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CERTIFICATE OF REGISTRATION

NOTICE IS HEREBY GIVEN that in compliance with the requirements of 15 Pa. C.S. § 8913, a Certificate of Registration – Domestic Limited Liability Company was filed on July 17, 2012 with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, for the purpose of registering a Limited Liability Company.

The name of the Limited Liability Company is D.A. BOWSHOP, LLC, having a registered address of 1980 Taneytown Road, Gettysburg, PA 17325.

The purpose for which the Limited Liability Company was organized is to engage in and do any lawful act concerning any and all lawful business for which limited liability companies may be formed in accordance with the laws of the Commonwealth of Pennsylvania.

Christina M. Simpson, Esq.
28 East High Street
Gettysburg, PA 17325

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. § 311), there was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania an Application for Registration of Fictitious Name of HARTLAUBS AUTO PARTS, the address of the principal place of business being 497 Beck Road, Gettysburg, PA 17325. The name and address of the entity that is a party to said registration is: Hartlaubs, Inc., 497 Beck Road, Gettysburg, PA 17325.

Puhl, Eastman & Thrasher
Attorneys

8/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. § 311), there was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania an Application for Registration of Fictitious Name of HARTLAUBS USED CARS, the address of the principal place of business being 497 Beck Road, Gettysburg, PA 17325. The name and address of the entity that is a party to said registration is: Hartlaubs, Inc., 497 Beck Road, Gettysburg, PA 17325.

Puhl, Eastman & Thrasher
Attorneys

8/10

LeVAN ET AL VS. MASON-DIXON RESORTS ET AL

1. The common law right of public access to judicial records is well established in this jurisdiction.

2. The public's general right to inspect and copy public records extends to pleadings, orders, notices, exhibits, and transcripts filed of record. It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.

3. In determining whether a motion to seal the public record should be granted, the court must engage in a balancing test weighing on the one hand the factors in favor of access, and, on the other, those against it.

4. An exhaustive review of the Gaming Act has failed to reveal any provision restricting the public's access to records other than those presented during an applicant's hearing process before the Gaming Board.

5. Certainly, the disclosure of confidential business information might harm a party's competitive standing and, therefore, meet the burden of overcoming the public's right of access to the records. The inquiry is whether the need for secrecy outweighs the presumption of access normally attached to such documents. Mere boilerplate claims of business records or trade secrets are insufficient to overcome the presumption of openness; rather, the moving party must show good cause by establishing that a clearly defined and serious injury would have occurred to the moving party if the record were not sealed.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 11-S-1320, DAVID M. LeVAN (SOLELY IN HIS CAPACITY AS A LIMITED PARTNER OF MASON-DIXON RESORTS, LP), HAYDEN ELIZABETH LeVAN 2010 TRUST, MICHAEL JACKSON, BERNARD YANNETTI AND LeVAN FAMILY PARTNERSHIP, LLC, VS. MASON-DIXON RESORTS GP, LLC, AND MASON-DIXON RESORTS, LP.

Campbell & White, P.C., and Timothy W. Callahan II, Esq., for Plaintiffs

Daniel E. Rhynhart, Esq., Grant S. Palmer, Esq., Mackenzie W. Smith, Esq., and John J. Mooney III, Esq., for Defendants

George, J., January 27, 2012

OPINION

This case presents the question of to what extent the public's right of access to court records may be restricted by the respective interests of one or both parties to litigation. Mason-Dixon Resorts GP, LLC and Mason-Dixon Resorts, LP (collectively "Mason-Dixon")

move to strike Plaintiffs' Complaint¹ or, in the alternative, seal portions of the Complaint filed by the LeVan Partners.² While the LeVan Partners do not oppose the request, they take issue with various factual and legal conclusions urged by Mason-Dixon in support of their Motion.

The common law right of public access to judicial records is well established in this jurisdiction. See *In Re Estate of duPont*, 966 A.2d 636, 638 (Pa. Super. 2009); *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 988 F.2d 157 (3d Cir. 1993). The existence of this right, which antedates the Constitution, is now "beyond dispute." *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988) (citations omitted). Public access to court proceedings and records promotes public confidence in the judicial system by providing the public with a more complete understanding of the judicial system and a better perception of its fairness. *R.W. v. Hampe*, 626 A.2d 1218, 1221 (Pa. Super. 1993) (citations omitted). Importantly, "The bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud." *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 660 (3d Cir. 1991) (citation omitted). In *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984). Pennsylvania's Third Circuit Court of Appeals quoted Justice Oliver Wendell Holmes for the proposition that public access to judicial records is desirable:

[N]ot because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.

Id. at 1069 (citations omitted).

¹ The Complaint consists of 60 separate paragraphs and nine exhibits. The attachments include numerous business documents which have additional exhibits attached to them.

² The Plaintiffs in this matter are identified as David M. LeVan, Hayden Elizabeth LeVan 2010 Trust, Trace Carter LeVan 2010 Trust, Michael Jackson, Bernard Yannetti, and LeVan Family Partnership, LLC. For reasons of brevity, they will be collectively referred to as "LeVan Partners" throughout this Opinion.

The public's general right to inspect and copy public records extends to pleadings, orders, notices, exhibits, and transcripts filed of record. *Leucadia, Inc.*, 988 F.2d at 162. It is uncontested, however, that "the right to inspect and copy judicial records is not absolute..." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). "Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Id.* Indeed, the Pennsylvania Superior Court has stated:

[T]he public may be excluded, temporarily or permanently, from court proceedings or the records of court proceedings to protect private as well as public interests: to protect trade secrets, or the privacy and reputations of innocent parties, as well as to guard against risks to national security interests and to minimize the danger of an unfair trial by adverse publicity. These are not necessarily the only situations where public access can properly be denied. A bright line test has yet to be formulated. Meanwhile, the decision as to public access must rest in the sound discretion of the trial court.

In re Estate of DuPont, 933 A.2d at 638, citing *Zdrok v. Zdrok*, 829 A.2d 697, 700 (Pa. Super. 2003). In determining whether a motion to seal the public record should be granted, the court must engage in a balancing test "weighing on the one hand the factors in favor of access, and, on the other, those against it." *Storms ex rel. Storms v. O'Malley*, 779 A.2d 548, 569 (Pa. Super. 2001), citing *Bank of America Nat'l Trust v. Hotel Rittenhouse*, 800 F.2d 339, 344 (3d Cir. 1986).

Since the current litigation finds its genesis in various legal arrangements entered between the parties for purposes of obtaining a Pennsylvania gaming license³, Mason-Dixon initially argues the documents at issue are protected from public access under the Gaming Act, 4 Pa. C.S.A. §1201, et seq. There is no merit to this argument. An exhaustive review of the Gaming Act has failed to reveal any provision restricting the public's access to records other than those presented during an applicant's hearing process before the

³ The parties are currently applicants for a license under the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S.A. § 1101, et seq.

Gaming Board. See 4 Pa. C.S.A. § 1206(f). The Gaming Act does not include any language extending the privilege beyond the confines of the application process. In fact, the Gaming Act contemplates records that are otherwise confidential in board proceedings that may lose their confidentiality if otherwise publically available in non-board proceedings. See 4 Pa. C.S.A. § 1206(f)(3). This language implicitly recognizes that documents presented to the Gaming Board may properly be subject to public availability when used in other contexts. As the legislature has not specifically extended the confidentiality provisions beyond proceedings in the Gaming Act, this Court will not, by judicial fiat, legislate a barrier to the common law right of access to court proceedings.

Mason-Dixon next argues that permitting the records to remain unsealed frustrates their appeal to the Pennsylvania Supreme Court of the Gaming Board's denial of their license application. Mason-Dixon suggests a public airing of the partnership dispute will create the misperception that Mason-Dixon is not ready, willing, and able to develop its project pursuant to an awarded license. While certainly the danger of an unfair trial by adverse publicity is a legitimate interest that might justify the sealing of court documents, *In Re National Broadcasting Co.*, 653 F.2d 609, 613 (D.C. Cir. 1981), Mason-Dixon misapplies that principle currently.

