

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough  
Master-In-Equity

Appellate Case No. 2014-002590  
Circuit Court Case No. 2011-CP-10-2946

**RECEIVED**

DEC 17 2015

**SC Court of Appeals**

Brent E. Bentrim, ..... Appellant,

v.

Wells Fargo Bank, N.A., ..... Respondent.

**CONSENT MOTION TO SEAL**

With the consent of Appellant, Wells Fargo Bank, N.A. ("Wells Fargo") moves to seal 51 pages of confidential documents in the Record on Appeal.

**BACKGROUND**

Judge Deadra L. Jefferson entered a Confidentiality Order with the consent of the parties on May 25, 2012 ("Order"). See Exhibit 1, Confidentiality Order. The Order applies to Wells Fargo's "confidential business information." Order, p. 1. During the course of discovery, Wells Fargo stamped a small percentage of its documents "Confidential" prior to production to Appellant.

Appellant served a copy of the Record on Appeal ("Record") on Wells Fargo on November 5, 2015. The Record is over 1400 pages along. It includes 51 of the documents

which Wells Fargo stamped “Confidential.” None of these documents were filed in the lower court. Instead, they were furnished to Judge Scarborough for *in camera* review.

The 51 documents in question fall into the following categories:

1. ALT Records; ROA 983-985; 1297; 1299-1301. These documents are screens from Wells Fargo’s ACLS record-keeping system. The screens represent compilations of business records which are not readily available to the public. They were produced pursuant to the Confidentiality Order and Appellant consents to their being sealed for the Record on Appeal.
2. Corporate records of The Money Store, LLC; ROA 1198-1228. These records include a Participation Agreement between Wachovia Bank, National Association and The Money Store/Service Corp. These are not readily available to the public. They shed light on Wells Fargo/Wachovia’s corporate strategies and management methodologies. They were produced pursuant to the Confidentiality Order and Appellant consents to their being sealed for the Record on Appeal.
3. Vault Records; ROA 1311-1323. These documents are screenshots of a document-management system not generally available to the public. They were produced pursuant to the Confidentiality Order and Appellant consents to their being sealed for the Record on Appeal.

The parties propose sealing the above-listed documents in an appendix to the Record. The deadline for filing the final briefs and the Record on Appeal is December 29, 2015.

### ARGUMENT

Parties seeking to seal material other than personal identifiers must file a motion to seal. *In re Revised Order Concerning Personal Identifying Information and Other Sensitive*

*Information in Appellate Court Filings*, 757 S.E.2d 421, 422, 407 S.C. 607, 608 (2014). Parties are instructed to exercise caution when filing sensitive data such as proprietary and trade secret information. *Id.* at 609.

When determining whether to seal documents, courts must consider seven factors:

(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.

*Ex parte Capital U-Drive-It, Inc.*, 630 S.E.2d 464, 470, 369 S.C. 1, 12 (2006).

Further, courts may consider an additional five factors:

(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.*

The factors above weigh heavily in favor of maintaining the confidentiality of the sealed documents. First, the parties agree that the records should be sealed. There is no issue regarding a fair trial or hearing. Second, sealing the documents will have no impact on witness cooperation. Third, the parties entered into the Confidentiality Order with a desire for and an expectation of privacy. Publishing the confidential documents at this stage would only serve to undermine the expectations of the parties. Fourth, there is little or no public significance of this hearing. Appellant claims damages related only to his own mortgage loan. Fifth, Wells Fargo perceives that unsealing the documents may lead to significant harm. The documents provide insight into Wells Fargo's confidential business practices in a competitive arena. Should these

practices become part of the public record, Wells Fargo's competitors could gain an unjustified business advantage. Sixth, the parties are not aware of any alternatives to keeping the records sealed. Seventh, South Carolina has repeatedly recognized that the public interest is served by protecting confidential business strategy. *See, e.g.* South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10, *et seq.*

Further, the optional *U-Drive-It* factors also weigh heavily in favor of keeping the documents sealed. Eighth, there is minimal public interest in the proceeding, as it only impacts the Appellant's specific loan. Ninth, the Appellant, who consents to keeping the documents sealed, is a private individual. Tenth, there is no historical event at issue. Eleventh, the public does not have access to the sealed records. Unsealing the documents would make them publicly available for the first time. And twelfth, a decision to keep the documents sealed will in no way offend the public interests of public access. Neither the public nor the parties to the case has requested public access to the documents.

The parties agree that the Appellant, by consenting to this Consent Order, waives no right to seek further discovery in future proceedings in the trial court, and Respondent will not use this Consent Order as grounds to object to future discovery.

### **CONCLUSION**

For the reasons set forth above, the parties request that the 51 documents marked "Confidential" in the Record on Appeal be filed in a separate, sealed appendix.

December 17, 2015

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WE CONSENT:

December 17, 2015

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Attorneys for Appellant

# Exhibit 1

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Brent E. Bentrim, )  
) )  
Plaintiff, )  
) )  
v. )  
Wells Fargo Bank, N.A., )  
) )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2011-CP-10-2946

**CONFIDENTIALITY ORDER**

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Pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, Defendant Wells Fargo Bank, N.A. ("Defendant") and Plaintiff Brent E. Bentrim ("Plaintiff") consent to the entry of the following Confidentiality Order:

1. Plaintiff has requested that Defendant produce broad categories of documents including materials related to Defendant's internal underwriting and servicing policies. These records contain confidential and proprietary business information, the public disclosure of which could be harmful to Defendant.

2. Defendant has objected to the production of this information in the absence of a Confidentiality Order that would prohibit the use or dissemination of the requested information to any person except as specifically set forth below.

3. Counsel for the parties agree that Defendant's confidential business information and private information relating to, without limitation, Defendant's servicing policies, employees or customers, as well as any additional confidential information that may be requested by either party in the future, are entitled to the protection that could be afforded by the entry of a

*10fs*  
*DCS*

Confidentiality Order. Counsel for the parties consent to this protective order to control the use and production of all such documents and information.

4. Disclosure of these documents and information shall be handled as follows:
  - a. Defendant shall redact all Social Security and any employee identification numbers from their records before producing documents.
  - b. All documents produced, created, identified, or otherwise referred to in the course of this litigation that the producing party believes, in good faith, contains confidential or proprietary information shall be marked "Confidential."
  - c. Documents marked "Confidential" shall not be disclosed to any person or entity, with the following exceptions:
    - i. Confidential documents may be disclosed to the parties and counsel for the parties who are actively engaged in the conduct of this litigation, as well as their associates, paralegals, secretaries and private investigators to the extent reasonably necessary to render professional services in this litigation, and the Court and its employees;
    - ii. Confidential documents may be disclosed to consultants or expert witnesses, whether testifying or non-testifying, retained by the parties for the purpose of assisting with this litigation subject to such consultants' or expert witnesses' execution of the Acknowledgment attached as Appendix "A"; and
    - iii. Confidential documents may be disclosed to material witnesses or to persons with prior knowledge of the confidential information contained in

the documents, to the extent reasonably necessary in preparing to testify or in testifying.

- d. Those portions of all depositions that include testimony about documents marked "Confidential" or that involve confidential business information or private information relating to Defendant employees shall also be marked "Confidential" and shall be limited in their disclosure in accordance with the rules set forth in paragraph 4(c)(i-iii).
- e. If any document or deposition excerpt marked "Confidential" is introduced as an exhibit or otherwise placed among the court papers in this case, it shall be filed in a sealed envelope or container marked with the case caption and a notice substantially as follows:

"CONFIDENTIAL: This envelope or container holds information of [name of producing party] filed under seal pursuant to a protective order. This envelope or container may not be opened, and the contents hereof may not be displayed or revealed, except by direction of the Court or by written consent of [name of producing party]."

5. No person, other than attorneys of the parties and their associates, paralegals, secretaries and staff, may create or otherwise obtain copies, notes, summaries or extracts of "Confidential" documents or information unless (s)he has executed the Acknowledgement attached as Appendix A.

6. Persons obtaining access to the documents produced in accordance with this Protective Order shall use the information only for the preparation and trial of this action (including appeals and retrials) and shall not use such information for any other purpose.

7. The attorneys for the parties are responsible for employing reasonable measures consistent with this Order to control the duplication of, access to, disclosure of and distribution of confidential information, and shall be specifically responsible for informing the Parties, witnesses, consultants, experts, employees, agents, associates, paralegals and secretaries of the terms and conditions of this Protective Order to ensure compliance with its provisions.

8. If the receiving party disagrees in full or in part with the designation of any document as "Confidential," it shall provide written notification of the objection at least 60 days before the start of trial. The parties shall meet and confer in an attempt to resolve the disagreement. If the dispute cannot be resolved by the parties, either Party may petition the Court for relief. Until the disagreement is resolved, any and all documents marked "Confidential" by the producing party will be treated as such by both Parties.

9. At the conclusion of this action, including any appeals, all materials marked "Confidential" and furnished pursuant to this Protective Order, and all copies thereof, shall be returned to counsel for the producing party or, at the producing party's option, destroyed by counsel for the receiving party. Counsel for the producing party will inform the receiving party no more than 30 days after the case has been resolved whether the "Confidential" documents should be destroyed or returned. Upon receipt of said notice, counsel for the receiving party shall either destroy or return all documents within seven days. The provisions of this Confidentiality Order insofar as it restricts the disclosure, communication of and use of "Confidential" information produced hereunder shall continue to be binding after the conclusion of this action.

10. Violation of this Protective Order shall be treated as contempt by this Court and shall be subject to the appropriate sanctions in the discretion of the Court, including, but not

limited to, those sanctions set forth in Rule 37 of the South Carolina Rules of Civil Procedure, as it applies to the parties.

IT IS SO ORDERED.

S/D L. Jefferson  
Honorable Deadra L. Jefferson  
Chief Administrative Judge, Ninth Judicial Circuit

This 17<sup>th</sup> day of May, 2012  
Charleston, South Carolina

WE CONSENT:

JLB 3/16/12  
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ATTORNEY FOR PLAINTIFF

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, O.P., G.S. & F.C.  
By Rachel Bunch  
DEPUTY CLERK

SOPS  
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# Appendix “A”



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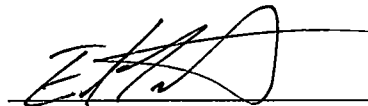
**SC Court of Appeals**

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PROOF OF SERVICE  
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I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Motion to Seal

Parties Served: Robert B. Varnado  
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*Attorneys for Appellant*



\_\_\_\_\_  
Edwin T. Mathis

December 17, 2015