

NOT FOR PUBLICATION

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CLERK U.S. BANKRUPTCY COURT
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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SAN FERNANDO VALLEY DIVISION

In re:

LAUREL CANYON MK2, LLC,

Debtor.

Case No.: 1:15-bk-11763-MB

Chapter 11

**MEMORANDUM OF DECISION
DENYING EX PARTE APPLICATION TO
FILE SETTLEMENT AGREEMENT
UNDER SEAL [DKT. NO. 60]**

On September 10, 2015, Laurel Canyon MK2 LLC, debtor and debtor in possession (the “Debtor”) filed its *Renewed Ex Parte Application (Pursuant to this Court’s August 25, 2015, Ruling) for an Order Authorizing Debtor File Under Seal the Confidential Settlement Agreement* (the “Application”), Dkt. 60, and supporting declarations by Lee Lubin and Eric Bensamochan. On September 14, 2015, JPMorgan Chase Bank, N.A., filed *Secured Creditor JPMorgan Chase Bank, N.A.’s Limited Opposition to Second Ex Parte Application of the Debtor to File Settlement Under Seal* (the “Opposition”), Dkt. 61.

The Court has reviewed and considered the Application, the Opposition, and, *in camera*, the document that the Debtor seeks authority to file under seal and files this memorandum in order to explain its decision on the Application.

Access to papers filed in a bankruptcy case is governed by Bankruptcy Code section 107(a). See *Father M v. Various Tort Claimants (In re Roman Catholic Archbishop)*, 661 F.3d 417, 429-31 (9th Cir. 2011). Bankruptcy Code section 107(a) creates a strong presumption in favor of public access to all papers filed in a bankruptcy case:

Except as provided in subsections (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

11 U.S.C. § 107(a). The only exception potentially applicable here is under Bankruptcy Code section 107(b), which provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—
(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b). Rule 9018 of the Federal Rules of Bankruptcy Procedure parallels the foregoing statute, providing:

1 On motion or on its own initiative, with or without notice, the court
2 may make any order which justice requires (1) to protect the estate or
3 any entity in respect of a trade secret or other confidential research,
4 development, or commercial information, (2) to protect any entity
5 against scandalous or defamatory matter contained in any paper filed
6 in a case under the Code, or (3) to protect governmental matters that
are made confidential by statute or regulation. If an order is entered
under this rule without notice, any entity affected thereby may move
to vacate or modify the order, and after a hearing on notice the court
shall determine the motion.

7 The Debtor contends that Houston Apartment Holdings, LLC (“Houston”) is the beneficiary
8 of a prepetition state court judgment entered against the debtor, pursuant to a prepetition
9 confidential settlement agreement (the “Settlement Agreement”). The Debtor alleges that Houston
10 is enforcing the state court judgment in a manner that violates the settlement agreement and
11 indicates its intention to seek relief from this Court to enforce the settlement agreement. The
12 Debtor notes, however, that the parties to the Settlement Agreement are obligated under its terms to
13 maintain the confidentiality of that agreement.

14 By its Application, the Debtor seeks an order of this Court authorizing the filing under seal
15 of the Settlement Agreement. The only cause articulated for this relief is that the parties agreed at
16 the time of the settlement agreement to maintain its confidentiality. This is not cause to authorize
17 the filing under seal of a settlement agreement. See *Togut v. Deutsche Bank AG (In re Anthracite*
18 *Capital, Inc.)*, 492 B.R. 162 (Bankr. S.D.N.Y. 2013) (unsealing settlement agreement
19 notwithstanding condition that there would be no deal if the court did not maintain the agreement
20 under seal).

21 Moreover, the Court has reviewed the Settlement Agreement *in camera* and finds nothing
22 therein that appears to constitute a trade secret or confidential research, development, or
23 commercial information, or any material that is scandalous or defamatory matter.

1 The Court notes that under Bankruptcy Code section 107(b) (and Rule 9018) information
2 “is not commercial simply because it relates to business affairs.” *Robbins v. Tripp*, 510 B.R. 61
3 (D.S.C. 2014). Rather, it is “information which would cause ‘unfair advantage to competitors by
4 providing them information as to the commercial operations of the debtor.” *Video Software
5 Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994),
6 citing *In re Itel Corp.*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982).

7 Further, the Court notes that the contents of the Settlement Agreement no longer appear to
8 be confidential. In that certain civil action that has been removed to this Court from the Los
9 Angeles Superior Court, *Phoenix Surf vs. Smadi, Inc., et al*, Adv. No. 1:15-ap-01137, the publicly-
10 filed complaint already discloses much of the substance of the Settlement Agreement, which is an
11 essential basis of the relief requested in that proceeding.

12 The Court will enter a separate order denying the Application.

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23 Date: October 6, 2015



24 Martin R Barash
25 United States Bankruptcy Judge
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