

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

**Susan C. Lawlor,
Debtor.**



**Chapter 13
Case # 01-11402**

Appearances: *Debra Leahy, Esq.*
 Bethel, VT
 Attorney for Debtor

Jan Sensenich, Esq.
White River Junction, VT
Chapter 13 Trustee

ORDER
DENYING MOTION FOR FILING OF SETTLEMENT AGREEMENT UNDER SEAL

On May 2, 2003, the chapter 13 trustee filed a motion for an order to allow the filing of a settlement agreement under seal (doc # 60). The matter was set for hearing for May 29, 2003. The Court granted the motion to the extent necessary to allow the Court to review the subject settlement agreement *in camera*. Having completed that *in camera* review, the Court finds that there has not been a sufficient showing to grant the relief requested.

The only basis offered in support for the request to allow this document to be filed under seal is that the subject settlement agreement contains a confidentiality clause, with significant penalties for its breach, and that the non-debtor party to the agreement insists that this confidentiality provision is a *quid pro quo* to the settlement.

Section 107 of the Bankruptcy Code addresses "Public Access to Papers" setting forth the congressional mandate that all documents filed in bankruptcy courts be open for public inspection and the limited grounds for deviation from that policy. It provides:

- (a) Except as provided in subsection (b) of this section, 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.
- (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.

Any limitation on the public's right of access must be viewed as an extraordinary measure that is warranted only under rare circumstances. 2 COLLIER'S ON BANKRUPTCY § 107.03. (15th ed. rev. 2003). The courts have zealously upheld the public's right to access and narrowly construed the exceptions. See In re Analytical Sys., Inc., 83 B.R. 833, 835 (Bankr. N.D. Ga. 1987); In Epic Assocs. V, 54 B.R. 445, 448 (Bankr. E.D. Va. 1985). The courts have generally focused on the seriousness of the harm threatened by dissemination and the lack of a less drastic safeguard as the primary considerations for determining whether a document can be filed under seal.

Accordingly, based upon the current record, the Court finds the Trustee has failed to present sufficient grounds for granting the motion to permanently seal the subject agreement from public access. The Court is not persuaded that there is a significant enough harm here to justify precluding public access, nor is it persuaded that there is not a less drastic safeguard available in this instance. Therefore, the Court denies the motion without prejudice to the parties filing an amended motion which provides a more compelling basis for relief under § 107.

SO ORDERED. _____

May 29, 2003
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge