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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2012-CP-07-3749
Appellate Case No. 2014-000827

Albert R. LaFleur and Eileen M. LaFleur.....Appellants,

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch, Katherine Swisher, and Reba Management, Inc.Respondents.

**RESPONDENTS CORAL RESORTS, LLC, HILTON HEAD HOSPITALITY, LLC D/B/A HILTON HEAD GUEST SERVICES, AND REBA MANAGEMENT, INC.'S
MOTION TO SEAL**

Respondents Coral Resorts, LLC, (Coral Resorts) Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, and Reba Management, Inc. (collectively, Coral Respondents) respectfully move this Court to seal all records pertaining to the above-referenced appeal, including without limitation all correspondence, motions, briefs, orders, filings, and references

thereto of any nature, whether in written or electronic form. This motion to seal is filed pursuant to the requirements established by the South Carolina Supreme Court's Order *Re: Revised Order Concerning Personal Identifying Information And Other Sensitive Information In Appellate Court Filings*, S.C. Sup. Ct. Order dated Apr. 15, 2014 (Shearouse Adv. Sh. No. 15 at 34-36), which provides in pertinent part:

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. at 35-36 (emphasis added).

As referenced in the South Carolina Supreme Court's April 15, 2014 order and as set forth in *Ex parte Capital U-Drive-It, Inc.*, the sealing of records is within a court's "supervisory power over its own records and files." 369 S.C. at 9, 630 S.E.2d at 469. Courts have properly denied access to records "where court files might have become a vehicle for improper purposes." *Id.* Ultimately, a court must decide whether an interest in

privacy outweighs the need for access. *Id.* For the reasons outlined herein, the right of Coral Respondents to maintain the privacy interests implicated within Appellants' initial brief and designation of matter to be included in the record on appeal (designation of matter) far outweighs any interest the public may have in accessing this Court's records pertaining to this appeal.

RELEVANT PROCEDURAL HISTORY¹

The issues that are the subject of this appeal arose as a result of Appellants attaching various exhibits to their memorandum in support of their motion to amend their complaint.² *See* Respondents' Exhibit A, Or. Granting TRO at 1, filed June 11, 2013. The exhibits, which Appellants had not previously produced during discovery, consisted of various un-redacted timeshare plan registration materials, containing trade secrets and confidential, private commercial information; an improperly disclosed, sealed transcript from a private administrative proceeding; and a proposed Amended Complaint referencing both the registration materials and private proceeding information. *See id.* at 1-2; *see also* Rule 26(c)(7), SCRCF

¹ For the Court's convenience, Coral Respondents have included this recitation of the relevant procedural history in this case. Coral Respondents do not concede Appellants have timely appealed these orders and rulings or that they are immediately appealable, and in fact, Coral Respondents assert these orders and rulings are not timely or immediately appealable.

² For the Court's convenience, Coral Respondents have included the referenced orders and transcripts as exhibits to this motion.

“Upon motion by a party . . . and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or undue burden by expense, including . . . (7) *that a trade secret or other confidential research, development, or commercial information* not be disclosed or be disclosed only in a designated way” (emphasis added)).

Initially, Respondent Coral Resorts sought to have both types of materials—the registration materials and the private proceeding information—protected from discovery and disclosure into the public record. Following an expedited ex parte hearing, the circuit court granted Respondent Coral Resorts’ ex parte motion for a temporary restraining order (TRO). *See* Respondents’ Exhibit A, Or. Granting TRO at 1-5, filed June 11, 2013; Respondents’ Exhibit B, Or. Granting TRO at 1-2, filed June 20, 2013 (extending the TRO through June 26, 2013). Specifically, the circuit court (1) ordered counsel for Appellants to immediately retract and withdraw the exhibits (the registration materials and private administrative proceeding documents) from their memorandum; (2) ordered the Beaufort County Clerk of Court’s office to maintain the exhibits under seal until the circuit court ordered otherwise; (3) enjoined Appellants and their counsel “from further publishing and disseminating the [e]xhibits, copies thereof,

and the information contained therein to anyone including but not limited to each other, to clients, to other clients, and to any co-counsel”; and (4) ordered the parties to appear at a subsequent hearing on Respondent Coral Resorts’ motion for a TRO. *See* Respondents’ Exhibit A, Or. Granting TRO at 3-4, filed June 11, 2013.

In support of its request for a TRO, Respondent Coral Resorts submitted two affidavits to the circuit court. B. Dean Pierce, General Counsel of Respondent Coral Resorts, provided the circuit court with an affidavit explaining that the materials Appellants submitted with their memorandum in support of their motion to amend their complaint contained confidential details of the development, management, marketing, corporate organizational structure, and financial information of Respondent Coral Resorts. *See* Respondents’ Exhibit C, Aff. of B. Dean Pierce at 1, filed June 12, 2013.

K. Michael Barfield, who has served as General Counsel for Respondent Coral Resorts, also submitted an affidavit in support of Respondent Coral Resorts’ motion for a TRO. *See* Respondents’ Exhibit D, Aff. of K. Michael Barfield at 1, filed June 14, 2013. Importantly, Barfield detailed which of the registration materials are not publicly available. *Id.* at 3-4.

