

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re NEWPORT CORPORATION
SHAREHOLDER LITIGATION

SUPREME COURT NO. 80636

District Court No. A733154

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Clerk of Supreme Court

HUBERT C. PINCON; and LOCALS
302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS-
EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT TRUST,

Appellants,

vs.

ROBERT J. PHILLIPPY; KENNETH
F. POTASHNER; CHRISTOPHER
COX; SIDDHARTHA C. KADIA;
OLEG KHAYKIN; and PETER J.
SIMONE,

Respondents.

**UNOPPOSED MOTION TO FILE
APPELLANTS' REPLY BRIEF UNDER SEAL**

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Appellants HUBERT C. PINCON; and LOCALS 302 AND 612 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS-EMPLOYERS CONSTRUCTION INDUSTRY RETIREMENT TRUST (“Appellants”), by and through undersigned counsel, hereby submit this unopposed motion to file their Reply Brief under seal. This motion is made and based upon the Stipulated Confidentiality Agreement and Protective Order Regarding the Sealing of Court Records, dated April 15, 2016 (the “Protective Order”),¹ to which Appellants and Respondents ROBERT J. PHILLIPPY; KENNETH F. POTASHNER; CHRISTOPHER COX; SIDDHARTHA C. KADIA; OLEG KHAYKIN; and PETER J. SIMONE (“Respondents”) are bound as signatories, Part VIII of the Nevada Rules for Sealing and Redacting Court Records (the “SRCR”), the attached Memorandum of Points and Authorities, and the prior orders of this Court regarding filing Appellants’ Opening Brief, Respondents’ Answering Brief, and portions of the Joint Appendix under seal.

I. MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to the Protective Order, various briefs and exhibits have been filed under seal in this Action, both in the District Court and in this Court. This includes, by order of this Court, Appellants’ Opening Brief, Respondents’ Answering Brief, and portions of the Joint Appendix. *See* Order Granting Motions, dated November 30, 2020; Order Granting Motion, dated February 12, 2021. Appellants’ Reply Brief, like the prior briefing on this Appeal, also cites information subject to the Protective Order. Accordingly, Appellants move to file their Reply Brief under seal.

II. LEGAL ARGUMENT

A. Standards

SRCR 3 sets forth the grounds upon which the Court may seal or redact documents or exhibits filed with the Court. Pursuant to SRCR 3(1), “[a]ny person may

¹ The Protective Order was submitted to the Court on November 16, 2020, as Exhibit 2 to Respondents’ Motion to Redact Appellants’ Opening Brief.

request that the court seal or redact court records for a case that is subject to these rules by filing a written motion.” SRCR 3(1). SRCR 3(4) provides, in pertinent part:

4. Grounds to seal or redact; written findings required. The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties’ agreement alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:

(a) The sealing or redaction is permitted or required by federal or state law;

(b) The sealing or redaction furthers an order entered under NRCP 12(f) or JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 26(c).

SRCR 3(4)(a)-(b). SRCR 3(5)(b) states that “[a] court record shall not be sealed under these rules when reasonable redaction will adequately resolve the issues before the court under subsection 4 above.” SRCR 3(5)(b).

B. The Court Should Allow Appellants’ Reply Brief to Be Sealed

Appellants’ Reply Brief should be sealed pursuant to SRCR 3(4). Newport Corporation has designated certain of the information obtained through discovery in this Action as Confidential or Highly Confidential pursuant to the terms of the Protective Order. The Protective Order only allows such designations when such information “constitutes, reflects, or discloses non-public, trade secrets, proprietary, and/or sensitive business or personal information or other legally protected information” or where it contains “extremely sensitive, highly confidential, non-public information, consisting either of trade secrets or proprietary or other highly confidential business, financial, regulatory, or strategic information.” *See* Protective Order, ¶2.

Certain of the information designated as confidential by Respondents is cited and/or summarized in Appellants' Reply Brief. As a result, the Reply Brief should be sealed. Pursuant to SRCR 3(5)(b), Appellants can adequately resolve the issue by publicly filing a redacted copy of their Reply Brief.

Accordingly, pursuant to paragraph 7 of the Protective Order and SRCR 3(4) and 3(5)(b), Appellants therefore seek to seal their Reply Brief.

Appellants have conferred with Respondents' counsel and were informed that they do not oppose this Motion.

III. CONCLUSION

For the reasons stated herein, Appellants respectfully request that their Reply Brief be sealed pursuant to SRCR 3(4).

Dated this 30th day of March 2021.

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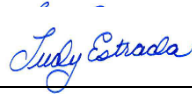
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March 2021, I submitted the foregoing UNOPPOSED MOTION TO FILE APPELLANTS' REPLY BRIEF UNDER SEAL for filing via the Court's eFlex electronic filing system to all parties of record.



Judy Estrada, an employee of H1 Law
Group