

UNITED STATES OF AMERICA, Plaintiff,
Jeffrey E. EPSTEIN and Ivan S. Fisher, Defendants.
No. 96 Civ. 8307(DC).

United States District Court, S.D. New York.

Feb. 19, 1998.

Mary Jo White, United States Attorney for the Southern District of New York, by Serene Nakano, Assistant United States Attorney, New York City, for the United States.

Gage & Pavlis, by G. Robert Gage, Jr., Ellen J. Casey, New York City, for Ivan S. Fisher.

MEMORANDUM DECISION

CHIN, J.

*1 In this case, the United States (the "Government") seeks to evict defendants Jeffrey E. Epstein and Ivan S. Fisher from a building formerly used as a residence by the Deputy Consul General of the Islamic Republic of Iran ("Iran"). After diplomatic and consular relations with Iran were severed in 1980, the Office of Foreign Missions ("OFM") of the United States Department of State took possession of the building pursuant to the Foreign Missions Act, 22 U.S.C. s 4301 et seq. OFM leased the building to Epstein in 1992. Epstein eventually sublet the premises to Fisher, purportedly without the Government's consent. Fisher, in turn, sublet a portion of the premises to several other lawyers.

In 1996, the Government purported to terminate Epstein's lease and brought this action to evict Epstein and Fisher. The other sub-tenants were later added as defendants. The Government also seeks to recover back rent from Epstein and Fisher.

During discovery, the Government requested production of Fisher's 1996 tax return to verify the amount of rent that he had collected from his subtenants. Fisher objected to the request. At a conference on December 10, 1997, I overruled the objection on the condition that the return be protected by an appropriate confidentiality order, which the parties were to negotiate. Fisher and the Government, however, were unable to agree on the terms of a protective order. Hence, they submitted separate proposed protective orders for my consideration.

The Government's proposed order contains a provision ("Proposed Paragraph 7(c)") that would permit the United States Attorney's Office for the Southern District of New York to disclose any confidential information governed by the protective order to other government agencies for the purpose of enforcing the criminal or civil laws of the United States. Thus, the Government seeks to reserve the right to use confidential information produced by Fisher in this case in unrelated civil or criminal matters. The Government contends that Proposed Paragraph 7(c) is necessary because the U.S. Attorney's Office has a statutory duty to enforce the laws, citing 28 U.S.C. s 547(c), and that it therefore cannot ignore any evidence of a violation of law--even evidence that comes to its attention only because it is produced pursuant to a protective order in discovery in a civil case. Fisher objects to Proposed Paragraph 7(c). He contends that use of any confidential documents produced in this case should be limited to this lawsuit.

Fisher's objection is sustained, for three reasons.

First, confidentiality orders are intended "to 'secure the just, speedy, and inexpensive determination' of civil disputes by encouraging full disclosure of all evidence that might conceivably be relevant." *Martindell International Tel. & Tel. Corp.*, 594 F.2d 291, 295 (2d Cir.1979). Unless protective orders are "fully and fairly enforceable," persons relying upon such orders will be inhibited from providing essential testimony and

information in civil litigation, "thus undermining a procedural system that has been successfully developed over the years for disposition of civil differences." *Id.* A provision that would permit the use of confidential information outside of this lawsuit would defeat the very purpose of the protective order.

*2 Second, although the Court recognizes the strong public interest in obtaining all relevant evidence required for law enforcement purposes, the Government as investigator " 'has awesome powers' [that] render unnecessary its exploitation of the fruits of private litigation." *Id.* (quoting *GAF Corp. v. Eastman Kodak Co.*, 415 F.Supp. 129, 132 (S.D.N.Y.1976)). Proposed Paragraph 7(c) should not be included in the protective order "merely to accommodate the Government's desire to inspect protected [information] for possible use in a criminal [or civil] investigation." *Martindell*, 594 F.2d at 296; *cf. id.* (denying Government's order to modify or vacate protective order to permit it access to witnesses' deposition transcripts protected by the order). The Government will still be able to fulfill its statutory obligation to enforce the law through ordinary criminal and civil process and by taking advantage of the substantial resources available to the Government to investigate suspected violations of the law.

Third, tax information has traditionally been treated as private and confidential information. Section 6103 of the Internal Revenue Code, for example, specifically prohibits any person, including an officer or employee of the United States, from "disclos[ing] any return or return information obtained ... in any manner in connection with his [or her] service as such an officer or employee." 26 U.S.C. s 6103(a). Section 6103 also spells out the limited situations when an officer or employee may disclose return information. See, e.g., s 6103(h)(2) (disclosure of returns and return information to Department of Justice employees), s 6103(h)(4) (disclosure of returns or return information in judicial or administrative proceedings). This section provides specific limits on the disclosure of returns and return information and bolsters the conclusion that Fisher's tax return is entitled to protection from disclosure by the Government in this action. See *Richards v. Stephens*, 118 F.R.D. 338, 339 (S.D.N.Y.1988) (s 6103 is intended to protect the confidentiality of taxpayers' returns by "regulat[ing] ... disclosure of tax returns by people having access to tax returns in their official capacity"). Fisher should not become the subject of an IRS tax investigation merely because of documents he produced in what is essentially a landlord-tenant suit.

For these reasons, I will enter a protective order that does not contain Proposed Paragraph 7(c). The Government may not use confidential information produced in discovery pursuant to the protective order for any purpose other than prosecuting this lawsuit, absent further order of the Court.

SO ORDERED.

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