

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BUCKEYE DIAMOND LOGISTICS, INC., :
Plaintiff, :
vs. : Case No. 3:01cv440
CHEP USA, INC., : JUDGE WALTER HERBERT RICE
Defendant. :

DECISION AND ENTRY OVERRULING PLAINTIFF'S MOTION TO LIFT
STAY (DOC. #91); DECISION AND ENTRY SUSTAINING IN PART AND
OVERRULING IN PART DEFENDANT'S MOTION FOR
RECONSIDERATION (DOC. #92); DOCS. ##29, 33-38 AND 41-42
ORDERED UNSEALED; DOCS. ##28, 30, 40 AND 43 TO REMAIN
SEALED

In its Decision of March 15, 2004, the Court, inter alia, sustained in part Plaintiff's Motion to Unseal the Record on Summary Judgment (Doc. #46), and ordered that Docs. ##28-30, 33-38 and 40-43 be unsealed. See Doc. #89. As a result of arguments made by Defendant's counsel during a conference call conducted later that day, the Court entered an Order on March 16, 2004, staying that aspect of its Decision and ordered that those documents remain under seal, pending a ruling upon Defendant's anticipated request for reconsideration. See Doc. #90. The Defendant has filed its Motion for Reconsideration (Doc. #92). The Plaintiff has filed a memorandum opposing the Defendant's motion (see

Doc. #96), and the Defendant has filed a reply in support thereof. See Doc. #98. With that motion, the Defendant seeks to have the Court maintain Docs. ##28, 30, 36-37,¹ 40 and 43 under seal. In other words, it has no objection to unsealing Docs. ##29, 33-35, 38 and 41-42.² Accordingly, the Court orders those documents to be unsealed.

The Court now rules upon Defendant's Motion for Reconsideration (Doc. #92), beginning its analysis by setting forth certain fundamental principles applicable to all such requests.³

Court records are presumptively public. Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1165 (6th Cir. 1983), cert. denied, 465 U.S. 1100 (1984). That presumption may be overcome and, thus, a court may seal its records, when there is a particularized special need for confidentiality. Id. at 1179-80. However, only the most compelling reasons can justify sealing judicial records. In re Knoxville News-Sentinel Co., 723 F.2d 470, 476 (6th Cir. 1983).

Defendant argues that the Court should maintain Docs. ##28, 30, 36-37, 40 and 43 under seal, because they contain sensitive commercial information which it

¹Docs. ##36 and 37 are duplicates of the same document.

²Docs. ##35 and 38 are duplicates of the same document.

³In addition to opposing the Defendant's motion, the Plaintiff has filed a motion, in which it requested that the Court lift the stay it had entered with its Order of March 16, 2004 (Doc. #90). See Doc. #91. Therein, Plaintiff argued that ten days had passed since Defendant had represented during the conference call conducted on March 15, 2004, that it would be moving for reconsideration on March 17th or 18th. Defendant submitted its request for reconsideration on March 25th, the same day that Plaintiff had filed its motion. Since the Plaintiff has not argued that Defendant's six-day delay caused it to suffer prejudice, the Court overrules Plaintiff's Motion to Lift Stay (Doc. #91).

has taken reasonable steps to protect from disclosure, given that their disclosure would benefit its competitors and disadvantage it in the marketplace.⁴ According to Defendant, Docs. ##28, 30, 36-37, 40 and 43 contain its internal financial information, information about its future business plans and customer information relating to pricing, volume, projected growth and service. By way of a specific example, Defendant points out that some of its contracts with its customers are attached to those documents. Those contracts contain Defendant's confidential pricing information, information about the volume of its sales and the identity of the key contacts with its customers.⁵

Defendant has set out a table on pages 7 through 13 of its motion, in which it identifies the confidential commercial information that is contained in each of the documents it argues should remain under seal. Plaintiff argues that none of the matters set forth in that table warrant continuing to maintain Docs. ##28, 30, 36-37, 40 and 43 under seal. As a means of analysis, the Court discusses the parties' arguments relating to each document in the above order.⁶

⁴Throughout its motion, Defendant repeatedly discusses the steps it has taken to maintain the secrecy of certain information. Although the fact that Defendant has kept the information contained in a particular document strictly confidential is a necessary condition of maintaining that document under seal, it is not a sufficient reason for maintaining a document under seal.

