

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 4611

HE CHI; BIAN YIDE; CAO YONGJIE;
CHEN MINZHI; CHENG TAO; HU
KUN; LIANG JINGQUAN; LUO
PENG; MA QIHONG; MA WEIGUO;
SONG YING; WANG JIAN; WANG
LING; WANG XUEHAI; XIE QIN; YE
XIAFEN; and ZHANG YUNLONG,

Plaintiffs,

v.

NORTHERN RIVERFRONT MARINA
AND HOTEL LLLP; NRMH
HOLDINGS LLC; NRMH HOTEL
HOLDINGS LLC; USA INVESTCO
LLC; PAC RIM VENTURE LTD.;
RIVERFRONT HOLDINGS II LLC;
WILMINGTON RIVERFRONT
DEVELOPMENT LLC; GOLDEN
MARINA LLC; CIRCLE MARINA
CARWASH, INC.; CHARLES J.
SCHONINGER; JOHN C. WANG;
JIANGKAI WU; CHRISTOPHER
ARDALAN; and GONGZHAN WU,

Defendants.

**ORDER ON PLAINTIFFS’ MOTIONS
TO FILE VERIFIED COMPLAINTS
UNDER SEAL**

1. This Order addresses two motions (“the Motions”) filed by Plaintiffs seeking to file under seal in their entirety the Verified Complaint, the First Amended and Verified Complaint, the Second Amended and Verified Complaint, and each of the numerous supporting exhibits filed therewith. (See First Amended and Verified Complaint, Exhibits A-M [“Exhibits”]). (ECF Nos. 26, 82, 84.)

2. Court filings are presumptively public records and must be “open to the inspection of the public,” except as prohibited by law. N.C.G.S. § 7A-109(a); *see*

Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 463 (1999). The burden is on the party seeking to maintain a filing under seal (the “designating party”) to overcome that presumption. See BCR 5.1(b); *PDF Elec. & Supply Co., LLC v. Jacobsen*, 2020 NCBC LEXIS 80, at *4 (N.C. Super. Ct. July 8, 2020). The designating party must provide “information sufficient for the Court to determine whether sealing is warranted.” BCR 5.2(b). Ultimately, “[t]he determination of whether [documents] should be filed under seal is within the discretion of the trial court.” *Taylor v. Fernandes*, 2018 NCBC LEXIS 4, at *4 (N.C. Super. Ct. Jan. 18, 2018) (citing *In re Investigation into Death of Cooper*, 200 N.C. App. 180, 186 (2009)).

3. The Court previously entered an Order directing Defendants, as the designating party seeking confidentiality with respect to these materials, to respond to the Motions and provide information sufficient for the Court to determine if sealing is warranted, particularly given that the information has been on the public record for more than a year. (See Order on Plaintiffs’ Motions to File Verified Complaints Under Seal, ECF No. 89.)

4. The Court instructed that if Defendants’ contention was that sealing was warranted, the parties were to confer and propose to the Court those portions of the documents that they contend require redaction. In the event Defendants believed that a document should be sealed in its entirety, they were directed to identify the extraordinary circumstances justifying such an order.

5. Defendants filed their Response to the Motions (“Response”) on 13 January 2023. (ECF No. 90.) They argue that certain documents filed by Plaintiffs

should be sealed because they contain proprietary and trade secret information which, they contend, could be of value to their competitors. They further argue that the Court should enforce the contractual confidentiality provisions in the Offering Circular¹ that each Plaintiff received, and in the Subscription Agreement² that each Plaintiff executed. Defendants conclude with a request that the Court seal “all documents that are the subject of the pending counterclaim.” (Defs’ Resp Mot to Seal 7, ECF No. 90.)

6. In their Response Defendants identify the documents that they contend should be sealed in their entirety as the Verified Complaint, ECF No. 3, First Amended and Verified Complaint, ECF No. 26, Second Amended and Verified Complaint, ECF No. 88, and Exhibits A,B,C,D,E,F,I, and J to the latter two pleadings, ECF No. 26.³ Notably, however, they do not identify their own Answer and Counterclaim to First Amended & Verified Complaint, ECF No. 35. Exhibit A to that pleading, filed in the public record by Defendants in March 2022, contains the very

¹ The Offering Circular states: “The information in this Offering Circular is furnished on a confidential basis exclusively for your use and retention and, by accepting this Offering Circular, you agree not to transmit, reproduce, or make available to any other person (other than your legal, tax, accounting or other advisers) all or any part of this Offering Circular without the General Partner’s express written permission.” (ECF No. 35.1, p.1)

² The Subscription Agreement states: “The undersigned acknowledges that the information contained in this Subscription Agreement and in the Offering Circular, and which the undersigned receives orally or in writing from the Partnership is confidential and non-public and agrees that all such information shall be kept in confidence by the undersigned unless disclosure is otherwise required by law or court order.” (ECF No. 35.1, p.87.)

³ The Court observes that the Exhibits appear in the record as attachments only to the First Amended and Verified Complaint, not to the Verified Complaint or the Second Amended and Verified Complaint.

same Offering Circular and Subscription Agreement that Plaintiffs filed and that Defendants contend are confidential. *See* ECF No. 35.1.

7. As a consequence of Defendants' own filing, any trade secret protection over the information in the Offering Circular and Subscription Agreement has been lost. *See RoundPoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at **38 (N.C. Super. Ct. Feb. 18, 2016) ("Information for which a claimant asserts trade secret protection can lose the benefit of protection if it has been disclosed, publicly released, or publicly filed during litigation."). In addition, effective on the date of Defendants' filing on the public record of these documents, Defendants waived the ability going forward to assert that the filed material is confidential. *See e.g., Glaxo v. Novopharm Ltd.*, 931 F. Supp. 1280, 1301 (E.D.N.C. 1996) (stating "Glaxo's concern for the confidentiality of its information dissipated somewhere between its secured facilities and the courthouse[,] and observing that the release of allegedly confidential information during open trial is a publication of that information and waives any right a party had to restrict its use).

8. As for the argument that sealing is required because the parties agreed to keep the information confidential, the appellate courts of North Carolina have held that the fact that disclosure might constitute a breach of contract is not itself a sufficient basis to warrant sealing. *Bradshaw v. Maiden Capital Opportunity Fund, LP* 2020 NCBC LEXIS 42, at *9-10 (N.C. Super. Ct. April 7, 2020) (citing cases).

9. Moreover, despite the Court's invitation, Defendants did not identify the *specific sections* of the listed documents that they contend should be sealed.⁴ Absent that information, and without being able to compare a list of proposed redactions against the information Defendants themselves filed in the public record, except as provided below, the Court declines to seal the pleadings or the Exhibits.

10. Accordingly, in the exercise of its discretion, the Court **DENIES** the Motions. Plaintiffs' Second Amended and Verified Complaint, (ECF No. 88), which is currently provisionally sealed, will be unsealed in 30 days and made available to the public.

11. However, the Court observes that the parties should revisit their compliance with the requirements of N.C.G.S. § 75-66 and N.C.G.S. § 132-1.10. Therefore, the Court, *sua sponte*, **ORDERS** that the unredacted Exhibits attached to Plaintiff's First Amended and Verified Complaint and Exhibit A to Defendants' Answer and Counterclaim be sealed. On or before 27 January 2023, all parties are directed to ensure compliance with these statutory requirements and to redact from these exhibits any personal information not permitted to be filed in the public record, prior to refileing them.

⁴ The Court's Order stated that only in a rare circumstance will the Court seal documents in their entirety. And redactions of information sought to be sealed by a party "should be as limited as practicable." BCR 5.2(d).

SO ORDERED, this the 20th day of January, 2023.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases