

The South Carolina Court of Appeals

Naert and DuBois, LLC, Appellant,

In the Matter of:

Anonymous Companies, Respondents,

v.

South Carolina Department of Labor, Licensing and
Regulation, and South Carolina Board of Real Estate
Commission.

Appellate Case No. 2014-000774

ORDER

In a June 5, 2014 order, this Court dismissed this appeal because Appellant was not a party in the proceeding below. We also denied Anonymous Companies' motion to seal. Subsequently, Anonymous Companies filed a motion for sanctions and what this Court construes as a motion to clarify the June 5, 2014 order. After reviewing the filings regarding the motion for sanctions, we find a hearing necessary to determine whether sanctions are appropriate. This Court will contact the parties within thirty days to schedule a hearing. Additionally, we clarify our ruling denying the motion to seal with the additional provisions outlined below.

"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." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006).

In deciding whether to seal or unseal a [C]ourt record . . . the [C]ourt must consider the following factors, pursuant to . . . Rule 41.1, SCRCP: (1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness

cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (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; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

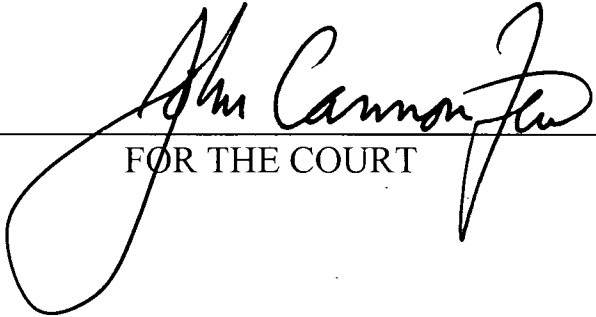
In addition, the court may consider (8) public interest in the proceeding; (9) the private or public status of the litigants and case generally; (10) whether release would enhance the public's understanding of an important historical event; (11) whether the public already has access to information contained in the records; (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.

Id. at 12, 630 S.E.2d at 470. In considering these factors, this Court does not believe sealing the record is permissible. Accordingly, this Court denies the motion to seal.

We are concerned, however, that the open nature of judicial branch proceedings means documents and other information sealed by the ALC is now part of the public file at this Court.¹ Thus, the very act of filing the appeal has effectively reversed the ALC's order. Appellant, who was not a party to the proceedings before the ALC, has obtained the relief the ALC denied by filing an appeal it was not entitled to file. Because of the improper nature of this appeal, this Court will

¹ The ALC is an executive branch court that the supreme court has never held is subject to the principles explained in *Capital U-Drive-It*. Moreover, the ALC sealed its record after determining the real estate commission erred in applying the Freedom of Information Act—section 30-4-70 of the South Carolina Code (2007). Presumably, therefore, if this Court reached the merits of the appeal, we would decide the case under the Act, not under the open-courts principles of *Capital U-Drive-It*.

return all filings containing information we deem to have been sealed by the ALC to the parties to who filed them.


FOR THE COURT

Columbia, South Carolina

cc:

Hon. Ralph K. Anderson, III
Joseph DuBois, Esquire
Zachary Steven Naert, Esquire
Melina Mann, Esquire
James Emerson Smith, Jr., Esquire
Nekki Shutt, Esquire
Kathleen McColl McDaniel, Esquire
Darra James Coleman, Esquire
Jacqueline Marie Pavlicek, Esquire

FILED
7/24/14