

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 13984

MASUD BEROZ; and
COMPONENTZEE, LLC,

Plaintiffs,

v.

NUVOTRONICS, INC.,

Defendant.

**ORDER ON
MOTION TO SEAL**

1. Defendant's Motion to Seal is pending before the Court. (ECF No. 17.) The motion requests that the Court place Exhibit C to Plaintiffs' complaint (the "License Agreement") and paragraphs 66, 78, 88, and 113 of the complaint under seal. Plaintiffs oppose the motion and filed a response on February 12, 2018. The Court elects to decide the motion without a hearing. *See* BCR 7.4.

2. Plaintiffs initiated this lawsuit on November 16, 2017. According to the complaint, Plaintiff Masud Beroz is an inventor and engineer. (*See* V. Compl. ¶¶ 1–2, 7, ECF No. 3.) He agreed to grant Defendant a license to certain semiconductor-related technology and also to assign several patent applications in the same field. (*See* V. Compl. ¶¶ 39–46.) In return, the complaint alleges, Beroz received promises of stock-option incentives and long-term employment. (*See* V. Compl. ¶¶ 39, 46, 48, 50.) Plaintiffs now contend that Defendant never intended to live up to the bargain and has instead fired Beroz and kept the intellectual property for itself. (*See* V. Compl. ¶¶ 51–52, 62, 67, 76, 78–81.) The complaint includes seven claims for relief,

including breach of contract, fraud, unfair or deceptive trade practices, and unjust enrichment.

3. After receiving an unopposed extension of time to respond to the complaint, Defendant filed its answer, counterclaims, and a motion to dismiss on January 18, 2018. That same day, Defendant also filed its motion to seal and a brief in support. (ECF Nos. 17, 18 [“Def.’s Br.”].)

4. Documents filed in the courts of this State are “open to the inspection of the public,” except as prohibited by law. N.C. Gen. Stat. § 7A-109(a); *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463, 515 S.E.2d 675, 685 (1999). Nevertheless, “a trial court may, in the proper circumstances, shield portions of court proceedings and records from the public.” *France v. France*, 209 N.C. App. 406, 413, 705 S.E.2d 399, 405 (2011) (quoting *Virmani*, 350 N.C. at 463, 515 S.E.2d at 685) (emphasis omitted). By rule in this Court, parties must “limit the materials that they seek to file under seal,” and “[t]he party seeking to maintain materials under seal bears the burden of establishing the need for filing under seal.” BCR 5.1(b).

5. Defendant contends that the License Agreement should be sealed for two reasons. First, it contends that the parties agreed, in section 6.3, that the material terms of the License Agreement are confidential. (Def.’s Br. 2.) Second, Defendant argues that the License Agreement contains “sensitive areas of Nuvotronics [sic] confidential research and business interests and business methods.” (Def.’s Br. 3.)

6. The first argument is a nonstarter. Our appellate courts and this Court have frequently and soundly rejected the notion that parties to litigation may shield

information from the public by agreement. “Evidence otherwise appropriate for open court may not be sealed merely because an agreement is involved that purports to render the contents of that agreement confidential.” *France*, 209 N.C. App. at 415–16, 705 S.E.2d at 407; *see also Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *5 (N.C. Super. Ct. Jan. 18, 2018).

7. Defendant’s second argument fares no better. Litigants may overcome the public’s interest in open court proceedings by demonstrating that certain information is subject to trade-secret protection or otherwise includes sensitive business information. *See France*, 209 N.C. App. at 416, 705 S.E.2d at 407 (citing N.C. Gen. Stat. § 66-156 (“[A] court shall protect an alleged trade secret by reasonable steps which may include . . . sealing the records of the action.”)). Here, Defendant’s conclusory reference to “confidential research and business interests and business methods” does not come close to carrying that burden. Defendant has not identified with specificity the information that is supposedly confidential, the reasons that harm to its business would result from public disclosure, or even the terms or provisions of the License Agreement that supposedly reveal confidential information. (*See* Def.’s Br. 2–3.)

8. Even assuming Defendant had adequately identified confidential information contained in the License Agreement, it would support sealing only the confidential terms, not the *entire* License Agreement. This Court disfavors filing entire documents under seal. *See* BCR 5.2(d) (sealing entire document is a “rare circumstance”). It was incumbent upon Defendant to justify the breadth of its

request, but its conclusory arguments fail to do so. As Plaintiffs note, the complaint frequently refers to and quotes many terms of the License Agreement, yet Defendant has not sought to seal those paragraphs of the complaint. (*See* Resp. Opp'n to Def.'s Mot. to Seal 7 (citing V. Compl. ¶¶ 54, 55, 58, 59), ECF No. 22.) At bottom, Defendant has not offered a reasoned basis to place the License Agreement under seal, whether in whole or in part.

9. Defendant separately contends that paragraphs 66, 78, 88, and 113 of the complaint should be sealed. (*See* Def.'s Br. 3.) This two-sentence argument is again insufficient to carry Defendant's burden.

10. According to Defendant, paragraph 66 contains "information concerning a Nuvotronics' customer's projects and potential projects." (Def.'s Br. 3.) Defendant appears to be concerned about a reference to a "customer requested feasibility project." (V. Compl. ¶ 66.) But this non-specific reference does not identify any customer by name or provide any greater detail about the project itself. If confidential information lurks within this phrase, it is well hidden. The Court discerns no reason to place paragraph 66 under seal.

11. Defendant asserts that the other three disputed paragraphs disclose "Nuvotronics' projects, research goals, technical areas of interest and alleged technical obstacles with regard to certain projects." (Def.'s Br. 3.) Without further explanation, it is not clear what Defendant is referring to. Paragraph 78 alleges that Defendant never intended to perform the promises made to Plaintiffs. Paragraph 88 states that Plaintiffs granted Defendant a license to use the patents identified in the

License Agreement. And paragraph 113 alleges that Defendant's purpose in fraudulently inducing Plaintiffs to enter into the License Agreement was to obtain Plaintiffs' semiconductor technology. To the extent these three paragraphs discuss semiconductor technology and Defendant's interest in it, they are of a piece with numerous other allegations that Defendant has not sought to seal. And in any event, Defendant's minimal explanation leaves the Court to guess at what, if anything, is confidential about this information and why public disclosure would result in harm to Defendant's business. Defendant has not carried its burden to show that paragraphs 78, 88, and 113 should be kept under seal.

12. Finally, it bears noting that the complaint and attached exhibits were filed publicly in their entirety in November 2017. Yet Defendant waited two months to seek relief. To the extent the complaint and License Agreement reveal truly confidential information in a way that poses a threat to Defendant's business, Defendant was obliged to act promptly to protect its interests. Its failure to do so could be deemed a waiver, but even if not, the two-month delay strongly suggests that Defendant faces no serious risk of significant harm from public disclosure. At a minimum, Defendant has not shown that the risk of harm outweighs the public's interest in open court proceedings.

13. For these reasons, the Court **DENIES** the motion to seal.

This the 3rd day of April, 2018.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases