

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 4887

MARTY L. KARRIKER,

Plaintiff,

v.

HARPOON HOLDINGS, L.P.,

Defendant.

**ORDER AND OPINION ON
DEFENDANT’S MOTION TO STRIKE
OR, IN THE ALTERNATIVE, TO SEAL
AND
ORDER ON DEFENDANT’S MOTION
FOR LEAVE TO FILE UNDER SEAL**

Raynor Law Firm, PLLC, by Kenneth R. Raynor, for Plaintiff Marty L. Karriker.

McGuireWood, LLP, by Heidi D. Siegmund, Zachary L. McCamey, Christopher M. Michalik, and Elisabeth Pomeroy, for Defendant Harpoon Holdings, L.P.

Conrad, Judge.

1. Defendant Harpoon Holdings, L.P. has moved to strike or seal several documents filed by Plaintiff Marty L. Karriker. Harpoon also seeks to seal portions of its reply brief filed in support of its motion to strike or seal.

2. **Background.** In May 2023, Harpoon moved to dismiss Karriker’s complaint. (Def.’s Mot. Dismiss, ECF No. 10.) A month later, Karriker publicly filed several documents in opposition to that motion, including his affidavit, (Karriker Aff., ECF No. 16), an affidavit from his attorney, (Raynor Aff., ECF No. 15), and a few supporting exhibits, (Karriker Aff. Ex. A, ECF No. 16.1; Raynor Aff. Exs. A & B, ECF Nos. 15.1, 15.2). Claiming that Karriker’s filings contain “highly confidential” information, Harpoon immediately moved to place them provisionally under seal. (Mot. Provisionally Seal 1, ECF No. 17.) Out of an abundance of caution, the Court,

on the same day, placed both affidavits and their exhibits under seal and directed Harpoon to file a brief in support of its motion to seal in compliance with Business Court Rule (“BCR”) 5.2. (Order Mot. Provisionally Seal ¶¶ 3, 4, ECF No. 19.)

3. Harpoon then moved, under Rule 12(f) of the North Carolina Rules of Civil Procedure, to strike the disputed materials to the extent that they include a draft version of its Amended and Restated Limited Partnership Agreement (“Draft LPA”). In the alternative, Harpoon asked to seal the Draft LPA. (*See* Def.’s Mot. Strike or Seal ¶ 7, ECF No. 23; *see also* Def.’s Mem. Supp. 4–12, ECF No. 22.) Karriker opposed the motion to strike or seal. (Pl.’s Opp’n, ECF No. 27.) Harpoon filed a reply brief provisionally under seal in support of its motion, (Def.’s Reply, ECF No. 32 (sealed)), along with a motion to seal the reply brief and a public redacted version of the brief, (Def.’s Mot. Seal, ECF No. 33; Def.’s Reply, ECF No. 35 (public)).

4. After full briefing,* the Court held a hearing on Harpoon’s motion to dismiss, its motion to strike or seal, and a BCR 10.9 discovery dispute on 15 August 2023. Before the Court had an opportunity to rule on the motion to dismiss and motion to strike or seal, Karriker filed an amended complaint, (Am. Compl., ECF No. 50), which “rendered any argument regarding the original complaint moot,” *Houston v. Tillman*, 234 N.C. App. 691, 695 (2014). The Court therefore denied Harpoon’s motion to dismiss as moot without addressing the merits. (Order Def.’s Mot. Dismiss, ECF No. 52.)

* Karriker did not file a brief in support of or opposition to Harpoon’s 7 August 2023 motion to seal its reply brief, so the Court will consider and decide the motion as uncontested. *See* BCR 5.2(c), 7.6. The Court also elects to decide this motion without a hearing. *See* BCR 7.4.

5. The amendment did not moot Harpoon's motion to strike or seal or its motion to seal its reply brief, however. Both are now ripe for decision.

6. **Motion to Strike.** Harpoon offers no persuasive reason to strike the Draft LPA. It bases its motion on Rule 12(f), which allows a court to “strike ‘from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter.’” *Carpenter v. Carpenter*, 189 N.C. App. 755, 759 (2008) (quoting N.C. R. Civ. P. 12(f)). But the material at issue is not in a pleading; it is in an exhibit submitted in opposition to a motion to dismiss. Rule 12(f) simply does not apply. *See Travelers Ins. Co. v. Ryder Truck Rental, Inc.*, 34 N.C. App. 379, 380 (1977) (holding, for similar reasons, that a Rule 12(f) motion “is not the proper motion by which to challenge a notice of dismissal”).

7. Even apart from Rule 12(f), trial courts have discretion to strike irrelevant or inadmissible evidence tendered in connection with a dispositive motion. Here, though, the Court never reached the merits of Harpoon's motion to dismiss because it was rendered moot by Karriker's filing of his amended complaint. It would be pointless to strike an exhibit that the Court never considered. The better practice is to deny a motion to strike as moot. *See, e.g., Window World of Baton Rouge, LLC v. Window World, Inc.*, 2019 NCBC LEXIS 54, at *102–03 (N.C. Super. Ct. Aug. 16, 2019) (collecting cases); *see also Blair Concrete Servs. v. Van-Allen Steel Co.*, 152 N.C. App. 215, 219 (2002) (reviewing ruling on a motion to strike evidence “for abuse of discretion”).

8. Furthermore, Harpoon appears to want not only to strike the Draft LPA and prevent its consideration but also to remove all trace of it from the Court's file. (See Def.'s Mot. Strike or Seal 1; Def.'s Reply 12.) That is an extraordinary request. To maintain transparency and the integrity of the record, the Court does not purge filed documents in all but the rarest of circumstances. Those circumstances are not present in this case.

9. The Court therefore denies Harpoon's motion to strike.

10. **Motions to Seal.** The presumption is that court filings are public records. See *Doe v. Doe*, 263 N.C. App. 68, 79–81 (2018). They must be “open to the inspection of the public,” except as prohibited by law. N.C.G.S. § 7A-109(a); see *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463 (1999). For that reason, the burden is on the designating party to overcome that presumption. See BCR 5.1(c); *PDF Elec. & Supply Co. v. Jacobsen*, 2020 NCBC LEXIS 80, at *4 (N.C. Super. Ct. July 8, 2020).

11. To meet this burden, the designating party must clearly articulate “the circumstances that warrant sealing the document.” BCR 5.2(b)(2). “Cryptic or conclusory claims of confidentiality won't do.” *Addison Whitney, LLC v. Cashion*, 2020 NCBC LEXIS 74, at *4 (N.C. Super. Ct. June 10, 2020). Instead, the designating party must explain how public “disclosure [of the document] would cause serious harm to [the] parties” or third parties to justify sealing. *Bradshaw v. Maiden Cap. Opportunity Fund, LP*, 2020 NCBC LEXIS 42, at *10 (N.C. Super. Ct. Apr. 7, 2020) (second alteration in original) (quoting *Lovell v. Chesson*, 2019 NCBC LEXIS 76, at

*5 (N.C. Super. Ct. Oct. 28, 2019)). The moving party must also file either a public version of a provisionally sealed document in which “redactions and omissions [are] as limited as practicable” or a nonconfidential description of each document. BCR 5.2(f).

12. To start, the Court notes that Harpoon does not seek to seal the Karriker affidavit (ECF No. 16), the Raynor affidavit (ECF No. 15), or any supporting materials beyond the Draft LPA. (*See* Def.’s Mot. Strike or Seal 1–2; *see also* Def.’s Mem. Supp. 7, ECF No. 22.) The Court will therefore unseal these filings.

13. Harpoon does seek to seal the Draft LPA and all references to it in its reply brief, arguing that it contains sensitive information about employment and ownership incentives, investor rights, and internal corporate governance. (*See* Def.’s Mem. Supp. 4, 8; Def.’s Reply 6; Def.’s Mot. Seal 1.) That is a plausible and sufficient basis for sealing in this unique context. The Court did not consider the Draft LPA in connection with Harpoon’s motion to dismiss and, following the filing of the amended complaint, likely will never consider it as the case goes on. As a result, the Draft LPA appears to have no bearing on any disputed issue, and the public’s interest in it is negligible. *See Harris v. Ten Oaks Mgmt., LLC*, 2023 NCBC LEXIS 91, at *15 (N.C. Super. Ct. July 31, 2023). The Court will therefore grant the motion to seal the Draft LPA. The parties should take note that the decision to seal the Draft LPA does not imply that the Court will grant a motion to seal similar or related documents in the future when the public’s interest may be stronger. (*See* Pl.’s Mot. Seal Am. Compl., ECF No. 51.)

14. **Conclusion.** For these reasons, the Court hereby **ORDERS** as follows:
- a. Harpoon's motion to strike is **DENIED**.
 - b. Harpoon's alternative motion to seal is **GRANTED in part** as to Exhibit A to the Raynor affidavit. (ECF No. 15.1.) This document shall remain under seal pending further order of the Court. Harpoon shall have through and including 13 October 2023 to file a notice of filing this exhibit entirely under seal that contains a nonconfidential description of the exhibit in compliance with BCR 5.2(f).
 - c. Harpoon's alternative motion to seal is otherwise **DENIED as moot**. The Mecklenburg County Clerk of Superior Court shall unseal the Raynor affidavit, (ECF No. 15), Exhibit B to the Raynor affidavit, (ECF No. 15.2), the Karriker affidavit, (ECF No. 16), and Exhibit A to the Karriker affidavit, (ECF No. 16.1), no later than 6 November 2023.
 - d. Harpoon's motion to seal its reply brief in support of its motion to strike or seal, (ECF No. 32), is **GRANTED**. This document shall remain under seal pending further order of the Court.

SO ORDERED, this the 6th day of October, 2023.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases