

STATE OF SOUTH CAROLINA
In the Court of Appeals

72447

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JUN 10 2014

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2012 CP-07-03746

Ex parte: East Coast Newspapers, Inc. d/b/a *The Island Packet* and
The Beaufort Gazette.....Movant

In re.

Albert Lafleur, et al.....Appellant

v.

Coral Resorts, L.L.C., et al.....Respondents

NOTICE AND MOTION TO INTERVENE
FOR THE PURPOSE OF CHALLENGING
THE SEALING OF THE RECORD

Movant, through the undersigned hereby moves to intervene in the above-referenced appeal for the limited purpose of challenging the sealing of the record on appeal. Movant has attempted to ascertain the identity of the parties on appeal, but the appeal does not appear on the Case Management website of the Court of Appeals, and the office of the Clerk of Court of the Court of Appeals has taken the position that until a pending motion to seal the record has been determined, all information relative to the appeal is to be withheld from the public.

Movant is informed and believes that appellants are represented by Joseph DuBois the firm of Naert and DuBois, L.L.C. and respondents are represented by Nekki Shutt of Callison, Tighe & Robinson, L.L.C., and James E. Smith, Jr. of James E. Smith, Jr. P.A. A copy of this notice and motion has been served on these attorneys by mail.

Movant is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business therein where it publishes two newspapers in Beaufort County, to wit: *The Island Packet* and *The Beaufort Gazette*.

Movant is informed and believes that the within appeal concerns allegations made with respect to the business practices of one or more “time share” entities operating in Beaufort County. Movant is further informed and believes that respondents have moved in the Court of Appeals for an order sealing the record on appeal.

As the Supreme Court of South Carolina explained fully in adopting Rule 41.1, SCRCPP, “South Carolina has a long history of maintaining open court proceedings and records” to effectuate the guarantee of Article I, section 9 of the South Carolina Constitution that all courts shall be public. As the Supreme Court of South Carolina ruled in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464, 469 (2006):

Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution and the state constitution. S.C. Const. art. I §9 (“[a]ll courts shall be public”); *Davis [v. Jennings]*, 304 S.C. [502] at 505, 405 S.E.2d [601] at 603; *Nixon [v. Warner Communications, Inc.]*, 435 U.S. [589] at 597-98, 98 S.Ct. [1306] at 1312, 55 L.Ed.2d [570] at 579-80 [(1978)]; *Virginia Dept. of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004); *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st Cir. 1986).

The Supreme Court of South Carolina has held that access to judicial records implicates the same constitutional guarantees that are applicable with respect to access to judicial proceedings, and this right of access “may only be overcome by an overriding interest based on

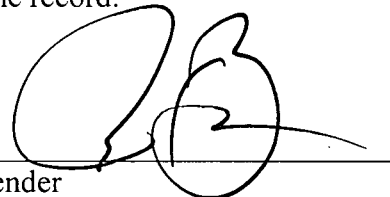
specific findings that closure is necessary to preserve ‘higher values,’ and the closure must be narrowly tailored to serve that interest.” *Ex parte Hearst-Argyle Television, Inc., d/b/a WYFF TV 4*, 369 S.C. 69, 631 S.E.2d 86, 89 (2006); *Ex parte The Island Packet*, 308 S.C. 198, 417 S.E.2d 575 (1992). A party seeking to seal judicial records bears the burden of establishing the propriety of the sealing. *Ex parte Capital-U-Drive-It, supra*; Rule 41.1, SCRPC.

Movant believes the public has a legitimate and genuine interest in the conduct of business activities, *See, e.g., Parker v. Evening Post Pub. Co., Inc.*, 317 S.C. 236, 452 S.E.2d 640 (1994), *certiorari den.*, 516 U.S. 1172 (1996), and a complete understanding of the litigation between and among the parties to this appeal cannot be obtained without reliance on the guarantee of open court records to allow a full and complete reporting of the litigation and events related to it.

For the reasons stated herein, Movant prays that it be allowed to intervene in the appeal for the limited purpose of challenging any motion to seal the record.

Columbia, South Carolina

June 10, 2014



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CERTIFICATE OF SERVICE

I, Jilian M Kurka. Paralegal to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on this 10th day of June, 2014, served counsel below with a Notice and Motion to Intervene by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

James E. Smith, Jr.
James E. Smith, Jr., P.A.
1422 Laurel St.
Columbia, SC 29201

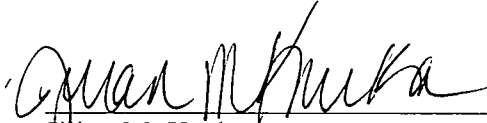
-AND-

Nekki Shutt
Kathleen McDaniel
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ATTORNEYS FOR RESPONDENTS

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