

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:16-CV-889-D

OPTIMA TOBACCO CORPORATION, a)
Florida corporation,)
)
Plaintiff,)
)
v.)
)
U.S. FLUE-CURED TOBACCO)
GROWERS, INC. and UETA, INC.,)
)
Defendants.)

ORDER

This case comes before the court on the motion (D.E. 10) by plaintiff Optima Tobacco Corporation (“plaintiff”) to seal its unredacted complaint (D.E. 8) and Exhibit A thereto (D.E. 9), a manufacturing agreement.¹ The motion to seal is supported by a memorandum (D.E. 11) and unopposed by defendants U.S. Flue-Cured Tobacco Growers, Inc. and UETA, Inc. (collectively “defendants”). See D.E. 26 ¶¶ 8, 9. For the reasons set forth below, the court will allow the motion in part and deny it in part.

DISCUSSION

The Fourth Circuit has directed that before sealing publicly filed documents the court must determine if the source of the public’s right to access the documents is derived from the common law or the First Amendment. *Doe v. Public Citizen*, 749 F.3d 246, 265-66 (4th Cir. 2014); *Stone v. Univ. of Md.*, 855 F.2d 178, 180 (4th Cir. 1988). The common law presumption in favor of access attaches to all judicial records and documents, whereas First Amendment protection is extended to only certain judicial records and documents, for example, those filed in

¹ The redacted version of the complaint is filed at Docket Entry 1 as a public document.

connection with a summary judgment motion. *Doe*, 749 F.3d at 267. Here, as noted, the documents sought to be sealed are a pleading and exhibit thereto, and therefore the right of access at issue arises under the First Amendment. *See Rushford v. New Yorker Magazine*, 846 F.2d 249, 252-53 (4th Cir. 1988).

While the presumption of access under the common law is not absolute and its scope is a matter left to the discretion of the district court, “[w]hen the First Amendment provides a right of access, a district court may restrict access ‘only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest.’” *Virginia Dep’t of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004). The burden of establishing the showing necessary to overcome a First Amendment right of access falls upon the party seeking to keep the information sealed. *Id.* Specific reasons must be presented to justify restricting access to the information. *Id.* (citing *Press-Enterprise Co. v. Superior Court*, 478 U.S.1, 15 (1986) (“The First Amendment right of access cannot be overcome by [a] conclusory assertion”)).

Here, this case arises from the alleged breach of a manufacturing agreement between the parties. Plaintiff seeks to redact certain portions of its complaint that relate to pricing and volume terms contained in the manufacturing agreement. It also seeks to seal in its entirety the manufacturing agreement comprising Exhibit A to the complaint.

Plaintiff has demonstrated that certain paragraphs of its unredacted complaint contain confidential business information that is subject to protection under a confidentiality provision in the manufacturing agreement, is not generally available to the public, and does not bear importance to any public matters. Based on this showing, the court finds that the presumption of access to the unredacted complaint has been overcome. *Wolfe v. Green*, No. 2:08-1023, 2010

WL 5175165, at *2 (S.D. W. Va. 15 Dec. 2010) (holding that First Amendment right of access overridden with respect to proposed redactions that included personal financial information).

Conversely, plaintiff has not demonstrated that the manufacturing agreement needs to be sealed in its entirety. Plaintiff characterizes the manufacturing agreement as “the contract that is at the heart of this dispute” and “the integral document that forms the basis of [plaintiff’s] breach of contract action.” Pl.’s Mem. (D.E. 11) 3, 4. Because of its importance to the case, sealing the manufacturing agreement in its entirety is not warranted. *See Knight v. Manufacturers & Traders Trust Co.*, 84 F. Supp. 3d 436, 446 (D. Md. 2015) (“[T]his ‘already strong presumption of access is further strengthened when a document directly affects an adjudication, such as a complaint in a motion to dismiss proceeding, as is the case here.’” (quoting *Tobacco Tech., Inc. v. Taiga Int’l. N.V.*, No. CCB-06-563, 2007 WL 172524, at *1 (D. Md. 17 Jan. 2007))).

In addition, the public must be given notice of a request to seal and a reasonable opportunity to challenge it. *In re Knight Publishing Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Here, the motion was filed on 9 November 2016. No opposition to this motion has been filed by any party or non-party despite a reasonable opportunity to do so.

Finally, the court is obligated to consider less drastic alternatives to sealing, and where a court decides to seal documents, it must “state the reasons for its decision to seal supported by specific findings and the reasons for rejecting alternatives to sealing in order to provide an adequate record for review.” *Id.* Because, as discussed, the unredacted complaint contains confidential information not generally available to the public and not bearing importance to public matters, the court finds that alternatives to sealing the unredacted complaint do not exist at the present time. The portion of plaintiff’s motion seeking to seal its unredacted complaint (D.E. 8) will therefore be allowed.

The court is not persuaded, however, that redaction is not a suitable alternative to sealing the manufacturing agreement in its entirety. Accordingly, the portion of the motion seeking the sealing of the manufacturing agreement will be denied. The manufacturing agreement shall remain under seal in accordance with Local Rule 79.2(b)(3), but will not be considered by the court. If it wishes to have the manufacturing agreement considered by the court, it may file a proposed redacted version of it or file it as a publicly filed document, as set forth below. Note that the public filing of the manufacturing agreement may vitiate the grounds for redaction of the complaint and require the court to revisit the issue of whether the unredacted copy of the complaint may properly be sealed.

CONCLUSION

For the foregoing reasons, IT IS ORDERED that plaintiff's motion (D.E. 10) to seal is ALLOWED IN PART and DENIED IN PART as follows:

1. The portion of plaintiff's motion seeking the sealing of the unredacted copy of the complaint (D.E. 8) is ALLOWED.
2. The Clerk shall retain the copy of the unredacted complaint at Docket Entry 8 under permanent seal in accordance with Local Civil Rule 79.2, E.D.N.C.
3. The portion of plaintiff's motion seeking the sealing of the manufacturing agreement (D.E. 9) is DENIED.
4. The Clerk shall retain under seal the copy of the manufacturing agreement at Docket Entry 9, but it will not be considered by the court. If plaintiff wishes to have the manufacturing agreement considered by the court, it shall file by 10 August 2017 either (1) a proposed redacted version of the manufacturing agreement, accompanied by a motion to seal, or (2) an unredacted copy of the manufacturing agreement as a public document.

This 27th day of July 2017.



James E. Gates
United States Magistrate Judge