

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No: 2011-CP-26-1718
Appellate Case No.: 2014-000331

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FEB 04 2015

SC Court of Appeals

74943

Waterfall Investors 2, LLC and Raymond E. Cleary, III Appellants,

v.

Bank of North Carolina, Successor In Interest to Beach First National Bank Respondent.

**MOTION FOR EXTENSION TO SERVE RECORD ON APPEAL
AND
FOR DIRECTION FROM THE COURT ON THE INCLUSION OF
DOCUMENTS SEALED AT THE LOWER COURT**

Appellants, Waterfall Investors 2, LLC and Raymond E. Cleary, III, hereby move this Court to provide an Order relating to documents that were produced under seal and only to chambers in the Circuit Court. One of the issues involved in this appeal is the Order Awarding an Amount of Attorney Fees to the Bank of North Carolina (“BNC”). As part of the process of determining the appropriate amount of attorney fees, BNC requested that the Defendants consent to having its attorneys time records submitted under seal to the Court in Chambers. The Defendants consented to this process pursuant to the attached Consent Confidentiality Order.

The documents are relevant to this Appeal and have been designated to be included in the Record on Appeal. Therefore, Appellants request direction from the Court of Appeals on the proper

procedure to include the sealed documents as part of the Record on Appeal. The Appellants would propose to create a separate volume for these documents, but number these documents consecutively as provided for in the designation of record. At the place in the Record on Appeal where the documents would normally appear, the Appellants would include a reference that the documents are being included under separate volume, under seal to maintain their confidentiality.

Further, because the record on appeal is due shortly and because the Appellants do not know if the court will agree to its proposed handling of the confidential documents, Appellants move for an extension of time to serve the Record on Appeal in this above matter until 15 days after an Order is entered by this court as it relates to the inclusion of the sealed documents in the Record on Appeal.



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Attorneys for Appellants

Columbia, South Carolina
February 4, 2015

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SC Court of Appeals

Waterfall Investors 2, LLC and Raymond E. Cleary, III Appellants,

v.

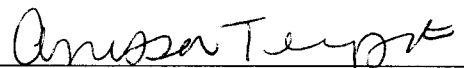
Bank of North Carolina, Successor In Interest to Beach First National Bank Respondent.

PROOF OF SERVICE

I certify that I have served the Motion for Extension to Serve Record on Appeal and For Direction from the Court to Produce Documents sealed at the Lower Court on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on February 4, 2015, addressed to its attorneys of record as follows:

Bradley A. Floyd, Esquire
The Floyd Law Firm, PC
P.O. Box 14607
Surfside Beach, SC 29587

Clayton M. Custer, Esquire
Michael J. Bogle, Esquire
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Anissa Terpstra, Paralegal to
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(803) 787-0505
Attorneys for the Appellants

Dated: February 4, 2015

COPIES

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Bank of North Carolina,)
Successor In Interest To)
Beach First National Bank,)
)
Plaintiff,)
)
vs.)
)
Waterfall Investors 2, LLC and)
Raymond E. Cleary III)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-26-1718

CONSENT CONFIDENTIALITY
ORDER

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CLEARY COURT

Judgment was entered against Defendants in the above entitled action, following a jury trial, on November 7, 2013 in the amount of \$2,906,788.59. Following the trial, Plaintiff submitted a motion to recover attorney's fees and costs and Defendants filed a motion in opposition to that request. Defendants claimed that Plaintiff's attorney's fees were excessive and duplicative. A hearing was held to hear arguments from both parties, and it was agreed that Plaintiff would allow Defendants' counsel to review all invoices and charges (redacted for attorney-client privileged entries, if any) for any duplication or unreasonable fees, and in exchange that Defendants' counsel agree to not disclose or use any information contained in the billing records for any other purpose.

Accordingly, it is hereby ORDERED as follows:

- 1) **Disclosure:** Plaintiff's counsel shall make available for review to Defendants' counsel any and all time sheets, invoices, and expense lists that comprise the amount sought by Plaintiff.
- 2) **Scope.** Plaintiff shall only be required to disclose the information and documents necessary for Defendants to ascertain what services were charged and for what fee. Such disclosure in no way entitles Defendants to



view or have access to Plaintiff's work product or research that may comprise the basis for a time entry or charge. Any accidental disclosure of work product or research shall not be considered a waiver of the protections otherwise available to those documents.

- 3) **Form and Timing of Designation.** Confidential Documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the Documents. Inadvertent or unintentional production of Documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.
- 4) **Documents Which May be Designated Confidential.** All documents produced pursuant to this Order will be deemed Confidential.
- 5) **Protection of Confidential Material.**
 - a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (§ 5(b)) for any purposes whatsoever other than litigating the specific issue of an award of attorney's fees.
 - b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the



terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review Documents which have been designated CONFIDENTIAL pursuant to this Order:

- i. counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
 - ii. parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;
 - iii. court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
 - iv. consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
 - v. other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.
- c. Control of Documents. Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of Documents designated as Confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the Documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order.
- d. Copies. All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of Documents

designated as Confidential under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL, if the word does not already appear on the copy.

All such copies shall be afforded the full protection of this Order.

6) **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the Documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.*, in relation to discovery and evidentiary motions), submitting the Documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that Documents may be filed under seal only with the permission of the court after proper motion.

7) **Treatment on Conclusion of Litigation.**


- a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.
- b. **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal,



all Documents treated as confidential under this Order, including copies as defined above shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to Documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy Documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of confidential Documents. This work product continues to be Confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential Documents.

- 8) **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.

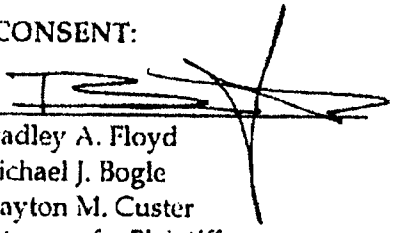
SO ORDERED.



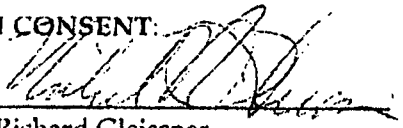
R. Knox McMahon
Circuit Court Judge

2-5-2014
Winston, South Carolina

I CONSENT:


Bradley A. Floyd
Michael J. Bogle
Clayton M. Custer
Attorneys for Plaintiff

I CONSENT:


Richard Gleissner
Attorney for Defendants

Consent To Confidentiality Order

