

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF:)
)
DENNIS BAMBER, INC.) CASE NO. 06-31800
)
)
Debtor)

DECISION AND ORDER
DENYING MOTION TO FILE UNDER SEAL

At Fort Wayne, Indiana, on February 14, 2007.

Steinway Musical Instruments, Inc. believes that LaSalle Bank N.A. is in possession of some type of deposit that should be returned to it. The Bank must be of a different opinion because Steinway is on the verge of filing a motion in this court which seeks to require the Bank to return the money. The court says that Steinway is on the verge of filing such a motion because, on February 9, 2007, it filed a motion for an ex parte order authorizing it to file the forthcoming motion, as well as future papers related to it, under seal. The basis for the request is that portions of the motion and its associated papers may include financial information which was received pursuant to a confidentiality agreement. As a result, Steinway contends filing under seal is necessary and appropriate to protect this confidential information.

As an initial matter, the court would observe that the relief Steinway intends to seek in its forthcoming motion will be either to recover money or property from an entity other than the debtor or some type of injunctive relief. As such, Rule 7001 of the Federal Rules of Bankruptcy Procedure specifically requires an adversary proceeding and will not allow Steinway to utilize the less formal procedures associated with contested matters and the bankruptcy court's motion practice under Rule 9014. See, Fed R. Bankr P. Rule 7001(1), (7). This alone is a sufficient reason to deny the present

motion, see, Matter of Perkins, 902 F.2d 1254 (7th Cir. 1990), without making any comment on the issue of filing under seal. Nonetheless, that would probably do little more than put the issue off until another day; so, in an effort to forestall (or improve) any future request, the court will briefly address the issue of filing under seal.

“[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and proceedings.” Nixon v. Warner, 435 U.S. 589, 597, 98 S.Ct 1306, 1312 (1978). As a result, whether it arises out of concerns animated by the First Amendment, or because courts may deal with matters of public interest, or due to the public’s right to monitor the performance of their public institutions, or a combination of all three of these concerns, there is a presumption – some say a strong presumption – that documents placed in the court’s files are open and available to the public. Nixon, 435 U.S. at 602, 98 S.Ct at 1314; Jessup v. Luther, 277 F.3d 926, 928 (7th Cir. 2002). It is, however, only a presumption, and if “there is a compelling interest in secrecy, as in the case of trade secrets, the identity of informers, and the privacy of children, portions and in extreme cases the entirety of a trial record can be sealed.” Jessup, 277 F.3d at 928. The party asking the court to seal portions of the record has the burden of overcoming the presumption and persuading the court that there is sufficient cause to do so.

A request to seal documents or other portions of the record is addressed to the court’s discretion. Nixon, 435 U.S. at 599, 98 S.Ct. at 1312; Matter of Continental Illinois Securities Litigation, 732 F.2d 1302, 1316 (7th Cir. 1984). Determining whether there is sufficient cause to do so can only be made on a case by case basis, after weighing the proffered reasons for secrecy against the competing interests of disclosure and public access. Nixon, 435 U.S. at 599, 98 S.Ct. at 1312-1313; Jessup, 277 F.3d at 928. The need for the court to make the determination cannot

be avoided. “The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). He may not rubber stamp a stipulation to seal the record.” Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d 943, 945 (7th Cir. 1999).

In light of the presumption that the court’s records are open to the public, Steinway has not even begun to satisfy its burden of proving that there is cause to file under seal. To begin with, the request, pertaining as it does to the entire forthcoming motion (not to mention unidentified future papers), is incredibly broad. Surely there must be something Steinway contemplates alleging that will not involve disclosing arguably confidential information. If so, the relief sought is too broad and should be more narrowly tailored. (If not, then Steinway has probably already violated the confidentiality agreement through what it has said in the motion to file under seal.) Secondly, Steinway has given the court only the vaguest idea of what the confidential information it seeks to protect might be. It has been characterized only as “financial information.” The court would hasten to point out that this is a Chapter 11 reorganization, pending in the bankruptcy court, and the debtor should have few financial secrets. See, 11 U.S.C. § 1125. While the court is willing to acknowledge that there undoubtedly is information a Chapter 11 debtor would be entitled to protect from public disclosure, doing so requires the court to know much more about the nature of that information than comes from simply characterizing it as “financial information.” Finally, merely because the parties may have agreed that certain information should be kept confidential is not sufficient cause to authorize filing under seal. If the parties’ agreement controlled the issue, there would be no need for the court to have any discretion in the matter and it would only need to rubber stamp whatever the parties put before it. That clearly is not the case. The decision to file under seal rests with the

court, not with the parties.

The ex parte motion for an order authoring Steinway to file a motion under seal is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court