

The South Carolina Court of Appeals

The Oaks at Rivers Edge Property Owners Association, Inc., John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance, Respondents,

v.

Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Appellants.

Appellate Case No. 2014-002390

ORDER

Appellants have filed a motion to file post-trial exhibits P1 through P4 under seal and a motion to file a reduced number of records on appeal.

Regarding Appellants' motion to file post-trial exhibits P1 through P4 under seal, "[j]udicial 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); S.C. Const. art. I § 9 ("All courts shall be public . . ."). Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the power to control our own records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470.

When ruling on a motion to seal, this court may consider the public interest in the proceeding; the private or public status of the litigants and case generally; whether release would enhance the public's understanding of an important historical event; whether the public already has access to information contained in the records; whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470.

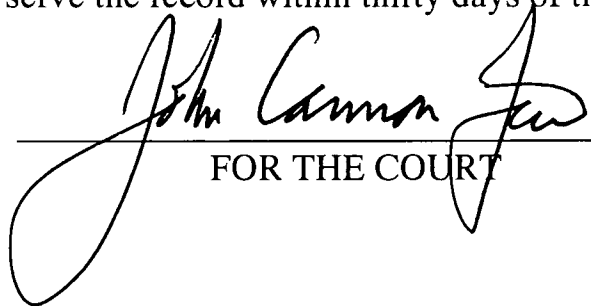
Appellants' motion to file post-trial exhibits P1 through P4 under seal is denied without prejudice because Appellants failed to address the factors listed above. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 12, 630 S.E.2d at 470 ("In deciding whether to seal or unseal a court record, the court must make specific factual findings, on the record, which weigh the need for secrecy against the right of access. The burden is on the party who seeks to overcome the presumption of access to show that the interest in secrecy outweighs the presumption."). Nothing in this order prevents Appellants from filing a new motion addressing those factors; however, we note the party seeking to seal settlement records must meet its burden "to overcome the presumption of access [and] to show that the interest in secrecy outweighs the presumption."¹ *Davis v. Jennings*, 304 S.C. 502, 506, 405 S.E.2d 601, 603 (1991) (internal quotation marks omitted).

Regarding Appellants' motion to file a reduced number of records on appeal, Appellants note the record is voluminous and filing fifteen copies of the record would "cause a financial burden to Appellants both in printing and binding as well as transporting all [fifteen] copies to" this court. Appellants' motion is granted to the extent that Appellants may file nine copies of the record, including one original

¹ In *Davis*, our supreme court explained:

[W]hen a protective order sealing the record is sought, the trial court shall make specific factual findings, on the record, which weigh the need for secrecy against the right of access. Factors to be considered may not be limited to, but should include: the ensuring of a fair trial; the need for witness cooperation; the reliance of the parties upon confidentiality; the public or professional significance of the lawsuit; and the harm to parties from disclosure.

unbound copy. Appellants shall serve the record within thirty days of the date of this order.


C.J.
FOR THE COURT

Columbia, South Carolina

cc: Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Melissa Ashley Fried, Esquire
Roy Pearce Maybank, Esquire
Amanda R. Maybank, Esquire
Walter Henry Bundy, Jr., Esquire
Michael Brent McDonald, Esquire

FILED
6/12/15