SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: June 21, 2013
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Decided: July 15, 2013

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Re: *The Sequoia Presidential Yacht Group LLC. v. FE Partners LLC*, Civil Action No. 8270-VCG

Dear Counsel:

This matter arises out of a nearly settled dispute between Plaintiff Sequoia Presidential Yacht Group LLC ("Sequoia") and Defendant FE Partners LLC ("FE Partners"). On June 21, 2013, FE Partners submitted a notice, pursuant to Court of Chancery Rule 5.1, objecting to the Court's confidential treatment of the Defendant's Motion for Default Judgment (the "Motion"). Because I find that Sequoia has failed to show "good cause" for continued confidential treatment of any material in the Motion, I direct that an unredacted copy be filed.

A. Factual Background

In February 2013, Sequoia filed a Verified Complaint seeking to enjoin FE Partners from exercising an option to purchase the Sequoia presidential yacht, as

agreed to in connection with a loan issued by FE Partners to Sequoia.[1] On June 13, 2013, FE Partners filed a Motion for Default Judgment and Other Sanctions for Fabrication of Evidence, Alteration of Evidence, Destruction of Evidence and Witness Intimidation (the "Motion"), alleging several instances of misconduct by Sequoia.[2] Shortly thereafter, according to the parties, Sequoia consented to a default judgment and an award of attorney's fees to FE Partners.[3] The parties are currently in the process of negotiating a dismissal.[4]

On June 20, 2013, counsel for FE Partners submitted a letter to the Court, alleging serious misconduct on the part of Sequoia's senior New York counsel.[5] The letter requested, among other relief, that I revoke the counsel's admission, granted *pro hac vice*, to the Bar of the Supreme Court of Delaware.[6] In response, I issued a Rule to Show Cause and conducted a hearing on June 25, 2013, at which New York counsel denied the allegations. On July 5, 2013, I issued a Letter

[1] Compl. ¶ 74.
[2] Def.'s Mot. for Default Judgment and Other Sanctions for Fabrication of Evidence, Alteration of Evidence, Destruction of Evidence and Witness Intimidation 1.
[3] Although the parties have repeatedly represented to the Court that Sequoia has consented to a default judgment and payment of FE Partners' attorneys' fees, no stipulation of dismissal has been filed as of this date.
[4] Letter to the Court from John Reed 1 n.1 (June 26, 2013) ("Def.'s Rep.").
[5] Letter to the Court from John Reed 1 (June 20, 2013).
[6] *Id.* at 5.

Opinion in which I deferred decision on the matter, pending a review of the evidence of misconduct by the Delaware Office of Disciplinary Counsel.[7]

Pleadings in this matter were made confidential subject to a confidentiality stipulation and order, pursuant to which any party could designate portions of the pleadings confidential, with redacted copies of the pleadings filed on the public docket, subject to Court review.[8] On June 21, 2013, counsel for FE Partners submitted a Notice of Challenge to Confidential Treatment (the "Notice"),[9] urging the Court to discontinue its confidential treatment of the Motion[10] pursuant to Court of Chancery Rule 5.1. Sequoia's counsel responded in opposition to the Notice on June 24, 2013,[11] and FE Partners filed a reply to Sequoia's response on June 26, 2013.[12] It now remains for this Court to "determine whether Confidential Treatment will be maintained, or whether a reply, hearing or further proceedings are warranted."[13] For the following reasons, I hold that confidential treatment of the Motion will not be maintained.

B. Discussion

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[7] *The Sequoia Presidential Yacht Grp. LLC v. FE P'rs LLC*, 2013 WL 3362056, at * 1 (Ct. Ch. July 5, 2013).
[8] Stip. and Order Gov. the Prod. and Exch. of Conf. Info. 1 (requiring documents to be filed consistent with Rule 5.1).
[9] Def.'s Notice of Challenge to Conf. Treatment 1.
[10] During a teleconference held on July 12, 2013, the Defendant's counsel clarified that its Notice of Objection to Confidential Treatment was limited to confidentiality assignations within the Defendant's Motion for a Default Judgment.
[11] Letter to the Court from Michael A. Weidinger 1 (June 24, 2013) ("Pl.'s Rep.").
[12] Def's Rep. 1.
[13] Ct. Ch. R. 5.1(f)(2).

Court of Chancery Rule 5.1 exists to "protect the public's right of access to information about judicial proceedings"[14] and "makes clear that most information *presented to the Court* should be made available to the public."[15] The public's right to access judicial records is considered "fundamental to a democratic state"[16] and "necessary in the long run so that the public can judge the product of the courts in a given case."[17] Accordingly, under Rule 5.1, only "limited types of information qualify for confidential treatment in submissions to the Court."[18] The party seeking confidential treatment of the record must demonstrate "good cause" for such treatment:

> For purposes of this Rule, "good cause" for Confidential Treatment shall exist only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause. Examples of categories of information that may qualify as Confidential Information include trade secrets; sensitive proprietary information; sensitive financial, business or personnel information; sensitive personal information such as medical records; and personally identifying information such as social security numbers, financial account numbers, and the names of minor children.[19]

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[14] *Protecting Public Access to the Courts: Chancery Rule 5.1*, at 3 (Jan. 1, 2013), *available at* http://courts.delaware.gov/rules/ChanceryMemorandumRule5-1.pdf.
[15] *Id.* at 4 (emphasis in original).
[16] *Horres v. Chick-fil-A, Inc.*, 2013 WL 1223605, at *1 (Del. Ch. Mar. 27, 2013) (quoting *In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984)).
[17] *Id.* (quoting *Va. Dept. of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004)).
[18] *Protecting Public Access to the Courts: Chancery Rule 5.1*, at 1. The rule applies to "[a]ll pleadings and other materials of any sort, including motions, briefs, letters, affidavits, exhibits, deposition transcripts, answers to interrogatories, answers to requests for admissions, and hearing transcripts." Ct. Ch. R. 5.1(a).
[19] Ct. Ch. R. 5.1(b)(2).

