

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GARY P. MCGUIRE,

Plaintiff,

vs.

Case No. 8:15-cv-2670-T-27AAS

ADEX CORPORATION,

Defendant.

ORDER

BEFORE THE COURT is Plaintiff's Unopposed Motion to Seal Evidence in Support of Motion for Summary Judgment (Dkt. 43). Upon consideration, the motion is **DENIED** *without prejudice*.

Trial courts have the inherent authority and discretion to seal records. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Decisions on motions to seal must balance the public's common law right of access against the interests favoring confidentiality. *Id.* at 599. The common law right of access is implicated by any pretrial motion that requires judicial resolution of the merits, including summary judgment motions, motions in limine, and *Daubert* motions, and can be overcome only by a showing of "good cause." *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1310-12 (11th Cir. 2001).¹

The decision to seal is the trial court's prerogative, not the parties'. *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002). The parties' mutual agreement to keep documents

¹See *Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1245 (11th Cir. 2007) ("Material filed in connection with any substantive pretrial motion, unrelated to discovery, is subject to the common law right of access."); *Rushford v. New Yorker Magazine*, 846 F.2d 249, 252 (4th Cir. 1988) (summary judgment motions); *In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119-20 (9th Cir. 2012) (*Daubert* materials).

confidential or to seal materials is “immaterial” to a court’s decision regarding the public’s right of access. *Brown v. Advantage Eng’g*, 960 F.2d 1013, 1016 (11th Cir. 1992). The right to file a document under seal does not automatically follow a confidentiality designation during discovery. *See Baxter*, 297 F.3d at 545 (denying renewed, joint motion to place documents under seal, and stressing that parties must offer legal justification for placing documents under seal, not merely label documents as confidential); *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978) (common law right of access cannot be overcome by “stereotyped and conclusory statements”).²

The “good cause” standard requires the trial court to “balance the respective interests of the parties.” *Chicago Tribune*, 263 F.3d at 1313. Whether good cause exists depends on the nature and character of the information in question. *Romero*, 480 F.3d at 1246. In balancing the public interest in access to court documents against a party’s interest in keeping the information confidential, courts consider

whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.

Romero, 480 F.3d at 1246.

The Local Rules for the Middle District of Florida also prescribe the contents of a motion to seal. The movant must include (i) an identification and description of each item proposed for sealing; (ii) the reason that filing each item is necessary; (iii) the reason that sealing each item is necessary; (iv) the reason that a means other than sealing is unavailable or unsatisfactory to preserve

²In *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206, 1207 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

the interest advanced by the movant in support of the seal; (v) a statement of the proposed duration of the seal; and (vi) a memorandum of legal authority supporting the seal. M.D. Fla. L.R. 1.09(a).

Plaintiff's motion fails to show "good cause" for sealing each document and fails to provide the reason a means other than sealing is unavailable (such as redaction), other than stating that Defendant designated a document as "Confidential." The right to file a document under seal does not automatically flow from Defendant's designation of certain documents as "Confidential." *See Baxter*, 297 F.3d at 545; *Brown*, 960 F.2d at 1016. Notwithstanding, Defendant publically filed all but two documents designated as "Confidential" in support of its motion for summary judgment. (See Dkts. 46-13, 46-14, 46-15, 46-16, 46-17, 46-19, 46-22, 47-1, 47-3, 47-4, 47-9, 47-15, 48-11).

Accordingly, Plaintiff's Unopposed Motion to Seal Evidence in Support of Motion for Summary Judgment (Dkt. 43) is **DENIED *without prejudice***.

DONE AND ORDERED this 9th day of January, 2017.



JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of Record