

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

QUAN-EN YANG

Plaintiff

vs.

G&C GULF, INC., D/B/A G&G TOWING

Defendant

CIVIL ACTION NO.: 403885V  
TRACK VI – Judge Rubin

**DEFENDANT'S MOTION TO DEEM DEFENDANT'S CUSTOMER CONTRACTS**  
**CONFIDENTIAL**

Defendant G&C Gulf, Inc., d/b/a G&G Towing ("G&G"), by and through undersigned counsel, moves, pursuant to the Stipulated Order Regarding Confidential Materials. entered by this Court of August 10, 2015, to have this Court rule that G&G's contracts with its clients, produced as G&C Production document numbers 51 to 1042 are confidential, and as grounds therefore respectfully refers this Honorable Court to the accompanying Memorandum of Points and Authorities in support of the Motion and Affidavit of Glenn Cade.

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing was served upon the individual(s) listed below by First Class Mail, postage prepaid on this 11th day of September, 2015 to:

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*Attorney for Defendant*

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Defendant

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**DEFENDANT’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
ITS MOTION TO DEEM ITS CUSTOMER CONTRACTS CONFIDENTIAL**

**I. INTRODUCTION**

Plaintiff has filed a ten count Amended Class Action Complaint based on Defendant G&C Gulf, Inc., d/b/a G&G Towing’s (“G&G”) towing of Plaintiff’s illegally parked car from a Walgreens lot in Rockville, Maryland. The parties entered into a Stipulated Order Regarding Confidential Materials (“Stipulated Order”) approved by the Court (Docket No. 57), and pursuant to that order, G&G in good faith designated its contracts with its customers (“Contracts”) as confidential materials. In conformity with the procedures set forth in the Order, Plaintiff has objected to this designation. *See*, Exhibit A. Defendant brings this motion to have the documents deemed confidential on the grounds that they contain trade secret and valuable, confidential business information.

**II. FACTUAL BACKGROUND**

On December 12, 2014, Plaintiff, Quan-En Yang (“Yang”) parked his Honda on private business property owned by Walgreens Pharmacy in Rockville, Maryland (Amended Complaint,

¶ 23).<sup>1</sup> Walgreens posts signs visible to those entering its property that its parking lot is reserved for its customers, and that persons who trespass on the property by illegally parking a motor vehicle on the lot are subject to having their vehicle towed (¶ 33). The Plaintiff ignored this sign, parked his vehicle on Walgreens' property and promptly left the premises. (¶¶ 27-28). Walgreens contracts with Defendant G&C Gulf, Inc., d/b/a G&G Towing ("G&G") to remove unauthorized vehicles from its parking lot (¶ 25). Pursuant to this contract, G&G towed the Plaintiff's Honda from the space it illegally occupied on Walgreens property.

Plaintiff's Amended Class Action Complaint against G&G alleges statutory claims under Maryland's Towing Law, Md. Code Ann., Transp. § 21-10A-01, *et seq.*, the Montgomery County Tow Law, Montgomery County Code, § 30-C-1, *et seq.* and the Maryland Consumer Protection Act, Md. Code Ann., Comm. Law, § 13-101, *et seq.* The Plaintiff also asserts common law claims for money had and received, conversion, and trespass to chattels.

On August 10, 2015, the Court entered a Stipulated Order Regarding Confidential Materials, which provided in part: "One who provides material may designate it as confidential only when such person in good faith believes it contains sensitive personal information, trade secrets or other confidential research, development, or commercial information." Stipulated Order, ¶ 1.a. (Docket No. 57).

### **III. THE DOCUMENTS AT ISSUE**

Plaintiff propounded discovery to G&G, seeking in part: "All contracts that you have entered into in the State of Maryland from April 16, 2003 to the present with property owners, owner's agents or managers for the provision of trespass towing services." Defendant responded as follows: "RESPONSE: Objection. The information sought is overbroad in scope and it seeks discovery relating to persons who are towed well beyond the applicable statute of limitations in

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<sup>1</sup> All further references to the Amended Complaint will be to paragraph number only.

this case. For this reason, the request seeks information that is not relevant to this proceeding nor would the discovery of information lead to admissible evidence. Without waiving this objection, Defendant is producing as G&G Production numbers 51 through 1003 contracts with property owners, owner's agents or managers that were subject to third party subpoenas and all contracts with property owners, owner's agents or managers where there has been a trespass tow since October 1, 2012."<sup>2</sup>

Defendant produced 952 pages of responsive Contracts, stamping them "CONFIDENTIAL." Almost all of the contracts were drafted and created by G&G, and contain the terms and conditions of G&G's obligations to tow illegally parked vehicles from their customers private lots. Further, the Contracts contain commercially valuable and confidential information as to the client contacts, information that is not readily available to the public or competitors. It is for this reason that Defendant seeks to maintain the confidentiality of these records.

#### **IV. LEGAL ARGUMENT**

##### **A. The Contracts Are Analogous To A Customer List**

Each of the Contracts contains information as to the person or persons at the property who (1) are authorized to make the decision to enter into a contract for towing services, and/or (2) are authorized to order a trespass tow from the property. Such information is not available to the general public, or G&G's competitors without expending great effort. The 300+ Contracts would provide a competitor with a list of all of G&G's active trespass towing clients for the last three years. In essence, the Contracts are a valuable customer list, and are subject to protection, as set forth below.

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<sup>2</sup> The production was recently supplemented to include additional contracts designated as document numbers 1004-1042.

**B. The Contracts Produced Are Trade Secrets, and/or Valuable Commercial Information And Should Be Deemed Confidential Under the Stipulated Order**

The Stipulated Order allows a party who responds to discovery to designate material as confidential if the producing party believes in good faith that it contains “sensitive personal information, trade secrets or other confidential research, development, or commercial information.” Stipulated Order, ¶ 1.a. The Stipulated Order does not define trade secrets or confidential commercial information. However, a review of relevant statutes and cases examining what constitutes a trade secret or commercial information that is protected as confidential business information, supports a determination that the Contracts here at issue contain trade secrets and/or confidential commercial information, and are entitled to protection.

The Maryland Uniform Trade Secrets Act (“MUTSA”), Md. Code Ann .Com. Law II §§ 11–1201 – 11–1209, defines a trade secret as: “information, including a ... compilation ..., that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Md. Code Ann. Com. Law II § 11–1201(e). “The subject matter of a trade secret: ‘. . . may be information of any sort;. . . the subject-matter may be the product of work, or expenditure of money, or of trial and error, or the expenditure of time.’” *Bond v. PolyCycle, Inc.*, 127 Md. App. 365, 371-72, 732 A.2d 970, 973 (1999), quoting, *Space Aero Prods. Co. v. R.E. Darling Co.*, 238 Md. 93, 105, 208 A.2d 74, cert. denied, 382 U.S. 843, 86 S.Ct. 77, 15 L.Ed.2d 83 (1965) (internal quotations omitted).

Prior to the enactment of the MUTSA, the Court of Appeals adopted the factors for determining whether a trade secret exists as set forth in the Restatement of Torts, and these

“factors still provide helpful guidance to determine whether the information in a given case constitutes ‘trade secrets’ within the definition of the statute. To the extent that the Restatement presents a narrower view, the [MUTSA] pre-empts that definition.” *Bond, supra*, at 372-73.

These factors are:

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Id.* at 372. Whether information “is a trade secret is a conclusion of law [based] upon the applicable facts.” *Operations Research, Inc. v. Davidson & Talbird, Inc.*, 241 Md. 550, 556, 217 A.2d 375 (1966), citing *Space Aero Products Co. v. R. E. Darling Co.*, 238 Md. 93, 106, 208 A.2d 74, cert. denied 382 U.S. 843, 86 S.Ct. 77, 15 L.Ed.2d 83 (1965).

