

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 12811

JAMES G. LOVELL,
Plaintiff,

v.

WILLIAM CHRISTOPHER
CHESSON,
Defendant.

WILLIAM CHRISTOPHER
CHESSON,
Counterclaim
Plaintiff and
Third-Party
Plaintiff,

v.

JAMES G. LOVELL,
Counterclaim
Defendant,

and

CHESSON & LOVELL, PLLC,
Nominal Third-
Party Defendant.

**ORDER ON CONSENT
MOTION FOR LEAVE TO FILE
COMPLAINT UNDER SEAL**

1. This Order addresses a motion by William Chesson, the defendant, to seal portions of the complaint. (ECF No. 13.) For the reasons discussed below, the Court **DENIES** the motion.

2. James Lovell, the plaintiff, filed his complaint on June 26, 2019. Lovell alleges that he and Chesson are longtime business associates, having worked

together at Rives and Associates, LLP and LBA Haynes Strand, PLLC before forming their own accounting firm about three years ago. (*See* Compl. ¶ 12, ECF No. 3.) The two are now in the midst of dissolving their firm but disagree over how to do so, prompting this lawsuit. (*See* Compl. ¶ 18.) Among other things, Lovell seeks to recover amounts related to (i) a settlement of litigation involving Lovell, Chesson, and Rives and Associates; and (ii) a settlement of Lovell and Chesson’s accounts with LBA Haynes Strand upon their departure (collectively, the “Settlement Agreements”). (*See* Compl. ¶¶ 24–35.)

3. Nearly two months after the complaint was filed, Chesson’s counsel informed the Court via e-mail and copying all counsel of record that the complaint contains confidential information that, in his view, shouldn’t be publicly available. On its own motion and out of an abundance of caution, the Court placed the complaint provisionally under seal and directed Chesson to file a motion to seal in compliance with Rule 5 of the North Carolina Business Court Rules (“BCRs”). (ECF No. 9.) Chesson filed his motion on August 28, 2019. (Mot. Seal, ECF No. 13.) With Lovell’s consent, Chesson requested that the Court seal paragraphs 27–29, 31(a)–(d), and 32–34 because they contain information subject to “express confidentiality provisions” within the Settlement Agreements. (Mot. Seal ¶¶ 5–7.) Neither Chesson nor Lovell filed a brief in support of the motion, and the Settlement Agreements are not attached as exhibits to either the complaint or the motion to seal.

4. In an interim order, the Court questioned whether the parties’ agreement to keep their contractual terms confidential was a sufficient reason to seal court

records. (See ECF No. 17 at ¶ 5.) The general rule is that court filings in our State are “open to the inspection of the public,” N.C.G.S. § 7A-109(a), and our Court of Appeals has held that “[e]vidence 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 v. France*, 209 N.C. App. 406, 415–16, 705 S.E.2d 399, 407 (2011). This Court has followed suit. See *Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *5 (N.C. Super. Ct. Jan. 18, 2018) (stating that courts are not bound by the parties’ designation of material as “confidential,” even if such designation is made in accordance with a confidentiality agreement); *Beroz v. Nuvotronics, Inc.*, 2018 NCBC Order 10, at ¶ 6 (N.C. Super. Ct. Apr. 3, 2018) (“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.”).

5. Rather than deny the motion outright, though, the Court invited Chesson and Lovell to submit a supplemental brief that addresses this case law, “identif[ies] with specificity the information that is supposedly confidential, and state[s] whether public disclosure of the information would result in harm to any party.” (ECF No. 17 at ¶ 6.) Chesson filed his supplemental brief on September 24, 2019. (Supp. Br., ECF No. 26.) Lovell declined to join Chesson’s brief and chose not to file one of his own. The motion is now ripe, and the Court elects to decide it without a hearing. See BCR 7.4.

6. Chesson presses two arguments, neither of which is persuasive. First, he attempts to distinguish *France* on the ground that the confidentiality provision there

“purported to deprive the court of its discretion.” (Supp. Br. 3.) What he means by this is not entirely clear. Chesson appears to read the provision at issue in *France* as a command to courts to seal the contract’s terms in the event of litigation. That would have been audacious indeed, but the provision didn’t go nearly so far. It merely directed the contracting parties “to use their best efforts” to file the contract, or references to it, under seal. *France*, 209 N.C. App. at 408, 705 S.E.2d at 402. This language is not unusual for confidentiality agreements, and it is materially indistinguishable from Chesson’s description of the Settlement Agreements. (See Supp. Br. 4.)

7. Second, Chesson appeals to the policy favoring settlement of litigation, which he insists is just as compelling as the policy favoring open court proceedings. (See Supp. Br. 4–5.) The Court of Appeals recently dispatched a similar argument in a case that Chesson fails to cite. See *Doe v. Doe*, 823 S.E.2d 583, 600 (N.C. Ct. App. 2018). In short, trial courts are free to consider the public policy favoring settlements as one factor in deciding whether to seal a court filing, “but if the parties are using our courts for resolution of their dispute, documents filed with the court are presumptively available to the public.” *Id.* at 602. Merely “[c]alling a settlement confidential” does not mean a court must or should place it under seal. *Id.* (quoting *Union Oil Co. v. Leavell*, 220 F.3d 562, 567 (7th Cir. 2000)).

8. The reality is that litigants would often prefer to keep their disputes private, perhaps to keep information out of the hands of competitors or to save themselves from embarrassment. Contracting parties would often prefer to keep their deals

secret too. If this Court's experience is any guide, confidentiality provisions are ubiquitous in all kinds of commercial and business contracts. On occasion, these agreements do contain or relate to truly confidential information—trade secrets, for example—that should not be disclosed to the public. When that information becomes the subject of litigation, the “court seals only the *secrets*,” not everything else. *Union Oil*, 220 F.3d at 567 (emphasis in original). And the reason the court seals those is not because the parties have agreed to keep them confidential but instead because their disclosure would cause serious harm to one or both parties—harm the parties should not have to endure as the price of obtaining a civil judgment.

9. Here, though, Chesson's only argument for sealing is that the Settlement Agreements and their terms are confidential because the parties say so. Despite an invitation, Chesson has not identified any harm that would result to him or others from public disclosure of the terms of the Settlement Agreements. The Court doubts there would be any. The complaint was publicly available for nearly two months before Chesson sought relief. His “delay strongly suggests that [he] faces no serious risk of significant harm from public disclosure.” *Beroz*, 2018 NCBC Order 10, at ¶ 12. At a minimum, it confirms that the risk of harm does not outweigh the public's interest in open court proceedings.

10. It may well be true that Lovell's disclosure of the terms of the Settlement Agreements has deprived Chesson of the benefit of his bargains, as he suggests. (*See* Supp. Br. at 4–5.) And Chesson may have a valid claim for relief. But now that the parties have submitted disputes about these agreements for judicial resolution, their

earlier agreement to keep their affairs confidential is not, without more, a sound reason to seal court filings. The Court will decide these disputes on a public record. *See Union Oil*, 220 F.3d at 568 (“Judges deliberate in private but issue public decisions after public arguments based on public records.”).

11. For these reasons, the Court **DENIES** the motion to seal. The clerk shall unseal the complaint, designated as ECF No. 3, thirty days from the date of this Order.

SO ORDERED, this the 28th day of October, 2019.

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