Moreover, that the information for which a party seeks confidential treatment may be embarrassing or previously undisclosed does not alone warrant confidential treatment.[20]

Rule 5.1 also "implements the powerful presumption of public access providing that '[e]xcept as otherwise provided in this Rule, proceedings in a civil action are a matter of public record.'"[21] Thus, the party seeking to "obtain or *maintain* Confidential Treatment always bears the burden of establishing good cause for Confidential Treatment"[22] and must demonstrate that "the particularized harm from public disclosure of the Confidential Information in the Confidential Filing clearly outweighs the public interest in access to Court records."[23]

Here, Sequoia has not met its burden of establishing "good cause" for continued confidential treatment of the Motion. In weighing the harm from public disclosure of the Motion against the public's interest in access to the record, Sequoia asserts "that this is not the case where the public could see a more complete and balanced view of events given the fact that both sides anticipate a

[20] *See Chick-fil-A, Inc.*, 2013 WL 1223605, at *2 ("Although it may be embarrassing to Chick-fil-A to have one of its franchises identified as the site where alleged misbehavior took place three years ago, that type of embarrassment will not suffice for continued Confidential Treatment. The public has an interest in understanding the nature of the Chick-fil-A dispute that was litigated in a court of this State.").
[21] *Id.* at *2 (citing Ct. Ch. R. 5.1(a)).
[22] Ct. Ch. R. 5.1(b)(3) (emphasis added).
[23] *Id.* at 5.1(g).

stipulation to be entered mooting the litigation."[24] Sequoia's argument is unconvincing. It implicitly suggests that the public loses its interest in access to the judicial records of a case if the litigation is "mooted." However, Rule 5.1 in no way limits the public's interest in "judg[ing] the product of the courts in a given case"[25] to cases in which the Court reaches a final judgment.[26] That a case ultimately settles, or one party submits to a default judgment, does not suggest that the public has no interest in the actions in the Court *before* that arrangement was reached. I also reject Sequoia's argument that the Court should consider Sequoia's efforts to "minimize further burden on the Court and the parties by having offered to stipulate to a judgment" as militating against unsealing the record.[27] The "good cause" requirement for confidential treatment is not satisfied by the good faith efforts of a party to save judicial resources by bringing about the close of litigation, and, I presume that, in agreeing to a judgment, Sequoia is acting in its own best interest.[28]

Rather, as FE Partners argues, Sequoia has failed to demonstrate that any material in the Motion provides "good cause" for continued confidential treatment. Sequoia seeks to keep confidential allegations that it forged or altered communications, and evidence of Sequoia's alleged destruction of evidence and

[24] Pl.'s Rep. 2.
[25] *See Va. Dept. of State Police*, 386 F.3d at 575.
[26] *See* Ct. Ch. R. 5.1.
[27] Pl.'s Rep 1.
[28] *See* Ct. Ch. R. 5.1 (b)(2).

witness intimidation. None of this information falls under, or is similar to, the prescribed categories of trade secrets; sensitive proprietary information; sensitive financial, business, or personnel information; or personal information such as medical records, social security numbers, financial account numbers, and the names of minor children.[29] Rather, it appears that Sequoia merely wishes to avoid the embarrassment it would face if I were to unseal the record, mostly due to its alleged conduct in the course of the litigation itself. This matter is of public interest, as evidenced by a number of stories in the press.[30] Sequoia's desire to avoid embarrassment in this regard, arising from its conduct in this matter it brought as Plaintiff, cannot justify continued confidential treatment of the Motion.[31]

C. Conclusion

[29] *See* Ct. Ch. R. 5.1 (b)(2). The only arguably confidential disclosure in the Motion cited by the Plaintiff is the ongoing tax audit with the District of Columbia, but the Plaintiff has pointed to nothing disclosed in the Motion that is not already in the public record. *See* Alan Suderman, *Yacht Club*, Wash. City Paper, Apr. 17, 2003, http://www.washingtoncitypaper.com/blogs/looselips/2013/04/17/yacht-club/; Neely Tucker, *Gary Silversmith Sailed the Sequoia back to Washington. Now he's in deep water.*, Wash. Post, May 9, 2013, http://www.washingtonpost.com/sf/feature/wp/2013/05/09/gary-silversmith-sailed-the-sequoia-back-to-washington-now-he's-in-deep-water/.

[30] *See supra* note 28.

[31] *See Chick-fil-A, Inc.*, 2013 WL 1223605, at *2.

Because Sequoia has failed to meet its burden to show "good cause" for continued confidential treatment under Rule 5.1, I direct the Defendant to file an unredacted copy of its Motion for Default Judgment, forthwith.[32]

To the extent the foregoing requires an order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

[32] The Defendant's Motion for Default Judgment included exhibits under seal. As I do not understand the Defendant's Notice to seek the unsealing of those exhibits, I have not considered the matter here.