

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 1036

CITISculpt FUND SERVICES,
LLC, a North Carolina limited
liability company, as Manager, f/b/o
10 ACADEMY STREET QOZB I,
LLC, a North Carolina limited
liability company,

Plaintiff,

v.

BLUEPRINT 2020 OPPORTUNITY
ZONE FUND, LLLP, a Delaware
limited liability limited partnership,

Defendant.

***SUA SPONTE ORDER ON REDACTED
DOCUMENTS***

1. **THIS MATTER** is before the Court *sua sponte* to address procedural irregularities associated with two documents that have been filed on the Court's e-filing system.

2. On 20 January 2023, Defendant Blueprint 2020 Opportunity Zone Fund, LLLP ("Blueprint") filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, Failure to State a Claim, and in the Alternative, for Lack of a Necessary Party of Blueprint (the "Motion"), (Mot. Dismiss Lack Subject Matter Jurisdiction, Failure State Claim, and in the Alternative, Lack Necessary Party [hereinafter "Mot. Dismiss"], ECF No. 31), along with a supporting brief, (Br. Supp. Mot. Dismiss, ECF No. 32), and the affidavits of Edward R. Baird and Scott D. Anderson, (Aff. Edward R. Baird, dated Jan. 20, 2023 [hereinafter "Baird Aff."], ECF No. 31.1; Aff. Scott D. Anderson, dated Jan. 20, 2023 [hereinafter "Anderson Aff."], ECF No. 31.2). The Baird affidavit included four supporting exhibits, (*see* Baird Aff. Exs. 1–4, ECF No.

31.1), and the Anderson affidavit included one supporting exhibit, (*see* Anderson Aff. Ex. 1, ECF No. 31.2). In the Motion, Blueprint represents that “[i]n order to avoid additional motions practice regarding sealing, information contained in [Exhibit 4 to the Baird affidavit and Exhibit 1 to the Anderson affidavit] that is not relevant to this Motion has been redacted after consultation contemplated in BCR 5.2(b)(6).” (Mot. Dismiss 4 nn.1–2.) Redactions appear in both exhibits. (*See* Baird Aff. Ex. 4; Anderson Aff. Ex. 1.)

3. The presumption is that documents filed in the courts of this State are “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). 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 (2011) (emphasis omitted) (quoting *Virmani*, 350 N.C. at 463). “The 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). Nevertheless, courts should conceal records sparingly and only “in the interest of the proper and fair administration of justice[.]” *Virmani*, 350 N.C. at 463.

4. When a party wants to seal all or part of a document, the correct procedure under the Business Court Rules (“BCR”) is to “file the document provisionally under seal and file a motion that asks the Court to seal the document.” BCR 5.2(a). When a moving party seeks to seal information that another person has designated as

confidential, BCR 5.2(b)(6) requires the movant to affirmatively state *in a motion to seal* that the moving party unsuccessfully sought the consent of the designating party to file the information publicly. Until the Court determines whether sealing is warranted, this procedure provides litigants with certain privacy protections and the public with notice that documents have been provisionally sealed by allowing access to public redacted versions or nonconfidential descriptions of those documents. *See* BCR 5.2(b)–(f).

5. The problem here is that Blueprint neither provisionally filed under seal unredacted copies of these two exhibits nor sought leave of the Court to seal them. If allowed as a common practice, Blueprint’s approach would prevent the Court from ever performing its gatekeeper role to protect the public interest. To preserve public access, the Court must be able to review the redacted material and determine whether it is of the type and quality that should be kept out of the public eye. That is not a choice the parties can make through their own private agreement.¹ *See Theims v. Welsch, Flatness & Lutz, Inc.*, No. 3:13-cv-554-WDS-DGW, 2013 U.S. Dist. LEXIS 156767, at *3 (S.D. Ill. Nov. 1, 2013) (“Redacting a document prior to filing has the same effect as filing a document under seal: it removes from public viewing the redacted information. Such an action cannot be permitted without prior Court approval.”); *see also Gray v. Catenary Coal Co.*, No. 2:10-cv-01056, 2012 U.S. Dist. LEXIS 27831, at *2–3 (S.D. W. Va. Mar. 2, 2012) (declining to approve a redacted

¹ Note that BCR 5 “does not apply to documents that are closed to public inspection by operation of statute or other legal authority. This rule does not affect a person’s responsibility to omit or redact private information from court documents pursuant to statute or other legal authority.” BCR 5.1(d).

settlement agreement where no motion to seal accompanied the agreement). Accordingly, the Court will not permit Blueprint to avoid its obligations under BCR 5 through consent of the parties.

6. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

- a. Blueprint shall have through and including 31 January 2023 to file a motion to seal Exhibit 4 to the Baird affidavit and Exhibit 1 to the Anderson affidavit that complies with BCR 5.
- b. Blueprint shall have through and including 31 January 2023 to file provisionally under seal unredacted versions of Exhibit 4 to the Baird affidavit and Exhibit 1 to the Anderson affidavit as provided in BCR 5.2(a).

SO ORDERED, this the 24th day of January, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge