

The South Carolina Court of Appeals

Peter D. Protopapas, as Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc.,
Respondents,

v.

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company; The Standard Fire Insurance Company; St. Paul Fire and Marine Insurance Company; The Employers' Fire Insurance Company; Southeastern Agency Group and M.I.A. Company, Inc. individually and as successors to or f/k/a Merrimon Insurance Agency, Inc.; Robert E. Aspray; Nell Ashworth, individually and as personal representative of the Estate of Robert J. Ashworth; Betty C. D'Amico, individually and as Executor of the Estate of Julian D'Amico, JR.; Kayla Keith, individually and as the personal representative of the Estate of Jerry W. Archer, SR; Richard L. Knight II, as personal representative of the Estate of Teddy L. Knight, SR, and Linda Knight, individually; David D. Rollins; James W. Smith and Frances R. Smith; and Linda J. White, individually and as personal representative of the Estate of Lubert R. White, JR., Defendants,

Of Which Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company and The Standard Fire Insurance Company are the Appellants.

Appellate Case No. 2021-000648

ORDER

The parties have filed a joint motion to seal limited portions of the trial record. Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, the court has the 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), SCRCR, 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).

After careful consideration of the consent motion and the relevant factors, the motion to seal is denied. The parties have failed to establish the majority of the factors listed above weigh in favor of sealing. Further, the parties' interest in secrecy or privacy does not outweigh the presumption of access to court records. *See id.* at 10, 630 S.E.2d at 469 ("Judicial proceedings and court records are presumptively open to the public . . ."); *id.* at 11, 630 S.E.2d at 470 ("A claim that a court file contains extremely personal, private, and confidential matters is generally insufficient to constitute a privacy interest warranting the sealing of the

file." (quoting *Doe v. Heitler*, 26 P.3d 539, 544 (Colo. App. 2001)); *id.* ("Likewise, prospective injury to reputation, an inherent risk in almost every civil lawsuit, is generally insufficient to overcome the strong presumption in favor of public access to court records."); *id.* at 12, 630 S.E.2d at 470 ("The burden is on the party who seeks to overcome the presumption of access to show that the interest in secrecy outweighs the presumption."). Finally, redacting the record affords adequate protection to the parties in this appeal.



FOR THE COURT

Columbia, South Carolina

cc:

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