

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, Administrative Law Judge

Case No. 13-ALJ-11-00294-AP

Naert and DuBois, LLCPetitioner/Appellant,

In the Matter of
Anonymous Companies,
South Carolina Department of Labor,
Licensing and Regulation, and South
Carolina Board of Real Estate Commission

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APR 25 2014

SC Court of Appeals

MOTION TO SEAL

Anonymous Companies, by and through their undersigned counsel, hereby request that this Court seal all records pertaining to the above-referenced appeal, including without limitation all correspondence, motions, briefs, orders, filings, and references thereto of any other nature, whether in written or electronic form. This Motion to Seal is filed pursuant to the requirements established by the Supreme Court's Order *In re Revised Order Concerning Personal Identifying Information And Other Sensitive Information In Appellate Court Filings*, Appellate Case No. 2013-002681, 2014 WL 1464413 (April 15, 2014), which provides in pertinent part as follows:

A party seeking to seal material beyond those personal identifiers listed above must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. **Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed.** Parties and counsel are reminded that the standard established in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006), and *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991), must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before

the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Id. (emphasis added).

As referenced in *in Re Revised Order Concerning Personal Identifying Information And Other Sensitive Information In Appellate Court Filings* and as set forth in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 9, 630 S.E.d 2d 464, 469 (2006), the sealing of records is within a court's "supervisory power over its own records and files." Courts have properly denied access to records "where court files might have become a vehicle for improper purposes." 369 S.C. at 9, 630 S.E.d 2d at 469. Ultimately, a court must decide whether an interest in privacy outweighs the need for access. *Id.* For the reasons outlined herein, the right of Anonymous Companies to maintain the privacy interests implicated far outweighs any interest that the public may have in access to the records pertaining to this appeal.

As an initial matter, Anonymous Companies do not concede that they are proper parties to this appeal or that this appeal or petition to intervene are timely, meritorious, or proper. Anonymous Companies are aware that this Court sent a Notice of Deficiency to the Petitioner/Appellant (herein after "Petitioner Law Firm") regarding the fact that the Notice of Appeal fails to identify any particular Respondents. Anonymous Companies do not concede they are Respondents to this appeal. As of the date of this Motion to Seal, counsel for Anonymous Companies is not aware that Anonymous Companies have even been served with the Notice of Appeal by the Petitioner Law Firm.

Nevertheless, it is imperative that Anonymous Companies bring to this Court's attention certain information about this appeal and petition to intervene and request that the record on appeal -- to the extent it is permitted to progress -- be sealed.

The Order from which Petitioner Law Firm is attempting to appeal is a sealed Order issued by the Administrative Law Court. Not only does that Order seal the entire Administrative Law Court proceeding, but it also sealed the Order itself. It is unclear how the Petitioner Law Firm came into possession of the sealed Order. To the extent a court or another entity inadvertently released the sealed Order, said inadvertent disclosure did not effectively “un-seal” the Order and the sealed Order remains a non-public document.

When Petitioner Law Firm filed its Petition/Notice of Appeal, it improperly caused the sealed Order to be published on the South Carolina Appellate Case Management System (“C-Track”). Counsel for Anonymous Companies are informed and believe that the sealed Order only was removed from C-Track on April 24, 2014. However, the Petition for Leave to Intervene and Notice of Appeal as well other documentation which make reference to the sealed Administrative Law Court file remain publicly-available on C-Track and through the Clerk of Court’s office.

Anonymous Companies are moving to seal the entire record because privacy is the gravamen of this matter. In addition to the sealed Order, Petitioner Law Firm is also in possession of a transcript of a private hearing involving Anonymous Companies before a government regulator, the nature of which was the subject of the Administrative Law Court proceeding. An employee of the government regulator anonymously and surreptitiously mailed said transcript to the Petitioner Law Firm. The government regulator concedes the release was unsanctioned. It was this disclosure that prompted Anonymous Companies in the first place to seek a ruling from the Administrative Law Court that the transcript – and all documents and information related to it – were private. The private nature of that transcript, documents, recordings, and exhibits related to the private proceeding involving Anonymous Companies was confirmed by the Administrative Law Court’s sealed Order, which also directed all third parties

to return “all documents, recordings, transcripts, and exhibits related to these proceedings” to the government regulator.

In the last sixteen months, Petitioner Law Firm has spearheaded an aggressive and increasingly personal campaign against Anonymous Companies. Despite the Administrative Law Court and the Circuit Court sealing the transcript of the proceeding before a government regulator and the Circuit Court ordering the Petitioner Law Firm not to publish it, Petitioner Law Firm has repeatedly injected information from that transcript into the public record. If past conduct is evidence of future conduct, then Petitioner Law Firm will continue this pattern and attempt to submit all or portions of that transcript into this appeal. Permitting this to happen without sealing the record would effectively reverse the Administrative Law Court’s ruling. “It is established law that courts have the inherent power to regulate the use of litigation evidence wrongfully obtained.” *Rodgers v. United States Steel Corp.*, 536 F.2d 1001, 1006 (3d Cir.1976); *Fayemi v. Hambrecht and Quist, Inc.*, 174 F.R.D. 319, 323 (S.D.N.Y.1997); *In re Shell Oil Refinery*, 143 F.R.D. 105, 108 (E.D.La.1992).

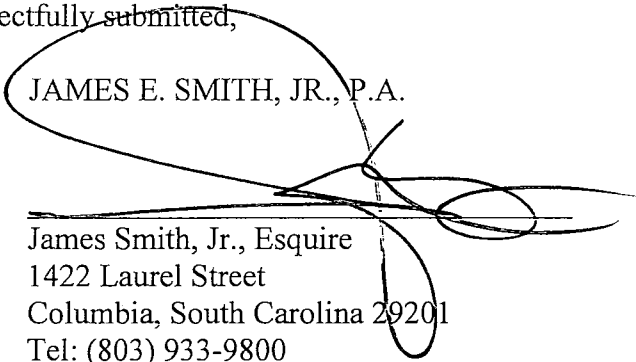
Furthermore, Petitioner Law Firm lacks standing to appeal or intervene in this matter. Petitioner Law Firm was never a party to the proceeding before the government regulator or in the Administrative Law Court. To now permit a **non-party** who received **non-public** documents through **inadvertant and unsanctioned disclosures** to publish those documents in this proceeding -- making them freely available to the public -- would permit Petitioner Law Firm to utilize this appeal as vehicle for the improper purpose of rendering highly sensitive, non-public matters public in order to gain an advantage in unrelated litigation.

Based upon the forgoing, Anonymous Companies’ interest in privacy in this matter far outweighs any interest the public might have to access these records, and consideration of these factors weighs heavily in favor of this Court sealing the entire record of this appeal. Therefore,

counsel for Anonymous Companies respectfully requests that this Court seal all records pertaining to this appeal, whether written or electronic.

Respectfully submitted,

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April 25, 2014

Columbia, South Carolina

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CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

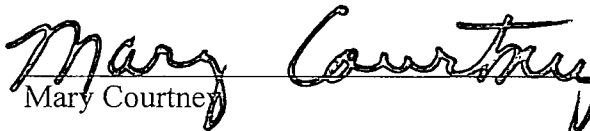
DOCUMENT SERVED: **NOTICE OF APPEARANCE**

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April 25, 2014


Mary Courtney