

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Judge

Appellate Case Number 2023-000353

Civil Action Number 2018-CP-23-01643

Jason Tuck Appellant,

v.

On the Mark Automotive Repair and Refinishing, LLC d/b/a On the Mark Automotive, LLC, Carolina's Best Auto Sales, LLC, Carolina's Best Finance, 828A St. Mark Road, LLC, Affordable Auto Finance, Inc., Southeastern Recovery and towing, LLC, John D. Watts III (a/k/a John D. Watts), Respondents.

Joint Motion to File Matters Under Seal

This appeal arises from the trial court's ruling on submissions by the parties. The parties agreed to file matters under seal. On November 10, 2022, the trial court entered a consent order to file matters under seal. (Attached). Both parties anticipate filing the same materials in this appeal.

For the same reasons approved by the trial court, the parties request that this Court enter an Order allowing the parties leave to file the same materials under seal as part of a supplemental Record.

Dated this 1st day of June, 2023.

For Appellant:

For Respondent Watts:

For Corporate
Respondents:

s/ Brian P. Murphy
Brian P. Murphy

s/ Bruce W. Bannister
Bruce W. Bannister

s/ L. Lee Plumblee
L. Lee Plumblee

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State of South Carolina)	IN THE COURT OF COMMON PLEAS
)	
County of Greenville)	2018-CP-23-01643
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Jason Tuck,)	
)	
Plaintiff,)	
v.)	
)	CONSENT ORDER TO FILE
)	MATERIALS UNDER SEAL
On the Mark Automotive Repair and Refinishing, LLC d/b/a On the Mark Automotive, LLC, Carolina's Best Auto Sales, LLC, 828A St. Mark Road, LLC, Affordable Auto Finance, Inc., John D. Watts III (a/k/a John D. Watts))	
)	
Defendants.)	
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Currently pending before this Court is the issue of whether the Judgment entered in this case as to the breach of contract claim should be attributed to Defendant Watts and the various corporate defendants other than Defendant On the Mark. The parties had consented to submission of proposed findings of fact and conclusions of law based on: (1) information exchanged in discovery; (2) the Record of proceedings on August 10, 2022; and (3) the Record created as to the de bene esse deposition of Watts conducted on October 25. On October 18, this Court entered a Consent Order setting the deadline of Monday, November 14 for the submission of the proposed findings of fact and conclusions of law.

Previously, the parties submitted a Consent Confidentiality Order entered on August 26, 2022. The parties have agreed that financial (including tax) records produced by the Defendants are subject to that Order. The parties jointly represent that much of the information that will be before the Court as to the remaining issues will involve such

information. The parties have agreed that, while such information and its importance may be characterized generally in the forthcoming filings, the underlying data and amounts should remain subject to the Confidentiality Order at this time. In short, the parties have agreed that any such data will be redacted from any public filings and the underlying documents filed under seal.

The parties also agree that the filings for this phase will be voluminous, covering five years and involve such files as general ledgers that are lengthy.

Rule 41.1(b) provides in relevant part:

[A]ny party seeking to file documents under seal shall file and serve a "Motion to Seal." The motion shall identify, with specificity, the documents or portions of documents for which sealing is considered necessary, shall contain a non-confidential description of the documents, and shall be accompanied by a separately sealed attachment labeled "Confidential Information to be submitted to Court in Connection with the Motion to Seal." The attachment shall contain the documents for the court to review in camera. The motion shall state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

- (1) the need to ensure a fair trial;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality;
- (4) the public or professional significance of the lawsuit;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Rule 41.1(b), SCRCP. Rule 1 also provides that the Rules may be construed "to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP.

With the agreement of the parties, the Court finds that the submission of the material is necessary to ensure that both parties have fully presented the issues and are entitled to a fair trial.

With the agreement of the parties, the Court finds that, based on the agreements reached on August 10, the protection provided by the Confidentiality Order was necessary to secure agreement of the Defendants to produce the files in their entirety and that such cooperation was necessary to afford both sides the opportunity to present their arguments.

With the agreement of the parties, the Court finds that Defendants have relied on the agreement that the information is confidential in producing in, and that Defendants reasonably expected Plaintiff to agree to the filing of the materials under seal. Plaintiff concurs that this was the understanding at the time the information was produced in discovery, at the time the parties submitted the Consent Confidentiality Order, and at the time the parties reached agreements on the Record during the August 10 proceedings.

With the agreement of the parties, the Court finds that there is no assertion of public significance related to the data at issue.

With the agreement of the parties, the Court finds that the disclosure of the information could be harmful to the privacy interests of Defendants.

With the agreement of the parties, the Court finds that there is no alternative to the filing of the information under seal as both parties need to provide a Record to support the arguments they will submit.

With the agreement of the parties, the Court finds that the public interest is served by permitting the filing of the documents under seal because, in the absence of the

agreements reached by the parties, further and unnecessary judicial resources would be expended on dealing with the information when neither party is requesting such action. This action has been pending since early 2018, and the public interest is best served by bringing an end to it in the most efficient way possible.

Because the parties agree as to the data that should be sealed, there is no need for the Court to review it in advance. Accordingly, the Court adopts the following procedure:

1. The parties may submit a sealed version of their proposed findings of fact and conclusions of law along with redacted versions to be filed by November 14.
2. The parties may seal any Exhibits containing "Confidential" information as that term is defined in the Consent Confidentiality Order entered August 26.

IT IS SO ORDERED.

WE CONSENT:

For Plaintiff:

s/ Brian P. Murphy

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Attorney for Plaintiff Jason Tuck

For the Other Corporate Entities:

s/ L. Lee Plumblee

L. Lee Plumblee (signed by BPM w/ permission)

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Greenville Common Pleas

Case Caption: Jason Tuck vs. On The Mark Automotive Repair And Refinishing LLC , defendant, et al
Case Number: 2018CP2301643
Type: Order/Consent Order

So Ordered

s/Letitia H. Verdin, SC Judge 2162