Regardless of which definition is used in this instance, the affidavit of Glenn Cade, sole owner of G&G, makes it clear that the Contracts are valuable confidential business information and/or trade secrets entitled to protection under the Stipulated Order. All six of the Restatement of Torts factors are present here and support the conclusion that the Contracts should be deemed confidential. First, the information regarding who is authorized to contract with G&G for towing or to contact G&G for a trespass tow, is not known outside of G&G. (Cade Aff., ¶ 8.) As to the second and third factors, this information is only made available to those G&G employees who need to know this information to do their jobs, and is otherwise kept confidential. (Cade Aff. ¶ 9.) See *NaturaLawn of America, Inc. v. West Group, LLC*, 484 F.Supp.2d 392, 399 (D.Md.2007) (where the identities of the customers were not widely known outside of the company and were

carefully guarded, the court found that the customer list was indeed a trade secret.) Fourth, the information is extremely valuable to G&G and its competitors. The information allows G&G to properly conduct its towing business, by knowing who is authorized to call for a tow, and who is responsible for towing at each client location. (Cade Aff., ¶¶ 7-8.) Disclosure of this information would allow G&G's competitors to know exactly whom to contact at each property and how to reach the client contact in order to solicit away G&G's business. (Cade Aff. ¶ 10.) As to the fifth factor, Mr. Cade has spent most of the last 18 years soliciting these clients and developing these contacts. (Cade Aff., ¶ 4.) Finally, this information is not readily available to competitors or others. (Cade Aff., ¶¶ 8-9.) Rather, to develop this information, a competitor would need to determine what types of businesses wish to engage in trespass tows, determine who owns or manages those businesses, determine who would make the decision regarding hiring a towing company, and then solicit their business. (Cade Aff. ¶ 11.)

Similarly, the contact and other information disclosed in the Contracts, meets the definition of a trade secret under MUTSA. It has potential and actual economic value to a competitor, who could duplicate years of Mr. Cade's effort locating and soliciting clients, by merely reviewing the Contracts. For this reasons, G&G has limited access of this information to only the employees who require this information to do their jobs. Under Maryland law, these factors are critical to a finding that a customer list is a trade secret. For example in *Allan M. Dworkin, D.D.S., P.A. v. Blumenthal*, 77 Md. App. 774, 781-82, 551 A.2d 947, 950-51 (1989), the Court specifically noted that customer lists could be trade secrets. However, where the compilation of a patient list was (1) merely incidental to the practice, and no independent efforts were made to compile the list and (2) where access to patient information was completely unrestricted and available to all employees, the Court held that the information was not a

protected trade secret. *Id.* Conversely, where, as here, access is limited and the information was the product of a concerted effort not easily duplicated, the information should be classified as a trade secret.

## V. CONCLUSION

The Contracts produced as G&C Production 51 to 1042, and stamped "CONFIDENTIAL," are entitled to the protection of the Stipulated Order, as they contain valuable, confidential business information. Under the terms of the Stipulated Order, Plaintiff may use the records in the course of the litigation of this matter under certain parameters. For the reasons set forth herein, Defendant asks that this Honorable Court hold that the Contracts are confidential materials subject to the Stipulated Order.

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*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing was served upon the individual(s) listed below by First Class Mail, postage prepaid on this 11th day of September, 2015 to:

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*Attorney for Defendant Glenn W. Cade, Jr.*



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**Defendant**

**CIVIL ACTION NO.: 403885V  
TRACK VI – Judge Rubin**

**ORDER**

Upon consideration of Defendant's Motion To Deem Its Customer Contracts Confidential, and response thereto, it is this \_\_\_\_ day of \_\_\_\_\_, 2015;

**ORDERED**, that the Contracts produced by Defendant as G&C Production, documents 51 to 1042, are declared "CONFIDENTIAL" as defined in the Stipulated Order Regarding Confidential Materials entered by this Court of August 10, 2015.

