Entered 26-CI-00105 05/28/2026 Diane Thompson, Nelson Circuit Clerk

COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
CIVIL ACTION NO. 26-CI-00105
DIVISION 1

SYLVIA E. SANDERS PLAINTIFF

VS. ORDER

THE BARDSTOWN BOURBON COMPANY, LLC, ET. AL. DEFENDANTS

* * * * *

In November of 2019, the plaintiff, Sylvia E. Sanders (hereinafter "Sanders"), was hired by the defendant, The Bardstown Bourbon Company, LLC (hereinafter "BBC"), as Vice President for Human Resources. On February 10, 2026, Sanders filed this action against BBC to assert claims for gender discrimination, discrimination retaliation, breach of employment contract, breach of implied covenant of good faith and fair dealing, intentional infliction of emotional distress, fraud, public policy wrongful discharge, defamation, interference with prospective relations, and interference with contractual relations.

BBC thereafter filed a motion to strike Sanders' complaint based on the following arguments: (1) the complaint contained "redundant, immaterial, impertinent, and scandalous content in blatant violation of CR 12.06," and (2) that Sanders had breached a Non-Disclosure Agreement (hereinafter "NDA") by including the following:

> confidential personnel matters (other than her own), current lawsuits, complaints of harassment and discrimination, training, business records, potential legal issues, decisions to terminate or demote specific employees, accusations of a named employee being involved in an affair with another named employee, accusations that specific employees were impaired on the job, accusations that named employees committed crimes, accusations that specific employees served minors, information about specific employees' salaries.



Entered 26-CI-00105 05/28/2026 Diane Thompson, Nelson Circuit Clerk

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See BBC's Motion to Strike, p. 6. BBC further asserted other NDA violations, including the following: (1) that "Sanders repeated a complaint submitted to her as the Vice President of Human Resources whereby a female employee accused a male supervisor of being a 'sexual predator,'" (2) that Sanders disclosed "a copy of an email correspondence which included . . . a confidential severance agreement," (3) that Sanders disclosed "an email correspondence which included an attachment detailing internal complaints of discrimination made by non-parties and information pertaining to business operations as well as legal matters," and (4) that Sanders included "the reason for separation of several employees by name." *Id.*, pp. 6-7.

After considering the arguments of counsel, this Court denied the motion to strike. However, the Court ordered the original complaint to be sealed, with Sanders being required to file a redacted complaint which removed the identities of the non-parties. As grounds, this Court thought it was inappropriate to specifically identify personal information of employees and former employees who are not parties to this action.

On March 20, 2026, BBC filed a counterclaim to assert that Sanders had breached the NDA. The NDA has been filed of record, and it specifically prohibited Sanders from disclosing "confidential or proprietary information." The NDA defines "confidential or proprietary information" to include "information . . . relating to: employees, . . . legal matters, human resources, . . . internal performance results, . . . and business records . . ."

BBC's counterclaim has alleged that Sanders disclosed confidential information in her complaint by identifying employees who came to her in confidence due to her employment position and that she revealed details of confidential investigations, wage information, and actual or threatened litigation. BBC further claimed that Sanders disclosed confidential information in



Entered 26-CI-00105 05/28/2026 Diane Thompson, Nelson Circuit Clerk

A9C98E39-2E96-45B0-9966-FBFA2A70FDB6 : 000002 of 000006

OO : 000002 of 000006

violation of the NDA to third parties outside of the lawsuit, and that she retained business records belonging to BBC in violation of the NDA.

On March 24, 2026, Sanders filed an expedited motion to dismiss the counterclaim and for relief pursuant to Kentucky's Uniform Public Expression Protection Act (hereinafter "UPEPA"). Both parties thereafter filed memorandums. After the Court considered arguments from counsel on May 6, 2026, it took this matter under submission. This Court is now prepared to address and adjudicate this pending motion.

