UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	)	CASE No.	19-21619 (JJT)
	)		
JOHN ALAN SAKON,	)	CHAPTER	11
Debtor.	)		
	)	RE: ECF Nos.	101, 114

ORDER DENYING THE TOWN OF GLASTONBURY'S MOTION TO SEAL

I. INTRODUCTION

Before the Court is the Town of Glastonbury's (the "Town") Motion to Seal (ECF No. 101, the "Motion") wherein the Town seeks, pursuant to D. Conn. L. Civ. R. 5(e), permission to file under seal (1) an unredacted version of the Town's Motion to Convert the Debtor's Case to a Case Under Chapter 7 or, in the Alternative, to Dismiss (ECF No. 97, the "Motion to Convert"), and (2) Exhibits 19 and 20 to the Declaration of Eric S. Goldstein in Support of the Motion to Convert (ECF No. 98, the "Goldstein Declaration") (collectively, the "Documents"). As indicated in its papers and before this Court, the Town's filing of the instant Motion is simply precautionary, as the Town "disputes the application of the Protective Order to the materials that the Debtor produced pursuant to the Court's January 15, 2020 Order . . . [and] does not believe that the documents are of the sensitive, commercial nature as requiring protection under the Protective Order." (ECF No. 101, ¶ 4).

The United States Trustee (the "UST") filed a Statement Regarding the Town's Motion (ECF No. 114, the "UST Statement"), wherein the UST underscored the presumption of transparency and the importance of public access to documents under the Bankruptcy Code, as well as the high burden the moving party must overcome when seeking to prevent public access

to certain materials. A hearing on the Motion and the UST Statement was held on March 6, 2020 (ECF No. 139), at which time the Court took the matter under advisement. For the reasons stated herein, the Town's Motion to Seal is GRANTED in part and DENIED in part.

II. BACKGROUND

The Debtor, John Alan Sakon (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on September 19, 2019 (ECF No. 1). In his amended schedules, the Debtor lists the Town as a creditor with secured claims as to three separate properties (ECF No. 40, p. 22). The Town thereafter filed a Motion for 2004 Examination of the Debtor (ECF No. 43, the "Motion for Examination") seeking "to determine whether there is a reasonable prospect of the Debtor obtaining financing to support a confirmable plan of reorganization . . . in light of the Debtor's nominal liquid assets and his estimated post-petition losses of more than $2,500 per month." ECF No. 43, p. 1.

In his Objection to the Motion for Examination (ECF No. 48, the "Debtor's Objection") the Debtor urged that because certain financial documents sought by the Town may contain confidential commercial information, the parties should "enter into a confidentiality agreement . . . ." ECF No. 48, ¶ 4. Based on these concerns, the parties moved for the entry of the Standing Protective Order (ECF No. 54, the "Protective Order") to govern the document production by the Debtor in response to the Town's Rule 2004 Examination. Through the Protective Order, the Debtor could designate certain information, documents, and other materials as either "confidential" or "confidential-attorneys' eyes only" depending on the information pertained therein.[1] The Protective Order was granted and entered by the Court on December 16, 2019 (ECF No. 58).

[1] Relevant to the matter now before the Court is paragraph 14 of the Protective Order, which states: "Any Designated Material which becomes part of an official judicial proceeding or which is filed with the Court is public.

Thereafter, in a separate and unrelated order entered by the Court, the Debtor was directed to serve upon the Town, the UST, and other specified creditors "any proposed financing agreements, term sheets and/or letters of intent provided by prospective lenders" (ECF No. 79, the "January 15 Order"). Pursuant to the January 15 Order, the Debtor produced these materials and, ostensibly as an attempt to comply with the Protective Order, designated them as "CONFIDENTIAL-ATTORNEYS' EYES ONLY."[2] The information contained in the Documents, which was first disclosed by the Debtor and which the Town now seeks to file under seal, relates to proposed letters of intent from prospective lenders, including conditional loan quotes, rates, terms, and communications related thereto.

At a hearing on the Motion held on March 6, 2020 (ECF No. 139), the Debtor clarified that his intention of designating the Documents as "CONFIDENTIAL-ATTORNEYS' EYES ONLY" was to protect himself during the process of communicating with various lenders to secure financing. Both the Town and the UST, however, expressed concerns that the Documents did not appear to be the type of documents that are typically subject to sealing. The Town further acknowledged its responsibility to serve unredacted documents upon the UST.[3] After hearing the parties' arguments, the Court took the matter under advisement.

III. DISCUSSION

There is a strong presumption and public policy favoring public access to court records. *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24,

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Such Designated Material will be sealed by the Court only upon motion and in accordance with applicable law, including Rule 5(e) of the Local Rules of this Court. This Protective Order does not provide for the automatic sealing of such Designated Material. If it becomes necessary to file Designated Material with the Court, a party must comply with Local Civil Rule 5 by moving to file the Designated Material under seal." ECF No. 58, ¶ 14.

[2] Pursuant to the Protective Order, documents labeled "CONFIDENTIAL-ATTORNEYS' EYES ONLY" contain "information that the disclosing party reasonably and in good faith believes is so highly sensitive that its disclosure to a competitor could result in significant competitive or commercial disadvantage to the designating party." ECF No. 58, ¶ 4.

[3] During the hearing on the matter, the UST confirmed receipt of the unredacted documents.

26 (2d Cir. 1994) (*citing Nixon v. Warner Commc'n, Inc.*, 435 U.S. 589, 597–98 (1978)); *see also U.S. v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). This right of public access is "rooted in the public's First Amendment right to know about the administration of justice." *In re Orion Pictures Corp., supra*, 21 F.3d at 26 (public access "helps safeguard 'the integrity, quality, and respect in our judicial system,' and permits the public 'to keep a watchful eye on the workings of public agencies'" [citations omitted]). "A court's ability to limit the public's right to access remains an extraordinary measure that is warranted only under rare circumstances as 'public monitoring is an essential feature of democratic control.'" *In re Anthracite Capital, Inc.*, 492 B.R. 162, 171 (Bankr. S.D.N.Y. 2013) (*quoting Gletzer v. Anderson Worldwide, S.C.*, 2007 WL 273526, at *2–3 (S.D.N.Y. Jan. 30, 2007)).

This presumption of open access is codified in section 107 of the Bankruptcy Code. *See* 11 U.S.C. § 107. Section 107(b), however, provides a narrow exception to this general presumption of access by empowering a court to protect information related to "a trade secret or confidential research, development, or commercial information; or . . . scandalous or defamatory matter." 11 U.S.C. §§ 107(b)(1)–(2). Pursuant to Federal Rule of Bankruptcy Procedure 9018, upon motion or on its own initiative, "the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . contained in any paper filed in a case under the Code." Fed. R. Bankr. P. 9018. The moving party bears the burden of showing "extraordinary circumstances." *In re Orion Pictures Corp., supra*, 21 F.3d at 27.

The Town, both through its Motion and its arguments at the March 6 hearing, contends that the filing of this Motion was merely precautionary, and was filed so as to avoid a dispute concerning the proper designation of the Documents under the Protective Order. The Debtor's

main contention is that his ability to obtain a loan under favorable terms will be impaired if potential lenders have access to the rates and terms already proposed, and that this particular type of information is precisely the type of commercially sensitive information that qualifies for protection.

Critically, the commercial information exception is intended to protect information that could harm the movant or give competitors an unfair advantage. *In re Dreier, LLP,* 485 B.R. 821, 823 (Bankr. S.D.N.Y. 2013); *see also In re Lomas Fin. Corp.*, 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991) (the commercial information exception also extends to disclosures that would have a "chilling effect on [business] negotiations, ultimately affecting the viability of the Debtors"). This Court finds that certain information contained in the Documents, namely any potential loan rates and terms, constitutes the type of commercial information that warrants protection and would impact negotiations between other prospective lenders and the Debtor.

When protection is warranted under 11 U.S.C. § 107, the Court has discretion in determining the manner in which the commercial information is protected. *In re Borders Group, Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011). "Redacting documents to remove only protectable information is preferable to wholesale sealing. The policy favoring public access supports making public as much information as possible while still preserving confidentiality of protectable information." *Id.* (*citing Nixon, supra*, 435 U.S. at 597–98)). After reviewing the information disclosed in the Documents, this Court finds that a direct redaction of any proposed loan rates and/or terms, rather than a wholesale sealing of the entirety of the Documents, will protect the Debtor's interest in obtaining favorable financing terms while assuring that the information relevant to the Town's Motion to Convert, the Goldstein Declaration, and any other

information relevant to the Court's and other constituents' understanding of whether there is a reasonable prospect of reorganization, will be publicly disclosed.

IV. CONCLUSION

For the reasons, and to the extent, set forth above, the Town of Glastonbury's Motion to Seal is GRANTED in part and DENIED in part. Due to the sensitive and/or prejudicial nature of certain information included in the Documents, it is hereby

ORDERED: The Town is directed to file upon the docket an updated version of its Motion to Convert with direct redactions of any proposed loan rates and/or terms consistent with this Ruling; it is further

ORDERED: With respect to Exhibits 19 and 20 of the Goldstein Declaration, the Town is directed to file upon the docket an updated version with direct redactions of any proposed loan rates and/or terms consistent with this Ruling; it is further

ORDERED: The redacted filings are limited to a period of 6 months so as to allow for competitive negotiations between the Debtor and potential lenders.

IT IS SO ORDERED at Hartford, Connecticut this 25th day of March 2020.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut