

The South Carolina Court of Appeals

Community First Bank, Inc., Appellant,

v.

John Michael Powell, Frederick D. Shepherd, Jr., James
E. McCoy, MPS Golf Course, Inc., and MPS
Development, Inc., Defendants,

Of whom Frederick D. Shepherd, Jr. is the Respondent.

Appellate Case No. 2017-002472

ORDER

Appellant has filed a motion to seal the record on appeal. Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, the court has the inherent power to control its own records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). Rule 41.1(b), SCRCP, requires a motion to seal to identify, with specificity, the documents or portions of documents for which sealing is considered necessary, to contain a non-confidential description of the documents, and to be accompanied by a separately sealed attachment labeled "Confidential Information to be submitted to Court in Connection with the Motion to Seal." 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.

Id. When ruling on a motion to seal, the court may 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).

Appellant has failed to specifically identify the documents or portions of documents for which sealing is necessary. Appellant has also failed to address the factors enumerated in Rule 41.1, SCRPC, and *Ex parte Capital U-Drive-It, Inc.* Furthermore, Appellant has not shown to this court why alternatives other than sealing the documents, such as redacting confidential information, are not available to protect legitimate private interests. *See* Rule 41.1, SCRPC. Accordingly, the motion to seal is denied at this time.


FOR THE COURT

Columbia, South Carolina

cc:

W. Andrew Arnold, Esquire
James C. Adams, II, Esquire
Justin N. Outling, Esquire
Elizabeth McDaniel McMillan, Esquire
Douglas F. Patrick, Esquire
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FILED

July 26, 2018