

SO ORDERED.

SIGNED this 25th day of March, 2020.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

IN RE:)	
)	Chapter 11
)	
Donald F. Wellington,)	Case No. 20-10080
)	
Debtor.)	
_____)	

**ORDER
GRANTING IN PART AND DENYING IN PART
MOTION TO MODIFY RULE 2015.3 REPORTING REQUIREMENTS**

THIS MATTER came before the Court on the Debtor's motion to modify the reporting requirements of Rule 2015.3 of the Federal Rules of Bankruptcy Procedure. The Court held a hearing on the Debtor's Motion on March 10, 2020, at which Charles Ivey III and Dirk Siegmund appeared for the Debtor, Clint Morse appeared for Naber Electric Corporation, Ashley Edwards appeared for Wells Fargo Bank, N.A., and Brian Anderson and Christopher Bayley appeared for Juniper Time Investor, LLC. William P. Miller appeared in his capacity as Bankruptcy Administrator for the Middle District of North Carolina. For the reasons set forth below, the Court finds the Debtor has failed to meet his burden under Rule 2015.3 and 11 U.S.C. § 107¹ to either waive the reporting requirements entirely or file all reports under seal. The Court does find cause to grant the Debtor's request for an enlargement of time in which to file the initial report.

¹ All citations to statutory sections refer to Title 11, United States Code, unless otherwise indicated.

The Debtor filed this chapter 11 bankruptcy case on January 24, 2020. The Debtor's primary assets, as reflected in his bankruptcy schedules, are investments and interests in privately held corporations and limited liability companies. Listed in Schedule A/B, the entities in which the Debtor holds an interest are:

<u>Entity</u>	<u>Ownership Percentage</u>	<u>Scheduled Value</u>
1. APPI Real Estate, LLC	25.00%	\$37,500
2. CCF Holdings, LLC	14.29%	\$29,300
3. Centralmark Holdings, LLC	35.00%	\$75,300
4. Green Light Holdings, LLC	40.00%	\$258,800
5. HJW Properties, LLC	37.03%	\$194,400
6. Green Mark Lawn Care	50%	\$20,000
7. Wellington Holdings, Inc	72%	\$5,000,000

On February 19, 2020, the Debtor filed the instant motion seeking to modify his reporting requirements under Rule 2015.3 (Docket No. 54, the "Motion"). The basic reporting requirements are detailed in subparagraph (a) of that rule:

(a) *Reporting Requirement.* In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. [...]

Fed. R. Bankr. P. 2015.3(a). The Court may waive or modify the reporting requirements, or protect information to be disclosed in the reports, as described in subparagraphs (d) and (e) of the rule:

(d) *Modification of Reporting Requirement.* The court may, after notice and a hearing, vary the reporting requirement established by subdivision (a) of this rule for cause, including that the trustee or debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.

(e) *Notice and Protective Orders.* No later than 14 days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders—known to the trustee or debtor in possession—of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, may request protection of the information under §107 of the Code.

Fed. R. Bankr. P. 2015.3(d), (e).

The Debtor seeks to modify the reporting requirements of Rule 2015.3 in three ways. First, the Debtor contends that reporting should not be required because the Debtor's interests in the entities are not "substantial or controlling" for purposes of Rule 2015.3. Second, the Debtor argues that, even if the reporting requirements are not waived, the Court should modify the Rule 2015.3 requirement to provide that all reports are to be filed under seal and accessible only to those creditors willing to sign a confidentiality agreement. Third, the Debtor requests an enlargement of time in which to file his first Rule 2015.3 report, with the initial deadline extended to April 1, 2020, and with each subsequent report to be filed at six-month intervals.

On March 4, 2020, the Debtor filed a Submission of Affidavit and Proposed Order (Docket No. 70). While the Debtor's affidavit repeats the arguments put forth in the Motion, the proposed order instead is based on a finding that Rule 2015.3 reporting is necessary in the case, but that the filing of all such reports under seal "is necessary to protect the privacy of innocent third parties" (Docket No. 70).

On March 9th, creditor Naber Electric Corporation ("Naber") filed a limited objection to the Motion (Docket No. 83). Naber objected to the Motion to the extent it sought a complete waiver of the Debtor's Rule 2015.3 reporting requirements, but Naber took no position on the Debtor's alternative request to file reports under seal. The Bankruptcy Administrator entered a notation on the case docket on March 10, 2020, the same date as the hearing, indicating he had no objection to the relief sought in the Motion and did not wish to be heard.

At the hearing, the Debtor described the intent of the Motion as "primarily designed to keep out of the public domain the private information of other investors in these LLCs." The Debtor conceded that he was "not trying to in any way to prevent creditors from being able to see the information that [Rule] 2015.3 requires." The Debtor's arguments presented at the hearing were premised on a desire to seal the Rule 2015.3 reports from public view, rather than seeking a waiver of the reporting requirement altogether.

Rule 2015.3 requires a chapter 11 debtor to file periodic financial reports of the value, operations, and profitability of each non-publicly traded entity in which the estate holds a substantial or controlling interest. Fed. R. Bankr. P. 2015.3(a). The term “substantial or controlling interest” is not defined, but for purposes of the rule, “an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest.” Fed. R. Bankr. P. 2015.3(c). Upon motion, the debtor, or any other party in interest, may seek to rebut the presumption. Fed. R. Bankr. P. 2015.3(c). As the leading bankruptcy treatise notes, “[t]he focus of the presumption is on whether the ownership interest is substantial to the entity and not whether it is substantial to the estate.” 9 COLLIER ON BANKRUPTCY ¶ 2015.3.07 (16th ed. 2020).

Of the seven entities listed in his bankruptcy schedules, the Debtor claims an ownership interest of 20 percent or greater in six entities.² The presumption arises, therefore, that the Debtor has a substantial or controlling interest in six of the seven entities and is required to comply with the Rule 2015.3 reporting requirements, unless the Debtor is able to rebut the presumption. In the Motion, the Debtor put forth broad arguments about the lack of “legal control over other members” or “how they may vote,” and the absence of a controlling interest necessary to take “material action” (Docket No. 54, ¶ 6). The Debtor, however, provided no specifics or supporting documentation as to any of the entities individually, and provided no caselaw to support his positions. At the March 10th hearing, the Debtor did not introduce evidence or testimony to support the argument that the Debtor did not have a substantial or controlling interest in the entities. In fact, the Debtor appeared to abandon this position, instead choosing to focus on his request to modify the Rule 2015.3 reporting requirements to allow for filing reports under seal. For these reasons, the Court finds the Debtor failed to rebut the presumption that he has a substantial or controlling interest in six of the seven entities listed in his schedules.

² Only the Debtor’s interest in CCF Holdings, LLC is below the 20 percent threshold at 14.29 percent.

In turning to the Debtor's alternative request to seal the Rule 2015.3 reports and limit production to those creditors that agree to sign a confidentiality agreement, the Court looks to Rule 2015.3(e), which allows "[t]he entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, [to] request protection of the information under § 107 of the Code." The standard by which the Court must assess the Debtor's request is therefore found in 11 U.S.C. § 107, which provides:

(b) 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)(1), (2).

This Court's local rules also provide guidance to those seeking to file documents under seal, pursuant to § 107.

(a) Prior to the filing of any paper in an action assigned to the ECF system, any person may apply by motion for an order allowing the filing of such paper under seal, or limiting the electronic access to, any specifically-identified paper, as provided by 11 U.S.C. §107 or as authorized by law. Such motion shall provide a non-confidential description of the paper to be sealed and shall:

- (1) state the reasons why sealing is necessary;
- (2) state the reasons why less drastic alternatives to sealing the paper will not afford adequate protection;
- (3) address the factors governing sealing of papers reflected in governing case law; and
- (4) state whether permanent sealing is sought, and, if not, state how long the paper should remain under seal and how the paper should be handled upon unsealing.

MBNC Local Rule 5005-4(6)(a).

In the Motion, the Debtor did not cite § 107 or discuss the stringent standard set by that provision for filing documents under seal. In contravention to the local rule, the Debtor did not address the factors governing sealing of papers reflected in governing case law. In the Motion, and at the March 10th hearing, the Debtor premised his argument for sealing the Rule 2015.3 reports on the purported privacy

interests of other investors in the entities who would prefer to not have the information made public. The Motion flatly states that “[t]he operational information and distributions to non-filing members is private and should not be made public” (Docket No. 54, ¶ 7). For at least one of the entities, the Debtor also relied on the conclusory statement that any information to be submitted as part of a Rule 2015.3 report “is not material to this Chapter 11 or any Plan of Reorganization” (Docket No. 54, ¶ 6).³ The Debtor did not claim that certain information to be contained in the Rule 2015.3 reports would be scandalous or defamatory, or would constitute a trade secret or confidential research, development, or commercial information. *See* § 107(b)(1), (2). When pressed by the Court, the Debtor’s attorney conceded he was not aware of any confidential commercial information or trade secrets that would serve as a basis for sealing the reports under § 107(b).

The party seeking protection under § 107(b) has the burden of proving that the information should be protected. *In re Thomas*, 583 B.R. 385, 391 (Bankr. E.D. Ky. 2018). “There is a strong presumption and public policy in favor of public access to court records,” *In re Borders Group, Inc.*, 462 B.R. 42, 46 (Bankr. S.D.N.Y. 2011), which is further supported by Congress’s stated purpose underlying Rule 2015.3 reporting, which is “to assist parties in interest taking steps to ensure that the debtor’s interest” in an entity in which the debtor holds a substantial or controlling interest “is used for the payment of allowed claims against the debtor.” Pub. L. No. 108–9, § 419(a) (2005); *see also* 9 COLLIER ON BANKRUPTCY ¶ 2015.3 RH (16th ed. 2020). Sealing public documents, including Rule 2015.3 reports, “remains an

³ The Debtor’s stated concern for materiality or relevance to the chapter 11 case is directed primarily toward one entity, Green Mark Lawn Care Management, LLC. In both the Motion and at the hearing, the Debtor argued that he has “nothing to do with [Green Mark’s] operations,” and that Green Mark “is a one person (son-in-law) operation” with “little to no sale value” (Docket No. 54, ¶ 6(e)). The Debtor, however, did not point to any caselaw, and the Court’s own research revealed no precedent, that would allow for a complete waiver of Rule 2015.3 requirements based solely on a debtor’s self-assessment of an entity’s relevance to the bankruptcy case. The Debtor did mention in passing that Green Mark “does not keep financial information ... there is no financial information and ... it’s utterly negligible.” An inability to access the financial records that would allow a debtor to complete a Rule 2015.3 report may be a basis for modifying the reporting requirements, *see* Rule 2015.3(d), but the Debtor provided no evidence, through documents, testimony, or affidavit, that Green Mark’s financial information was inaccessible, or that the Debtor had made “a good faith effort to comply” with the reporting requirements before seeking modification and did not request relief under Rule 2015.3(d) either in the Motion or at the hearing.

extraordinary measure that is warranted only under rare circumstances.” *Robbins v. Delafield (In re Williams)*, No. 15-71767, 2017 WL 6278764, at *2 (Bankr. W.D. Va. Dec. 8, 2017).

The Debtor’s stated rationale for filing all Rule 2015.3 reports under seal, available only to those parties signing confidentiality agreements, is a desire to protect the privacy interests of other investors. However, “[p]arties’ broad statements regarding their desire for confidentiality is not a basis to seal” records from public view. *In re Thomas*, 583 B.R. at 391; *see also In re Motors Liquidation*, 561 B.R. 36, 43 (Bankr. S.D.N.Y. 2016) (“The ‘commercial information’ exception is not intended to offer a safe harbor for those who crave privacy or secrecy for its own sake.”). The Debtor’s stated basis does not meet the high burden required to seal the Rule 2015.3 reports under § 107, and the Debtor’s Motion does not comply with Local Rule 5005-4(6). Accordingly, the Debtor’s request must be denied.

In addressing the Debtor’s request to extend the deadline for filing his initial Rule 2015.3 report, the Court finds it has discretion to extend the time for filing under Federal Bankruptcy Rule 9006(b)(1). Considering the duration of the extension requested, and the time required to hear and determine the Debtor’s Motion, the Court finds cause to grant the Debtor’s request to extend the deadline to file the initial Rule 2015.3 report to April 1, 2020, with subsequent reports due every six months.

For the foregoing reasons, and based on the representations in the Motion and at the March 10, 2020 hearing, as well as the full record in this bankruptcy case, IT IS HEREBY ORDERED that the Debtor’s Motion is granted in part and denied in part as follows:

1. the Debtor’s request to waive the Rule 2015.3 reporting requirements is denied;
2. the Debtor’s request to file the Rule 2015.3 reports under seal is denied without prejudice to the Debtor’s right to renew his request at a later time, provided he has a sufficient basis under § 107; and

3. the Debtor's request to enlarge the time in which to file his initial Rule 2015.3 report is granted.

IT IS FURTHER ORDERED that the Debtor shall file his initial Rule 2015.3 report on or before April 1, 2020, with all future reports to be filed in six-month intervals on or before the first day of the specified month.

END OF DOCUMENT

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20-10080 C-11

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