

The South Carolina Court of Appeals

PNC Bank, N.A., successor to RBC Bank (USA),
Respondent,

v.

Liberty Cottages, LLC; GW Dorchester, LLC; USS
Clarksville, LLC; Liberty Cottages Land, LLC; Royal
Beach Properties, LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G. Rice-Marko;
Evan R. Marko and John E. Marko, Jr., Appellants.

Appellate Case No. 2015-001149

ORDER

Appellant has filed a motion requesting this Court to seal the entire record in this case. "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); *see* 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 10, 630 S.E.2d at 469. For guidance, we look to Rule 41.1(b), SCRCP, which requires a party asking to seal a record to identify, with specificity, the documents or portions of documents for which sealing is considered necessary, to include a non-confidential description of the documents, and to provide the Court a separately sealed attachment labeled "Confidential Information to be submitted to Court in Connection with the Motion to Seal." *See* Rule 41.1, SCRCP, "Note" (stating "Rule 41.1 was enacted to set forth with clarity the fact that the courts of this State are presumed to be open and to set forth with particularity when documents and settlement agreements, submitted to a court for approval, may be sealed."). The Rule also requires the moving party to state the reasons why sealing is necessary, explain why less drastic

alternatives to sealing will not afford adequate protection, and address the following 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.

When ruling on a motion to seal, the Court must also 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 (2006).

After careful consideration, the parties' joint motion to partially seal the record on appeal is granted. The supplemental record on appeal that includes the confidential documents shall remain sealed on appeal.



FOR THE COURT

Columbia, South Carolina

cc:

Robert E. Stepp, Esquire
Willard D. Hanna, Jr., Esquire
Francis B.B. Knowlton, Esquire
Thomas Wm. McGee, III, Esquire
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