

The South Carolina Court of Appeals

Skywaves I Corporation, Appellant/Respondent,

v.

Branch Banking and Trust Company, Successor in
merger to Branch Banking and Trust Company of SC,
a/k/a BB&T, Respondent/Appellant,

And James Edahl, Respondent.

Appellate Case No. 2015-001809

ORDER

Skywaves I Corporation (Appellant/Respondent) has filed a motion to seal portions of the record on appeal. Specifically, Appellant/Respondent moves to seal certain documents marked confidential which contain private, proprietary, sensitive or personal information concerning the parties. Appellant/Respondent seeks to file a record on appeal, the index of which will reference the confidential documents but not include the actual documents. Appellant/Respondent then wishes to file a second sealed supplement to the record on appeal containing the confidential documents. We note all parties have consented to this motion.

"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, SCRC, "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, we grant the motion to seal portions of the record on appeal. Appellant/Respondent will file an index to the record on appeal referencing but not containing the below confidential documents and a sealed supplemental record on appeal containing the confidential documents.

Confidential Documents to be filed in a Sealed Supplemental Record on Appeal:

A. April 16, 2015, Exhibits to Plaintiff's Motion to Strike Answers of Defendants Based on Fraud Upon the Court and Unclean Hands and Violation of Rule 37 and Rule 11, SCRPC, and Incorporated Memorandum in Support

- Exhibit H (SL/EM_000001)
- Exhibit J (BB&T/PA_003833)


B. April 29, 2015, Notice of Filing Exhibits to Plaintiff's Memorandum in Opposition to Motions for Summary Judgment

- Exhibit 8 (BB&T/FC_000558)
- Exhibit 13 (BB&T/FC_001131-1134)
- Exhibit 15 (BB&T/PA_003833)
- Exhibit 19 (BB&T/FC_000523-524)
- Exhibit 20 (BB&T/FC_002378-2379)
- Exhibit 25 (BB&T/PA_002374)
- Exhibit 26 (BB&T/FC_001247)
- Exhibit 28 (BB&T/FC_000627-628)
- Exhibit 30 (JE/PF_000618)
- Exhibit 33 (BB&T/FC_001194-1198)
- Exhibit 35 (BB&T/FC_001252-1253)
- Exhibit 36 (BB&T/FC_001123)

C. Exhibits V-1, V-2, V-3, and V-4 to Defendants Branch Banking and Trust Company's Memorandum in Support of its Motion for Summary Judgment (filed on December 22, 2014)


FOR THE COURT

Columbia, South Carolina

FILED
7/15/16 

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