Following a series of hearings on Respondent Coral Resorts' motion for a TRO, the circuit court ruled the registration materials and private administrative proceeding documents that Appellants filed as exhibits to their memorandum in support of their motion to amend their complaint would remain sealed, and the circuit court lifted the TRO. *See* Respondents' Exhibit E, Tr. of June 26, 2013 Hrg. at page 36, lines 13-15; page 45, lines 18-21; page 48, line 24; page 54, line 10 (redacted). Additionally, the circuit court ordered and counsel for Appellants agreed they would not publish the documents or information contained therein to non-clients and they would not release the same to the media. *See id.* at page 45, lines 22-24.

On October 31, 2013, following additional consideration at an October 30, 2013 hearing, the circuit court found the registration materials were not relevant to discovery. *See* Respondents' Exhibit F, Or. dated Oct. 31, 2013. Additionally, the circuit court found most of the registration materials at issue are not publicly available and are, in fact trade secrets; accordingly, the circuit court found these registration materials are protected from discovery. *See id.* Specifically, the circuit court found that only certain publicly available registration materials are properly a part of the public record and discoverable. *See id.*

The October 31, 2013 order addressed only the protection of the registration materials. *See id.* Coral Respondents concurrently pursued administrative remedies regarding protection of the improperly disclosed transcript and other information arising from the private administrative proceeding. As a result of those efforts, a court of competent jurisdiction issued a final determination that all matters related to the administrative proceeding, including the transcript that was provided to counsel for Appellants without authorization, are private and that such disclosure to counsel for Appellants was improper.³

The Appeal

On appeal, Appellants' initial brief and designation of matter reference in great detail the very same materials that were the subject of the TRO and that the circuit court ruled would remain sealed at the trial-court level. *See* Respondents' Exhibit A, Or. Granting TRO at 1, filed June 11, 2013; Respondents' Exhibit B, Or. Granting TRO at 1-2, filed June 20, 2013 (extending TRO through June 26, 2013); Respondents' Exhibit E, Tr. of June 26, 2013 Hrg. at page 36, lines 13-15; page 45, lines 18-21; page 54, line 10. These materials, which Appellants have designated to be included

³ This order has been sealed along with all other documents associated with that proceeding. Counsel for Coral Respondents can provide the Court with a copy of the relevant order for the Court's in camera review if this Court so desires.

in the record on appeal and which Appellants present at length in their initial brief and designation of matter, contain highly sensitive, private, proprietary, commercial information and confidential trade secrets as well as information concerning a private administrative proceeding. *See* Appellant's Initial Br. at 7, 10-11, 13-17; Appellant's Designation of Matter to be Included in the R. on Appeal; *see also Re: Revised Order Concerning Personal Identifying Information And Other Sensitive Information In Appellate Court Filings*, S.C. Sup. Ct. Order dated Apr. 15, 2014 (Shearouse Adv. Sh. No. 15 at 34-36) ("Parties should also exercise caution in including other sensitive personal data in their filings, such as . . . proprietary or trade secret information [and] information regarding an individual's cooperation with the government . . .").

ARGUMENT

It appears counsel for Appellants are once again attempting to inject the same highly sensitive information and trade secrets as well as information concerning a private administrative proceeding into this Court's records. Over the course of the last seventeen months, counsel for Appellants has spearheaded an aggressive and increasingly personal campaign against Coral Respondents. Despite a court ruling the administrative proceeding was private and the circuit court's ruling

protecting the registration materials, Appellants are once again publishing to the public Coral Respondents' confidential, private, and protected information and trade secrets. *See Rodgers v. United States Steel Corp.*, 536 F.2d 1001, 1006 (3d Cir. 1976) ("It is established law that courts have the inherent power to regulate the use of litigation evidence wrongfully obtained."); *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).

If this Court allows the records in this appeal to remain open to the public, any privacy rights Coral Respondents have pertaining to these private, highly sensitive documents and information will become moot because they will be in the public domain, easily available to anyone with an internet connection. Further, allowing these highly sensitive materials and any references to them to remain open to the public will cause Coral Respondents' hard-fought battle to protect its private and confidential information and trade secrets from public disclosure to be lost. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 9, 630 S.E. 2d at 469 (noting courts have properly denied access to records "where court files might have become a vehicle for improper purposes").

Accordingly, Coral Respondents respectfully move this Court to seal the entire record of this appeal, in hard copy and electronic form. If these highly sensitive materials are made accessible to the public in any form, it would cause irreparable harm to the business interests of Coral Respondents and cause a chilling effect on businesses seeking to cooperate with government regulatory bodies. *See* Respondents' Exhibit D, Affidavit of Michael Barfield at 2. The right of Coral Respondents to maintain the privacy interests implicated within Appellants' initial brief and designation of matter far outweighs any interest that the public may have in accessing the records pertaining to this appeal.

Respectfully submitted,

[Signature block on following page]


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GUEST SERVICES, AND REBA
MANAGEMENT, INC.**

Dated: May 22, 2014
Columbia, South Carolina

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Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch,
Katherine Swisher, and Reba Management, Inc.....Respondents.

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 by first class U.S. Mail postage pre-paid on the date below to the following:

DOCUMENT SERVED: Respondents Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, and Reba Management, Inc.'s Motion to Seal

PARTIES SERVED:

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Carli Cochran

Columbia, South Carolina
May 22, 2014