⁵The Defendant has supported these assertions with the detailed affidavit of Elton Potts, which is attached to its motion.

⁶Plaintiff argues that the Defendant has taken advantage of the agreed upon protective order into which the parties have entered, by designating the vast majority of documents that it has produced as "Outside Attorney's Eyes Only," which means that counsel cannot share them with his client's principals. Designating so many documents for such protection, Plaintiff argues, has hampered its ability to prepare for trial. The Defendant indicates that the parties have entered into an informal agreement, whereby the Plaintiff's counsel is

First, Defendant argues that its Motion for Summary Judgment (Doc. #28) should remain sealed, because certain affidavits and exhibits attached thereto contain the type of confidential commercial information generally discussed above, i.e., contracts with customers, the names and addresses of contracts of customers and its revenues. Plaintiff contends that the information contained in this document is not worthy of protection. The Court cannot agree and concludes that Defendant has demonstrated that disclosure of this information would harm it and that, therefore, there is a compelling reason for keeping Doc. #28 under seal.

Second, Defendant argues that Plaintiff's Motion for Summary Judgment on Count I (Doc. #30) should remain sealed, because it contains confidential internal accounting procedures, a consultant's report, specific customer relationships and accounting issues relating to those relationships, its contracts with some of its customers, internal financial information and business strategies and improvement planning. Plaintiff argues that this information is not worthy of continued protection. The Court cannot agree; rather, it concludes that Defendant has met its burden of demonstrating that a compelling reason supports the continued sealing of Doc. #30.

Third, Defendant argues that the two duplicate copies of its Memorandum in Opposition to Plaintiff's Motion for Summary Judgment on Count I (Docs. ##36

permitted to share documents so-produced with his client's principals. Quite simply, the question of whether the Court should unseal documents containing confidential commercial information is significantly different from that of whether Plaintiff's counsel should be permitted to share documents containing such information with his client's principals or with any witness he intends to call to testify. If the parties' informal agreement does not provide the Plaintiff sufficient ability to share documents to prepare for trial, it need only request further relief from the Court.

and 37), which were filed on successive days, should remain under seal, because they contain a reference to revenue generated with respect to one identified customer and discuss specific customer names. Although Defendant asserts generally that disclosure of this information would give a competitor an unfair advantage, it has not explained how knowing the amount of revenue it generated, more than two years ago,⁷ from one specific customer or the names of specific customers would give an advantage to a competitor. Defendant has not indicated that the identity of certain entities using a large number of pallets and, thus, its customers, is a trade secret or otherwise constitutes confidential business information. Therefore, the Court concludes that Defendant has failed meet its burden of demonstrating that a compelling reason supports the continued sealing of Docs. ##36 and 37.

Fourth, Defendant argues that Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment (Doc. #40) should remain sealed, because it contains information pertaining to internal accounting procedures and strategic business planning. Although Plaintiff argues that this information is not worthy of continued protection, the Court concludes that the Defendant has met its burden of demonstrating that a compelling reason supports the continued sealing of Doc. #40.

Fifth, Plaintiff's Reply Memorandum in Support of its Motion for Summary Judgment on Count I (Doc. #43) contains similar information pertaining to internal accounting procedures and strategic business planning. Although Plaintiff argues that this information is not worthy of continued protection, the Court concludes

⁷Docs. ##36 and 37 were filed on March 12 and 13, 2003.

that the Defendant has met its burden of demonstrating that a compelling reason supports the continued sealing of Doc. #43.

Based upon the foregoing, the Court sustains in part and overrules in part Defendant's Motion for Reconsideration (Doc. #92). That motion is sustained as it relates to Docs. ##28, 30, 40 and 43, and overruled as it relates to Docs. ##36 and 37, which are duplicate documents. As a consequence, Docs. ##28, 30, 40 and 43 shall remain under seal, while Docs. ##36 and 37 are ordered unsealed. In addition, Docs. ##29, 33-35, 38 and 41-42 are unsealed, given that Defendant has raised no objection to such unsealing.

March 22, 2005

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of record.