

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

THEODORE HOSAFLOOK,

Plaintiff,

v.

**CIVIL ACTION NO. 1:17CV28
(Judge Keeley)**

OCWEN LOAN SERVICING, LLC,

Defendant.

**ORDER GRANTING MOTION TO
INTERVENE [DKT. NO. 182], GRANTING MOTION TO UNSEAL
[DKT. NO. 184], AND UNSEALING TWO DOCUMENTS [DKT. NOS. 69, 166]**

On November 13, 2019, Public Citizen, National Association of Consumer Advocates, West Virginia Consumer Protection Alliance, and West Virginia Association for Justice (collectively, "Nonprofits") moved to intervene in this closed case for the limited purpose of "invoking the First Amendment and common law right of public access to court records" (Dkt. No. 182). The Nonprofits also filed a motion to unseal Exhibit M to plaintiff Theodore Hosaflook ("Hosaflook's") motion for summary judgment (Dkt. No. 69) and the Court's memorandum opinion and order denying the parties' cross motions for summary judgment (Dkt. No. 166).

In support of these motions, the Nonprofits note that, although this Court previously "acknowledged that both the common law and the First Amendment give the public a presumptive right of access to court records," it declined to address those rights here because only a party had requested that the documents be unsealed

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(Dkt. No. 181 at 13). The defendant, Ocwen Loan Servicing, LLC (“Ocwen”), argues that the documents were properly sealed and should remain so because the trade secrets they contain are entitled to protection (Dkt. No. 186 at 2). The Nonprofits’ reply contends that the public has a strong interest in learning about “possible illegalities in Exhibit M, and in understanding the basis for the Court’s ruling” (Dkt. No. 189 at 7).

Federal Rule of Civil Procedure 24(b)(1) provides that, “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of fact or law.” What constitutes a timely motion is within the Court’s discretion, as determined from all the circumstances. National Ass’n for Advancement of Colored People v. New York, 413 U.S. 345, 365 (1973). The Fourth Circuit, in particular, has recognized permissive intervention as a proper way for a nonparty to seek access to documents subject to a protective order. In re: Grand Jury Subpoena, 836 F.2d 1468, 1470 (4th Cir. 1988). It has further recognized that intervention may be appropriate after a court has entered a final judgment. Rushford v. New Yorker Magazine, Inc., 846 F.2d 249, 252 (4th Cir. 1988).

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In the case at bar, the motion to intervene was timely filed; the Nonprofits filed their motion less than three weeks after learning of the sealed documents. Furthermore, intervention will not impact the adjudication given that the parties have already settled their dispute. Finally, the Nonprofits represent the interests of consumers and consumer advocates involved in consumer protection matters, who share claims in common with the questions of fact and law presented in this case. Therefore, the Court concludes that it is a proper exercise of its discretion to permit the Nonprofits to intervene here.

Regarding the motion to unseal filed by the Nonprofits, the First Amendment provides a strong presumption favoring the public's right of access to court documents. Rosenfeld v. Montgomery Cty. Pub. Sch., 25 F. App'x 123, 132 (4th Cir. 2001). This right "applies to documents submitted in support of summary judgment motions in civil cases [and] requires a showing that the denial of access is necessitated by a compelling government interest and is narrowly tailored to serve that interest in order to justify the sealing of documents." Id.; see also Doe v. Public Citizen, 749 F.3d 246, 267-68 (4th Cir. 2014) (holding that the First Amendment

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right of access also applies to a judicial decision adjudicating a summary judgment motion).

Courts also may substitute a "higher value" for "government interest" in cases involving records filed by nongovernmental civil litigants. Morris v. Cumberland Cty. Hosp. Sys., Inc., No. 5:12-CV-629-F, 2013 WL 6116861, at *2 (E.D.N.C. Nov. 13, 2013). In the Fourth Circuit, trade secrets may constitute higher values that can overcome the First Amendment right of access. Woven Elec. Corp. v. Advance Grp., Inc., Nos. 89-1580, 89-1588, 1991 WL 54118, at *6-7 (4th Cir. Apr. 15, 1991).

Here, the strong presumption favoring the public's access to court documents under the First Amendment overcomes any argument that the trade secrets at issue constitute a higher value. Even if the sealed documents once contained trade secrets, Ocwen has not refuted the assertion that they are now obsolete. Moreover, the public has an interest in reviewing the information in the documents to determine whether it conflicts with the requirements of a consent judgment entered into by Ocwen with the Consumer Financial Protection Bureau, 49 states, and the District of Columbia (Dkt. No. 189-1 at 2-3). Consent Judgment, Consumer Fin. Protection Bureau, et. al. v. Ocwen Fin. Corp., No. 1:13-CV-02025

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(D.C.C. Feb. 26, 2014), ECF No. 12. Finally, the information contained in the documents is already publicly available elsewhere in the record (Dkt. Nos. 64, 88, 71-3).

Because the First Amendment right of public access applies to Exhibit M submitted in support of Hosaflook's summary judgment motion and to the Court's reasoning in its memorandum opinion and order, the documents should be unsealed. Accordingly, the Court:

1. **GRANTS** the Nonprofits' motion to intervene (Dkt. No. 182);
2. **GRANTS** the Nonprofits' motion to unseal (Dkt. No. 184);
3. **UNSEALS** Exhibit M to Hosaflook's motion for partial summary judgment (Dkt. No. 69); and
4. **UNSEALS** the Memorandum Opinion and Order denying Hosaflook's motion for partial summary judgment and denying Ocwen's motion for summary judgment (Dkt. No. 166).

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record, and to remove this case from the Court's active docket.

DATED: January 9, 2020

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE