

The South Carolina Court of Appeals

Marc Haas, Susan Haas, Rob Star and Melissa Star,
Appellants,

v,

TI Oldfield Operations, LLC, SF Operations, LLC,
Oldfield Club, Oldfield Community Association,
Oldfield Club Board of Directors and John Does 1-10,
Respondents,

And

TI Oldfield Operations, LLC and SF Operations, LLC,
Third Party Plaintiffs,

v,

Oldfield, LLC and Crescent Communities, LLC f/k/a
Crescent Resources, LLC, Third Party Defendants.

Appellate Case No. 2018-000707

ORDER

Appellants filed a motion to file "confidential documents" under seal, asserting the September 17, 2009 Termination and Release Agreement was sealed by the circuit court pursuant to an agreement of the parties.

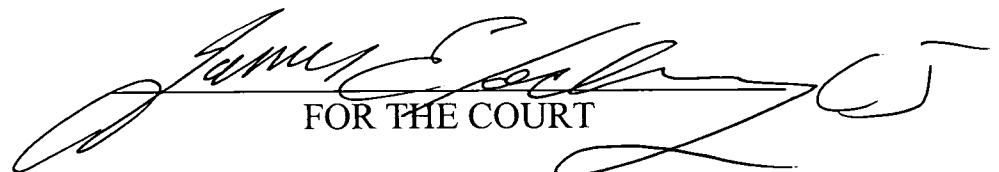
Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the power to control our own records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). In *Ex parte Capital U-Drive-It*, the Supreme Court of South Carolina analyzed Rule 41.1(b), SCRCP, in deciding whether to seal or unseal a court record. 369 S.C. at 12, 630 S.E.2d at 470. 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." Rule 41.1 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 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's motion fails to address the factors listed above. Accordingly, the motion to seal is denied without prejudice to Appellant's right to provide the court with the information required by Rule 41.1(b), SCRCP and *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006).


FOR THE COURT

Columbia, South Carolina

FILED

February 21, 2010

cc:

Denise Lynn Savage, Esquire

Merritt Gordon Abney, Esquire

Ian S. Ford, Esquire

Hunter H James, Esquire

Robert Michael Ethridge, Esquire

Suzanne Elizabeth Deters, Esquire