

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Zita L. Weinshienk

Civil Action No. 08-cv-00377-ZLW-MEH

CHAD M. WIESE,

Plaintiff,

v.

CENTEX HOMES,

Defendant.

ORDER

The matter before the Court is Defendant's Motion To Seal (Doc. No. 40). Defendant asks the Court to seal Exhibits E, I, J, K, L, N, and O to Defendant's Motion For Summary Judgment. Plaintiff has filed no response the motion.

Pursuant to D.C.COLO.LCivR 7.2A., documents may be filed under seal based upon "a showing of compelling reasons." Under D.C.COLO.LCivR 7.2B, a motion to seal must describe, at a minimum, (1) the nature of the materials or proceedings at issue, (2) the legitimate private or public interests that warrant the relief sought, (3) the clearly defined and serious injury that would result if the relief sought is not granted, and (4) why a less restrictive alternative to the relief sought is not available. In determining a motion to seal, the Court looks to whether "the public's right of access is outweighed by competing interests."¹

Defendant states that Exhibit E contains non-public information evaluating the performance and potential of Defendant's employees relative to their peers, that

¹United States v. Hickey, 767 F.2d 705, 708 (10th Cir. 1985) (quoting In re Knight Publishing Co., 743 F.2d 231, 235 (4th Cir. 1984)).

Exhibits J and K contain non-public information relating to Defendant's finances, including its divisional revenues, costs, and profits or losses, and that Exhibits I, L, N, and O contain non-public information relating to Defendant's finances and operations, including specific employee headcount figures, broken down by department and division, at specific points in time. Defendant argues that "the public has no right of access to, nor any legitimate reason to desire access to" this information, and that "the competing interests in preventing disclosure are strong."² Defendant also contends that, in granting Defendant's Motion For Protective Order, the Court "necessarily found" that the documents Defendant has designated as "Confidential" are deserving of protection.³

Defendant has not identified a specific, legitimate, private or public interest that warrants sealing the subject documents, or any clearly defined and serious injury that would result if the documents are not sealed.⁴ Defendant has merely stated in a conclusory fashion that the documents should be sealed because they are "non-public," and because there exists some unidentified "competing interest" which is "strong." Defendant also has offered no explanation as to why a less restrictive alternative to sealing is unavailable.⁵ Moreover, the fact that Defendant itself has deemed the documents "Confidential" under the Protective Order does not, without more, constitute a compelling reason to seal. The provisions of the Protective Order, which address

²Defendant's Motion To Seal at 2-3.

³Id. at 3.

⁴See D.C.COLO.LCivR 7.2B.

⁵See id.

mechanisms for disclosure during discovery, do not eliminate the need for Defendant to satisfy the requirements for a motion to seal under applicable law, including this Court's Local Rules. Defendant has not satisfied those requirements on the present motion. Accordingly, it is

ORDERED that Defendant's Motion To Seal (Doc. No. 40) is denied without prejudice. It is

FURTHER ORDERED that Defendant may re-file a motion to seal adequately addressing the applicable standard for sealing in this Court. It is

FURTHER ORDERED that Exhibits E, I, J, K, L, N, and O to Defendant's Motion For Summary Judgment (Doc. No 42) shall remain sealed until further Order of the Court.

DATED at Denver, Colorado, this 15th day of May, 2009.

BY THE COURT

A handwritten signature in black ink, reading "Zita L. Weinschenk". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

ZITA L. WEINSHIENK, Senior Judge
United States District Court