\_\_\_\_\_  
**JUDGE**

# **EXHIBIT A**



Richard S. Gordon  
rgordon@GWCfirm.com

August 24, 2015

**BY ELECTRONIC MAIL**

Ronald S. Canter  
The Law Offices of Ronald S. Canter, LLC  
200A Monroe Street, Suite 104  
Rockville, Maryland 20850

**Re: Yang v. G&C Gulf, Inc. d/b/a G&G Towing  
Objection to Confidential Designation**

Dear Ron:

Pursuant to Paragraph 4 of the Stipulated Order Regarding Confidential Materials (Dkt. no. 57, entered August 10, 2015), Plaintiffs object to G&G Towing's designation of G&G Production 51 through 1003 as "CONFIDENTIAL." The documents included in G&G Production 51 through 1003 are limited to G&G Towing's contracts with Parking Lot Owners, the vast majority of which are on the same standard G&G Towing form. Since none of these documents include "sensitive personal information, trade secrets or other confidential research, development, or commercial information," the confidential designation is inappropriate.

As always, please feel free to contact me if you have any questions.

Very truly yours,

Richard S. Gordon

RSG/cs

cc: Frederic J. Einhorn (by Electronic Mail)

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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AFFIDAVIT OF GLENN CADE

The undersigned hereby declares and affirms under the penalties of perjury that the contents of this Affidavit are true and correct:

1. I have personal knowledge of the matters set forth herein and I am competent to testify thereto.

2. I am the sole shareholder of Defendant G&C Gulf, Inc.

3. G&C Gulf, Inc.'s sole business is the operation of G&G Towing, ("G&G"), a Montgomery County, Maryland licensed towing service. G&G has been in the towing business since 1968.

4. Since I hired Bryan Sherman as General Manager of G&G Towing 18 years ago, my efforts on behalf of G&G have been devoted to the promotion of its towing business by soliciting and marketing G&G's services to Montgomery County property owners ,

5. I, along with Steve Kerasiotes, G&G's Sales Representative, are exclusively responsible for soliciting Montgomery County property owners to contract with G&G Towing for its trespass towing services.

6. Mr. Kerasiotes has recently taken ill and I am now solely responsible for soliciting businesses in Montgomery County for trespass towing services.

7. G&G's business in Montgomery County encompasses towing vehicles pursuant to requests by the Montgomery County Police, towing of vehicles that have been illegally parked on private property ("trespass tows"), towing of vehicles under private contract and transport of vehicles under private contract.

8. G&G enters into written contracts with Montgomery County property owners for trespass towing services. The terms of the contract and the information contained in the contracts include the identity of persons who have been solicited for G&G's business, as well as the names of managers and/or persons with whom G&G transacts its business. The identity of these persons is not known outside of G&G.

9. G&G takes extensive measures to safeguard its customer contracts, does not disclose the existence of those contracts or the individuals who are authorized to engage G&G for its towing services to third parties or to G&G employees who have no need for such information.

10. The information relating to G&G's customer contracts, its customer lists and more specifically the identity of the individual managers of each property that has contracted with G&G is proprietary information. If this information is disclosed to the general public and/or specifically to G&G's competitors, G&G would suffer a disadvantage in its business relationship with its customers and in its ability to compete in the market for towing services. A competitor who had access to the contracts produced in discovery in this matter, would have the name, telephone number and email of hundreds of G&G's client contacts, and could readily attempt to solicit G&G business, with little to no effort.

11. It would be extraordinary difficult for G&G's competitors, third parties and/or other members of the public to obtain information relating to the identity of the individuals

responsible for contracting for towing services with G&G on behalf of property owners.  
without extraordinary efforts.

DATED: 9/9/15 \_\_\_\_\_  
Glenn Cade

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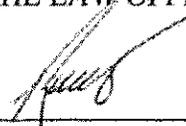
Defendant

CIVIL ACTION NO.: 403885V  
TRACK VI – Judge Rubin

**REQUEST FOR HEARING**

Defendant hereby requests a hearing in open court on its Motion to Deem Defendant's Customer Contracts Confidential.

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