained pursuant to that Order other than for purposes of this litigation.

I also agree to return to counsel of record, not later than thirty (30) days after the termination of this litigation, any and all documents in my possession containing Confidential Information which is the subject of said Order .

Name: _____

Date: _____

EXHIBIT A

United States District Court
for the
Western District of North Carolina
February 29, 2000

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:99-cv-00074

True and correct copies of the attached were mailed by the clerk to the following:

Paul A. Kohut, Esq.
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Charlotte, NC 28205


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Johnston, Allison & Hord
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Horack, Talley, Pharr & Lowndes
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301 South College St.
Charlotte, NC 28202

David A. Lloyd, Esq.
Horack, Talley, Pharr & Lowndes
2600 One First Union Center
301 South College St.
Charlotte, NC 28202

- cc:
- Judge ()
- Magistrate Judge ()
- U.S. Marshal ()
- Probation ()
- U.S. Attorney ()
- Atty. for Deft. ()
- Defendant ()
- Warden ()
- Bureau of Prisons ()
- Court Reporter ()
- Courtroom Deputy ()
- Orig-Security ()
- Bankruptcy Clerk's Ofc. ()
- Other _____ ()

Date: 2/29/00

Frank G. Johns, Clerk
By: 
Deputy Clerk

United States District Court
for the
Western District of North Carolina
March 7, 2000

Remarked

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:99-cv-00274

True and correct copies of the attached were mailed by the clerk to the following:

C. Gregory Stewart, Esq.
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323 Union St., Suite 300
Nashville, TN 37219-0608

cc:
Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Court Reporter ()
Courtroom Deputy ()
Orig-Security ()
Bankruptcy Clerk's Ofc. ()
Other _____ ()

Date: 3/7/00

Frank G. Johns, Clerk

By: 

Deputy Clerk