By way of background, Strategic Lawsuits Against Public Participation (hereinafter "SLAPP") are used by businesses or persons "to harass, intimidate or silence those individuals who use their right to petition." *Seiller Waterman, LLC v. Bardstown Capital Corp.*, 642 S.W.3d 68, 79 (Ky. 2022). "A SLAPP may come in any form; however, common formulations include defamation, invasion of privacy, and nuisance claims." *Thurman v. Cowles Company,* 562 P.3d 777, 780 (Wash. 2025). "These lawsuits are brought with the intent to deter the defendant from public participation by subjecting them to costly and extensive litigation." *Id.*

"The UPEPA is a type of anti-SLAPP law, designed to combat the problem of strategic lawsuits against public participation." *Id.* In 2022, Kentucky adopted the UPEPA. See KRS 454.460-454.478. The UPEPA generally permits "the person who exercised his or her petitioning right[ ] to file a motion to strike or dismiss because the case involves protected speech on a matter of public concern." *Seiller Waterman,* at 79. It is an "accelerated procedure for using established, substantive defenses to dismiss non-meritorious claims." *Davenport Extreme Pools & Spas v. Mulflur,* 698 S.W.3d 140, 154 (Ky. App. 2024).

KRS 454.462(1)(a) specifically states that the UPEPA "applies to a cause of action asserted against a person **based on** the person's communication in a legislative, executive,



Entered 26-CI-00105 05/28/2026 Diane Thompson, Nelson Circuit Clerk

A9C98E39-2E96-45B0-9966-FBFA2A70FDB6 : 000003 of 000006

OO : 000003 of 000006

judicial, administrative, or other governmental proceeding" (emphasis added). Unfortunately, there are no Kentucky appellate court decisions interpreting the "based on" language.

Sanders contends that the UPEPA is applicable because BBC's counterclaim is "based on" the language contained in her complaint and exhibits. She further asserts that the General Assembly "did not exempt a breach-of-contract, an NDA, employer claims, or claims containing mixed allegations." See Sanders' Reply, April 29, 2026, pp. 3-4.

In contrast, BBC asserts that the UPEPA "prohibits a party from initiating a claim based ***solely upon*** petitioning activity . . .". See BBC's Response, April 15, 2026. In making this argument, BBC relies on *Duracraft Corp. v. Holmes Products Corp.,* 691 N.E.2d 935, 939 (Mass. 1998) ("SLAPP suits have been characterized as 'generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so'") (citation omitted).

In *Duracraft*, the Massachusetts Supreme Court was asked to interpret the "based on" language. That Court ultimately adopted a construction that "would exclude motions brought against meritorious claims with a substantial basis other than or in addition to the petitioning activities implicated." *Id.* at 167. It was ultimately determined that an NDA constituted a substantial basis for the lawsuit other than the petitioning activity.

This Court finds *Duracraft* to be a persuasive authority. Otherwise, Sanders' strict interpretation of "based on" could lead to nonsensical results. For instance, suppose an employee with Yum! Brands, who had previously signed an NDA, filed a discrimination complaint that randomly disclosed the eleven secret ingredients to Kentucky Fried Chicken. Yum! Brands would then be precluded from asserting any claim related to the NDA breach because the counterclaim was "based on" the language in the employee's complaint.



Entered 26-CI-00105 05/28/2026 Diane Thompson, Nelson Circuit Clerk

A9C98E39-2E96-45B0-9966-FBFA2A70FDB6 : 000004 of 000006

OO : 000004 of 000006

In addition, this Court has thoroughly reviewed BBC's counterclaim and it finds sufficient facts to support a *prima facie* case for breach of contract. As grounds, the counterclaim alleges the following: (1) that the parties executed an NDA, (2) that Sanders breached the NDA by making unauthorized disclosures, and (3) that BBC has been damaged. As a result, this Court finds that Sanders is unable to satisfy KRS 454.472(1)(c).

Finally, KRS 454.487(2) specifically states that the trial court "shall award court costs, attorney's fees, and reasonable litigation expenses related to the motion [t]o the responding party if the responding party prevails on the motion and the court finds that the motion was brought without good cause." This Court finds that it would be inappropriate to award same herein. As grounds, the Court believes that Sanders had good cause for filing her motion, especially since there are no Kentucky decisions interpreting the "based on" language.

NOW, THEREFORE, THE PREMISES CONSIDERED, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That the expedited motion of the plaintiff, Sylvia E. Sanders, to dismiss the counterclaim of the defendant, The Bardstown Bourbon Company, LLC, is hereby denied.

2. That the motion of the defendant, The Bardstown Bourbon Company, LLC, for costs, attorney's fees, and expenses is hereby denied.

3. That if this Order is appealed, KRS 454.666 requires all proceedings between all parties to be stayed.

4. That this Order is final and appealable with no just reason for delay.

DATED 5-28-2026.

JUDGE, NELSON CIRCUIT COURT





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