When considering an appeal from an unsuccessful application for a gaming license, the scope of review of the Pennsylvania Supreme Court "is limited to determining whether the Board: (1) erred as a matter of law; or (2) acted arbitrarily and in capricious disregard of the evidence." *Id.* at 216.⁴ With regard to an error of law, the Supreme Court's scope of review is plenary. *Id.* (citations omitted). However, where a licensing appeal challenges the factual determinations of the Gaming Board, those determinations are not subject to *de novo* review. "Rather, under the capricious disregard standard[,] an agency's determination is given great deference, and relief will rarely be warranted." *Id.* (citation and footnote omitted). Thus, the Supreme Court clearly defined its role in refusing to step into the shoes of the Gaming Board and determine, in the first instance, whether the

⁴ The legislature provided to the Pennsylvania Supreme Court with exclusive appellate jurisdiction to consider appeals from decisions of the Pennsylvania Gaming Board, 4 Pa. C.S.A. § 1204.

evidence of record meets the clear and convincing evidence standard. *Id.* Quite to the contrary, their review of whether the Board acted in capricious disregard of the evidence is limited to the record established in the proceedings before the Board. See *Id.*

The cornerstone of Mason-Dixon's suggestion that the current appeal will be harmed by information flowing from this litigation presupposes the Pennsylvania Supreme Court would be influenced in its decision making by matters not properly before it in the record. This Court unequivocally rejects such a premise as supported by neither fact nor law. Absent direct evidence to the contrary, which is currently lacking, this Court will not presume the Justices of the Pennsylvania Supreme Court, or the judges of any other court, will violate their oath of office by considering improper information derived from non-record sources in rendering a decision.⁵

Finally, Mason-Dixon argues a sealing order is appropriate since the filed documents include confidential business information and trade secrets. Certainly, the disclosure of confidential business information might harm a party's competitive standing and, therefore, meet the burden of overcoming the public's right of access to the records. *Leucadia, Inc.*, 988 F.2d at 166. The inquiry is whether the need for secrecy outweighs the presumption of access normally attached to such documents. *Id.* Mere boilerplate claims of business records or trade secrets are insufficient to overcome the presumption of openness; rather, the moving party must show good cause by establishing "that a clearly defined and serious injury would have occurred to the [moving] party if the record were not sealed." *Hutchison v. Luddy*, 611A.2d 1280, 1291 (Pa. Super. 1992). Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning are insufficient to meet this burden. See generally, *Leucadia, Inc.*, *supra*.

Mindful of the foregoing instruction from our appellate courts, I find little substance to Mason-Dixon's argument. The portions of the Complaint sought to be sealed by Mason-Dixon include various

⁵ Mason-Dixon cannot rationally suggest information disclosed in this litigation is prejudicial to their application for license in the event their appeal is successful, as the comprehensive provisions of the gaming law would most certainly require Mason-Dixon to reveal that information through the remanded application process regardless of whether the current record is sealed.

paragraphs in the Complaint and a majority of the exhibits attached to the Complaint. Applying the balancing test of *Leucadia*, I will address each item separately.

The paragraphs in the Complaint which Mason-Dixon seeks to seal generally reference disagreement between the parties as to the continued viability of the partnership. The topics of disagreement include the likelihood of success on the appeal to the Supreme Court and the ability of the partnership to reach contractual obligations and achieve its intended goal. As these allegations do not, in and of themselves, include sensitive business information or trade secrets, there is no reason to seal this information. The public is entitled to know the allegations upon which the Court will ultimately act.

Exhibit “A” to the Complaint is the limited partnership agreement that forms the primary basis of this litigation. Although it contains some terms specific to the parties, a thorough review of that document fails to reveal any information that might place Mason-Dixon at a competitive disadvantage. Since it is the heart of the litigation, the right of public access to this document outweighs any limited need for secrecy.

Similarly, Exhibits “B,” “C,” and “D” are relatively innocuous documents consisting of a sales agreement for the purchase of property on which part of the casino would be located, an option agreement for the purchase of remaining properties on which the casino would be located, and a site survey of the property at issue. Mason-Dixon has not defined, nor has this Court been able to decipher, what specific portions, if any, of these documents might properly be considered trade secrets. Similarly, other than the purchase price and the terms of the agreements, there is very little business information in the documents. On the other hand, this information is relevant to a primary issue presented to the Court: whether the purpose for which the partnership was created is capable of being achieved. Mason-Dixon’s general claim of confidential business records with regard to these documents is insufficient to overcome the public’s right to access.

The same analysis applies to Exhibit “E,” which is a Mason-Dixon project agreement. Once again, disclosure of public access to the agreement is relatively harmless, as the only business information included is the financing terms between the respective parties to the agreement. There are, however, a number of exhibits attached to

the agreement that might arguably be considered business records containing confidential information. As public access to those documents fails to advance any overriding public interest, and pursuant to the agreement of the parties, those records shall be sealed. Those records consist of an M.D.R. reimbursable document, project budget, project schedule, and a ground lease term sheet. All other documents will remain unsealed.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 27th day of January 2012, the Motion of the Defendants to Strike and/or Seal the Record is denied in its entirety with the exception that the following portions of the Mason-Dixon Project Agreement, attached to Plaintiffs' Complaint as Exhibit "E," shall be sealed by the Prothonotary of Adams County pending further Order of Court:

Mason-Dixon Project Agreement Exhibit "C,"
Mason-Dixon Project Agreement Exhibit "D,"
Mason-Dixon Project Agreement Exhibit "E," and
Mason-Dixon Project Agreement Exhibit "J."

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF MELVIN W. BARTELS, DEC'D**

Late of the Borough of New Oxford, Adams County, Pennsylvania

Administrator: Timothy J. Bupp, c/o Jon C. Countess, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Jon C. Countess, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF BETTY JANE SANDERS, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania

Co-Administrators: Linda S. Hoke, 525 Funt Road, Aspers, PA 17304; Vicky I. Miller, 1132 South Pleasant Avenue, Dallastown, PA 17313

Attorney: John C. Zepp III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF EDWARD SHAPIRO, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrator: Douglas J. Shapiro, 119 East Middle Street, Gettysburg, PA 17325

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 28 West Middle Street, Gettysburg, PA 17325

ESTATE OF ALMA C. TYLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Clara J. Wivell-Kaiser, 15449 Orchard Avenue, Blue Ridge Summit, PA 17214

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF WALTER D. CLAPSADDLE a/k/a WALTER DAVID CLAPSADDLE, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Jean H. Clapsaddle, 1745 Highland Avenue Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF EARL D. FRIES, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Craig L. Fries, 33 North Carolina Avenue, Sinking Spring, PA 19608

Attorney: Stephen J. Gring, Esq., Treeview Corporate Center, 2 Meridian Boulevard, Suite 100, Wyomissing, PA 19610

ESTATE OF RONALD LEE HUDZICK a/k/a RONALD L. HUDZICK a/k/a RONN HUDZICK, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Paul David Hudzick, 245 Wren Street, Indiana, PA 15701

Attorney: Wayne A. Kablack, Esq., Simpson, Kablack & Bell, LLC, 834 Philadelphia Street, Suite 200, Indiana, PA 15701

ESTATE OF ROBERT S. PLANK a/k/a ROBERT SAMUEL PLANK, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Robert M. Plank, 629 Natural Dam Road, Gettysburg, PA 17325

Attorney: Christina M. Simpson, Esq., 28 East High Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF ROGER R. DEVLBISS, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Personal Representatives: Vickie L. Wisner, 138 Boyer Street, Littlestown, PA 17340; Michael David Devilbiss, 3729 Old Taneytown Road, Taneytown, MD 21787

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF ARDIS MARIE HOLLABAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Attorney: Murrel R. Walters III, Esq., 54 East Main Street, Mechanicsburg, PA 17055

ESTATE OF NANCY NEWSOM KREBS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Thomas John Andrew Krebs, 930 Cortleigh Drive, York, PA 17402

ESTATE OF HENRY CLEVELAND REAVER JR., DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: Thomas Henry Reaver, 245 Krug Road, Littlestown, PA 17340; Helen Joyce Unger, 115 North Queen Street, Littlestown, PA 17340

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF GLORIA A. SHRADER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Stephen J. Shrader, 328 Kohler Mill Road, New Oxford, PA 17350; Roberta A. Poist, 334 Hanover Street, New Oxford, PA 17350

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HOPE M. WEIR a/k/a HOPE MARIE WEIR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David Richard Weir, 122 East Middle Street, Hanover, PA 17331

Attorney: Katrina M. Luedtke, Esq., Mooney & Associates, 115 Carlisle Street, New Oxford, PA 17350

