

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

GEORGE M. KARL, *et al.*,

Plaintiffs,

vs.

Civil Action 2:09-CV-34
Judge Sargus
Magistrate Judge King

GORDON BIZAR, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court on *Plaintiff Bret A. Adams's Second Motion to Seal Portions of Defendants' Counterclaim and Portions of Defendants' Memo in Opposition to Plaintiff Adams's Motion to Seal*, Doc. No. 25 ("*Second Motion to Seal*"). For the reasons set forth below, the *Second Motion to Seal* is **DENIED**.

I. BACKGROUND

After plaintiffs filed the original complaint in the Court of Common Pleas for Franklin County, Ohio, the action was removed to this Court. *Notice of Removal*, Doc. No. 2; *Complaint*, Doc. No. 3. Plaintiffs later amended the complaint, alleging four separate claims as to each of the three plaintiffs: tortious interference with business (Count I), tortious interference with business relations (Count II), tortious interference with contract (Count III), and defamation (Count IV). *Amended Complaint*, ¶¶ 40-59, Doc. No. 5 ("*Am. Compl.*"). Thereafter, defendants filed a counterclaim for abuse of process, alleging that plaintiffs initiated this action "with the improper purpose to discourage Global Aggregation from pursuing the purchase of Corazon." *Counterclaim*, Doc. No. 8, ¶ 17.

Plaintiff Bret A. Adams, an individual who owns a controlling membership interest in plaintiff Tartan Fields Golf Club, Ltd. and Tartan Development Company, LLC ("Corazon"), subsequently moved to seal defendants' entire counterclaim, including Exhibit B attached thereto, alleging that defendants knowingly submitted criminal records that intentionally misrepresent the facts and their legal consequences. *Am. Compl.*, ¶¶ 1-3, 13, 17; *Plaintiff Bret A. Adams's Motion to Seal Defendants' Counterclaim*, Doc. No. 20 ("*First Motion to Seal*"). After defendants opposed this motion, Doc. No. 22, Plaintiff Adams withdrew the motion to seal. Doc. No. 23; *Order*, Doc. No. 24.

Plaintiff Adams then filed the instant motion, seeking to seal Paragraph 22 of the *Counterclaim*, Exhibit B attached thereto, and Exhibit D attached to defendants' opposition to the *First Motion to Seal* (collectively, "law enforcement records"). *Second Motion to Seal*, pp. 1-4. Paragraph 22 of the *Counterclaim* alleges that Plaintiff Adams "has instituted litigation or otherwise threatened it to secure an ulterior purpose" and has engaged in a "pattern of inappropriate threats." *Counterclaim*, ¶ 22. Exhibit B to the *Counterclaim* consists of several documents from Pickaway County Sheriff's Office and the Circleville Municipal Court that purportedly support the allegations contained in Paragraph 22 of the *Counterclaim*. Exhibit D attached to defendants' opposition to the *First Motion to Seal* is duplicative of Exhibit B to the *Counterclaim*. The *Second Motion to Seal* is fully briefed and ripe for resolution.

II. STANDARD

A strong public right of access attaches when a document is filed or utilized in public proceedings. *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1178-79 (6th Cir. 1983). At that point, a court's ability to restrict access to what is ordinarily public information is narrowed to instances where restriction is necessary to preserve a litigant's right to a fair trial and where necessary to protect "certain privacy rights of participants or third parties, trade secrets and national security." *Id.* at 1179.

A "naked conclusory statement" that public access to information "would harm [a] company's reputation is not sufficient to overcome the strong common law presumption in favor of public access to court proceedings and records." *Id.* at 1179-80. "[O]nly the most compelling reasons can justify the total foreclosure of public and professional scrutiny" of documents forming the basis of the adjudication. *Id.* at 1180 (quoting *Joy v. North*, 692 F.2d 880, 894 (6th Cir. 1982)) (internal citations omitted). Even then, "a court should not seal records unless public access would reveal legitimate trade secrets, a recognized exception to the right of public access to judicial records." *Id.*

Moreover, "business information that might harm a litigant's competitive standing" may be a proper subject of a formal protective order. *In re Knoxville News-Sentinel Co., Inc.*, 723 F.3d 470, 474 (6th Cir. 1983). Bank records, too, may be sealed where necessary to protect the privacy interests of parties. *Id.* at 477. "[C]ommercial self-interest," however, will not provide grounds justifying the sealing of documents. *The Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 225 (6th Cir. 1996). Similarly, a party's interest "in

avoiding adverse publicity" will rarely outweigh the public's interest in disclosure, particularly where the subject of the litigation is of great public concern. *In re Knoxville*, 723 F.3d at 477.

III. DISCUSSION

Plaintiff Adams argues that the information addressed in his motion falsely suggests that he is in legal and professional jeopardy when in fact the criminal charges referenced in the *Counterclaim* were dismissed on January 14, 2009, six days before defendants filed their *Counterclaim*. *Second Motion to Seal*, pp. 2-5 (citing Exhibit A attached thereto). Plaintiff Adams further contends that the law enforcement records are "in no way relative to, or probative of, Defendants' claims. . . . They are not used to rebut Plaintiffs' claims" and that defendants' "goal" in referring to those records was to persuade others to make negative character judgments about him. *Id.* at 3, 5. Second, Plaintiff Adams argues that the Circleville Municipal Court has sealed the records at issue pursuant to O.R.C. § 2953.52, *et seq.*, and that inquiry into any record sealed by this statute is prohibited by O.R.C. § 2953.55. *Id.* at 5-6 (citing Exhibit B attached thereto). Finally, after arguing that "[c]ourts do indeed consider the subject matter of the material proposed to be sealed," Plaintiff Adams contends for the first time in reply that a content-neutral exception to the strong policy of public access based on O.R.C. § 2953.52, *et seq.*, applies to his request to seal.¹ *Reply of*

¹More specifically, Plaintiff Adams contends that a restriction on public access is proper where the request to seal satisfies a three-part test: "that the [restriction] serve an important governmental interest; that this interest be unrelated to the content of the information to be disclosed in the proceeding; and that there be no less restrictive way to meet that goal." *Second Motion to Seal*, p. 3 (citing, *inter alia*, *Brown & Williamson*, 710 F.2d

Bret Adams to Defendants' Memorandum in Opposition to Plaintiff Adams' Second Motion to Seal, Doc. No. 28, pp. 2-6 ("Reply") (citing, *inter alia*, *In re Knoxville*, 723 F.2d at 476-78, and *Brown & Williamson*, 710 F.2d at 1179).

Defendants take the position that the law enforcement documents are relevant to defendants' abuse of process counterclaim and that, by asserting a defamation claim, Plaintiff Adams has placed his reputation at issue in this case. *Defendants Gordon Bizar and Global Aggregation Corporation's Memorandum in Opposition to Plaintiff Bret A. Adams' Second Motion to Seal Portions of Defendants' Counterclaim and Portions of Defendants' Memo in Opposition to Plaintiff Adams' Motion to Seal*, Doc. No. 27 ("Memo. in Opp."), pp. 1-2. Defendants argue that a state court order to seal does not (1) change the fact that the law enforcement records at issue had previously been publicly available, or (2) protect Plaintiff Adams from having to address his underlying actions, detailed in the challenged law enforcement records, in this Court. *Id.* at 1-3. Finally, defendants argue that Plaintiff Adams has failed to justify sealing the disputed information under any of the limited exceptions available to him under *Brown & Williamson*. *Id.* at 5-8.

Defendants' arguments are well-taken. The Court is not persuaded that the argument advanced by Plaintiff Adams for the first time in his *Reply* applies in this case. First, the other rationales offered by Plaintiff Adams undermine his later contention that a content-

at 1179). He argues that the state court order to seal pursuant to O.R.C. § 2953.52, *et seq.* serves an important governmental purpose because it provides a second chance to criminal defendants who have been found not guilty.

neutral exception is appropriately applied here. For example, Plaintiff Adams initially expressed concern that the content of the materials that he seeks to seal are inflammatory, that they will create the false impression that he is in serious legal and professional jeopardy and that they will cause people to reach negative character judgments about him. *Second Motion to Seal*, pp. 2-3, 5. Indeed, plaintiff's initial memorandum in support of his motion relied primarily on these content-based concerns as justification for sealing the *Counterclaim* and law enforcement materials. *Id.* at 7. It was only in reply to defendants' discussion of the narrow exceptions to the strong presumption of openness that Plaintiff Adams argued that a content-neutral exception based on O.R.C. § 2953.52, *et seq.*, applies here. *Reply*. This attempt is unpersuasive for the additional reason that Plaintiff Adams's purported exception differs significantly from the types of content-neutral exceptions contemplated by *Brown & Williamson, e.g.*, regulating the number of spectators or the use of flashbulbs or cameras in a courtroom. See *Brown & Williamson*, 710 F.2d at 1179. Plaintiff Adams has simply not established that his justification for sealing this Court's records is content-neutral.

The only other justification for sealing advanced by Plaintiff Adams relates to his concern for his reputation. However, as discussed *supra*, claimed harm to one's reputation or injury to one's standing in the community does not warrant a deviation from the strong presumption of public access. See *id.* at 1179-80; *In re Knoxville*, 723 F.3d at 477.

Moreover, to adopt Plaintiff Adams's argument would be tantamount

to permitting a state court order to override a federal court's power and discretion to maintain its own records. Stated differently, if this Court were to accept Plaintiff Adams's argument that O.R.C. § 2953.53 is sufficient to overcome the strong policy in favor of public access, a party could successfully move to seal any document filed in federal court that had previously been sealed by a state court order issued pursuant to that statute. Plaintiff Adams himself agrees that this reasoning is untenable, *Second Motion to Seal*, p. 6, and courts have rejected this result as well. See, e.g., *Schwab v. Gallas*, 724 F. Supp. 509, 510 (N.D. Ohio 1989) ("[R.C. §] 2953.32 cannot be construed as affecting federal records either maintained or in the custody of federal officers."); *In re Application of Pacifico for Sealing of Records*, 129 Ohio App. 3d 152, 153 (2nd Dist. Ct. App. 1998) ("[C]ommon pleas courts in this state are without jurisdiction or constitutional authority to order federal courts, agencies, or officials to seal federal conviction records[.]"). Accordingly, because Plaintiff Adams has not established an exception to the strong public right of access, his request to seal must fail.

WHEREUPON, Plaintiff Bret A. Adams's *Second Motion to Seal Portions of Defendants' Counterclaim and Portions of Defendants' Memo in Opposition to Plaintiff Adams's Motion to Seal*, Doc. No. 25, is **DENIED**.

October 28, 2009

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge