

FOR OFFICIAL PUBLICATION

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOHN NEWTON,	)	CASE NO. SX-14-CV-213
Plaintiff,	)	
	)	ACTION FOR DAMAGES
v.	)	
	)	JURY TRIAL DEMANDED
HESS OIL VIRGIN ISLANDS CORPORATION	)	
and HESS CORPORATION a/k/a/	)	CONSOLIDATED UNDER: <i>IN RE: ASBESTOS,</i>
AMERADA HESS CORPORATION,	)	<i>CATALYST, & SILICA TOXIC DUST</i>
	)	<i>LITIGATION</i> , MASTER CASE NO. SX-15-CV-
Defendants.	)	096
	)	

Appearances:

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MEMORANDUM OPINION

MOLLOY, Judge.

BEFORE THE COURT are two motions seeking the same relief – leave to file documents under seal. The plaintiff, John Newton, filed the first motion (titled as a request). He seeks leave to file under seal an exhibit to his response in opposition to a motion the defendants, Hess Oil Virgin Islands Corporation (“HOVIC”) and Hess Corporation (“Hess”), filed to compel arbitration. The Defendants filed the second motion, seeking leave to file their reply under seal. For the reasons

* The instant motion was submitted by prior counsel for Defendants, Sunshine S. Benoit, Esq. of Barnes & Benoit LLP.

stated below, the Court will grant Newton's motion and grant in part and deny in part the Defendants' motion.

I. BACKGROUND

John Newton filed a complaint, later amended, against Hess and HOVIC, alleging that he "worked approximately 21 years inside the refinery," (Amend. Compl. ¶4, filed Apr. 21, 2015), where he was "exposed to toxic dusts of asbestos, catalyst and silica in the course of his individual work duties as well as when he was in the vicinity of other workers manipulating materials that created friable asbestos, catalyst and silica dust that traveled into his work area." *Id.* ¶ 6. Newton claims that "[h]e was diagnosed on April 6, 2014 with Interstitial Lung Disease with a reading of 1/1," *id.* ¶ 8, and alleges that Hess and HOVIC "knew of the dangers of exposure to asbestos, catalyst and silica," *id.* ¶ 21, but "failed to implement and enforce proper safety procedures and failed to properly warn," *id.* ¶ 22, and "supplied inadequate and non-approved masks and respiratory equipment for environments where workers worked with asbestos, catalyst and silica." *Id.* ¶ 24. He asserts a premises liability / gross negligence claim (count one) and a claim for supplying a chattel dangerous for its intended use (count two) against both Defendants. He seeks damages, including punitive damages.

Hess and HOVIC separately answered Newton's amended complaint on May 12, 2015 and jointly filed a motion to compel arbitration on September 4, 2015, based on a dispute resolution agreement Newton signed on August 17, 2002, with HOVENSA, LLC Newton filed a response in opposition to the Defendants' motion to compel arbitration on October 2, 2015 and simultaneously filed a request to submit under seal a copy of a 2012 "agreement in conjunction with Defendants' shutdown of its operations at the Hess Refinery," which was "not attached to Defendants' motion,"

but “provides that Mr. Newton ‘knowingly and voluntarily releases and forever discharges HOVENSA, LLC [and its affiliates] of and from any and all claims and grievances, known and unknown, asserted or unasserted, which the Employee has or may have against Releasees as of the date of execution of this Agreement.” (Pl.’s Opp’n 2, filed Oct. 2, 2015.) Newton argues first, that the 2012 agreement supersedes the 2002 agreement and, second, that any claims arising from his 2014 diagnosis were not released. It is the 2012 Newton-HOVENSA agreement that Newton wants to file under seal. The Defendants requested and were granted an extension (to November 30, 2015) to file their reply. Instead of filing their reply, the Defendants filed a motion for leave to file their reply under seal, without simultaneously filing their proposed reply under seal.

II. DISCUSSION

Newton’s request and the Defendants’ motion raise the same concern: the “constitutional right of access to basic court filings.” *John v. People*, 63 V.I. 629, 643 (V.I. 2015) (citations omitted). Forty years ago, the Supreme Court of the United States summarized the tensions between the litigant’s desire to keep his information private and the public’s right to access court records, explaining that

the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen’s desire to keep a watchful eye on the workings of public agencies, and in a newspaper publisher’s intention to publish information concerning the operation of government.

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. For example, the common-law right of inspection has bowed before the power of a court to insure that its records are not used to gratify private spite or

promote public scandal through the publication of the painful and sometimes disgusting details of a divorce case. Similarly, courts have refused to permit their files to serve as reservoirs of libelous statements for press consumption, or as sources of business information that might harm a litigant's competitive standing.

It is difficult to distill from the relatively few judicial decisions a comprehensive definition of what is referred to as the common-law right of access or to identify all the factors to be weighed in determining whether access is appropriate. The few cases that have recognized such a right do agree that the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.

Nixon v. Warner Communications, Inc., 435 U.S. 589, 597-99 (1978) (citations, quotation marks, and footnotes omitted). But concerning civil litigation in particular, the Supreme Court of the United States has also recognized that “[m]uch of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). In fact, “pretrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law, and, in general, they are conducted in private as a matter of modern practice.” *Id.* (footnote and citations omitted)). The reason why is because

[d]iscovery rarely takes place in public. Depositions are scheduled at times and places most convenient to those involved. Interrogatories are answered in private. Rules of Civil Procedure may require parties to file with the clerk of the court interrogatory answers, responses to requests for admissions, and deposition transcripts. Jurisdictions that require filing of discovery materials customarily provide that trial courts may order that the materials not be filed or that they be filed under seal. Federal district courts may adopt local rules providing that the fruits of discovery are not to be filed except on order of the court. Thus, to the extent that courthouse records could serve as a source of public information, access to that source customarily is subject to the control of the trial court.

Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33 n.19 (1984) (internal citations omitted).

The Virgin Islands recognizes the public's right to have access to court records. Our law provides that "[t]he records of every court of justice shall be public records and, except as otherwise provided in subtitle 2 of Title 5, shall be open to the inspection of any citizen or party in interest under the supervision of the clerk of the court having custody of the records, during business hours."¹ 4 V.I.C. § 241. Technically, the public's right to access court records is restricted only when the records concern "reports of child abuse, sexual abuse or neglect," 5 V.I.C. § 2540(a), "[l]aw enforcement records and files concerning a child," *id.* § 2527(a), applications and orders pertaining to wiretapping, *see id.* § 4105(f), criminal records that have been expunged, *see id.* § 3731, or reports concerning incapacitated persons under guardianship, *see* 15 V.I.C. § 5-307. In other words, there is no authority under the Virgin Islands Code to permit papers filed in a civil case to be sealed from the public's eye. Instead, that authority is found within court rules of procedure.

Virgin Islands Rule of Civil Procedure 5.2 provides that "[t]he court may order that a filing be made under seal without redaction," but also "may later unseal the filing or order the person who made the filing to file a redacted version for the public record." V.I. R. Civ. P. 5.2(d).² Rule 5.2(d)

¹ "It is well established that in the Virgin Islands, the common law is not applicable without first determining whether it is soundest rule for the Virgin Islands." *Prosser v. Nissman*, 67 V.I. 96, 102 (Super. Ct. 2016) (citing *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011); *Gov't of the V.I. v. Connor*, 60 V.I. 597 (V.I. 2014) (*per curiam*)). If it were not for section 241 of title 4 of the Virgin Islands Code, the Court would have to decide whether recognizing the common law right of access to court records was the soundest rule for the Virgin Islands. However, because the Legislature has granted the right of access to court records, the statute controls here. *But see Howard v. State*, 291 P.3d 137, 142 (Nev. 2012) ("Because the common-law right to access is broader than the other sources of that right—constitutions and statutes—jurisdictions vary in their approaches to striking a balance between the public's right of access to judicial records and competing privacy interests."). No issue is raised here whether the common law right of access is at issue or whether it is broader in the Virgin Islands than the statutory right.

² The Virgin Islands Rules of Procedure took effect March 31, 2017, before Newton's request or Defendants' motion was filed. *See generally In re: Adoption of the V.I. Rules of Civ. P.*, Prom No. 2017-002, 2017 V.I. Supreme LEXIS 22, *1-2 (V.I. Apr. 3, 2017). Pursuant to Rule 1-1(c)(2), the Virgin Islands Rules of Civil Procedure governs in all civil actions pending on March 31, 2017 absent a contrary order from the Supreme Court or an express finding of the Superior Court judge or magistrate judge that applying the new rules would be infeasible or work an injustice. *See* V.I. R. Civ. P. 1-1(c)(2) ("These rules, and subsequent amendments, govern: proceedings in any action pending on the effective date of the rules or amendments, unless: (A) the Supreme Court of the Virgin Islands specifies otherwise by order; or (B) the Superior

contemplates first that a document be made under seal without redaction and then, after the court reviews the document, it may order the filer to submit a redacted version in place of the sealed document or the court may unseal the entire document. The concern here is two-fold: the Defendants seek leave to file their arguments, i.e., their reply brief under seal, not a document attached to their reply, while Newton “self-sealed” his exhibit (the 2012 agreement) before the Court granted leave, which technically means his agreement has not been under seal since he filed it as no order to seal it issued from this Court. Newton’s request and the Defendants’ motion will be discussed below.

A. Newton’s Request to Seal An Exhibit to His Dispositive Motion Paper

Along with his response in opposition to the Defendant’s motion to compel arbitration, Newton filed a request, which reads as follows:

Plaintiff moves to file under seal an *Exhibit 1* to Plaintiff’s *Opposition to Defendants’ Motion to Compel Arbitration and Stay Pending Arbitration* because the Exhibit is subject to a confidentiality agreement between Plaintiff and Defendants. The *Exhibit 1* is the focus of Plaintiff’s arguments in his Opposition. Plaintiff respectfully requests that the Court permit Plaintiff to submit the above-referenced *Exhibit 1* to Plaintiff’s Opposition under seal. A proposed order is attached.

(Pl.’s Req. to File an Exh. 1 for Pl’s Opp’n to Defs.’ Mot. to Compel Arb. & Stay Pending Arb. 1, filed

Court makes an express finding that applying them in a particular previously-pending action would be infeasible or would work an injustice.”). A few Superior Court judges have concluded that “courts should apply the procedure in effect at the time a motion was filed.” *Jones v. Lockheed Martin Corp.*, 68 V.I. ___, __ n.9; 2017 V.I. LEXIS 161, *36 n.9 (V.I. Super. Ct. Nov. 22, 2017) (citing *Edwards v. Hess Oil V.I. Corp.*, SX-15-CV-382, 2017 V.I. LEXIS 94, *5 n.3 (V.I. Super. Ct. June 28, 2017)); *Edwards*, 2017 V.I. LEXIS 94 at *5 n.3 (“Rule 1-1 must require that the rules in effect prior to March 31, 2017 continue to govern motions *pending as of that date*, but for all motions filed after March 31, 2017, the new rules will apply unless application to the case (not a particular motion) would be unjust or infeasible.” (emphasis added) (*Webster v. FirstBank P.R.*, 66 V.I. 514, 519 n.3 (V.I. 2017)); *accord In re: Rohn*, 67 V.I. 764, 770 n.3 (V.I. 2017) (“In its appellate brief, the Cost-U-Less defendants correctly note that much of Federal Rule 11(c) is incorporated into Virgin Islands Rule of Civil Procedure 11(c), which went into effect on March 31, 2017. However, because the Superior Court sanctioned Rohn on March 2, 2016, we apply the rules that were in effect on that date.” (citing *Blyden v. People*, 53 V.I. 637, 658 n.15 (V.I. 2010)). Here, Rule 5.2 was not in effect when Newton filed his request or when the Defendants filed their motion. Clearly, they could not have complied with it. But Rule 5.2 speaks to the court’s authority regarding sealing, not the parties’ responsibility. Clearly, then Rule 5.2(d) governs here, even though the rule was not in force at the time of the parties’ applications.

Oct. 2, 2015 (paragraph break omitted).) Defendants did not file a response. Newton did not await a ruling from the Court, but instead simultaneously filed the exhibit in a sealed envelope.

The public's right of access to court records encompasses "dispositive motions, such as summary judgment motions." *Verni ex rel. Burstein v. Lanzaro*, 960 A.2d 405, 409 (N.J. App. Div. 2008) (citing *Hammock v. Hoffmann-LaRoche, Inc.*, 662 A.2d 546, 580 (N.J. 1995)). Since the motion to compel arbitration may "dispose" of Newton's claims, it is akin to a dispositive motion. *Cf. Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, 113 (Super. Ct. 2016) ("[T]he best policy for the Virgin Islands is to permit discretionary dismissal of actions in which all claims have been referred to mandatory, binding arbitration."); *see also Burke v. Treasure Bay V.I. Corp.*, SX-16-CV-121, 2016 V.I. LEXIS 161, *6-7 (V.I. Super. Ct. Oct. 6, 2016) (motion to dismiss based on agreement to arbitrate converted to summary judgment motion because agreement was outside the pleadings). Therefore, the papers pertaining to the motion should be available to the public. (*Accord* Defs.' Mot. to File Under Seal 1, filed Nov. 30, 2015 (hereinafter "Mot.") ("[T]here is a presumptive right of public access to pretrial motions of a nondiscovery nature, and the material filed in connection therewith." (citations omitted))).) As the District Court of the Virgin Islands recently explained,

[t]he right to public access to judicial records and proceedings is axiomatic, and the Court maintains a "strong presumption of openness which does not permit the routine closing of judicial records to the public." A party seeking to file under seal bears a "heavy burden" and must show that "disclosure will work a clearly defined and serious injury" to the party seeking sealing. The presumption in favor of openness may be overcome only by a movant's showing that closure is "essential to preserve higher values and is narrowly tailored to serve that interest."

Beberman v. U.S. Dept. of State, Civ. No. 2014-020, 2014 WL 12768904, *1 (D.V.I. May 21, 2014) (quoting *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984); and *Globe Newspaper Co. v. Super. Ct. for Norfolk Cnty.*, 457 U.S. 596,

606 (1982)) (brackets and emphasis omitted). Newton did not carry this heavy burden.

First, Newton request is really a motion because “[a]ny application— whether orally or in writing—made to a court or judge for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant in a pending case is a motion.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 128-29 (Super. Ct. 2016) (quotation marks, brackets, and citations omitted). But requests also have to be supported by authority. *Cf. Pate v. Gov’t of the V.I.*, 62 V.I. 271, 291, n. 68 (Super. Ct. 2015) (“By signing a motion or supporting memorandum, an attorney certifies that the applicable law in this jurisdiction has been cited, including authority for or against the position being advocated by counsel.”). Newton failed to cite any authority in support of his request to file his exhibit under seal. That was improper.

Second, “[a] party to litigation has no authority to ‘self-seal’ a document absent court order. Even when stipulated to by adverse parties, the Court must weigh any interests in confidentiality against that of the public to open court records.” *Carty v. Gov’t of the V.I.*, 203 F.R.D. 229, 230 (D.V.I. 2001) (citations omitted).³ Newton self-sealed the exhibit he submitted with his opposition to the Defendants’ motion to compel arbitration. That too was improper. He should have waited for the

³ *Carty* states that it is a decision of the Appellate Division of the District Court, which would be binding on the Superior Court of the Virgin Islands until overruled by the Supreme Court of the Virgin Islands. *See In re: People of the V.I.*, 51 V.I. 374, 389 n.9 (V.I. 2009) (*per curiam*) (“[D]ecisions rendered by the Third Circuit and the Appellate Division of the District Court are binding upon the Superior Court.”). *But see Blyden v. Gov’t of the V.I.*, 64 V.I. 367, 378 n. 6 (V.I. 2016) (“Appellate Division and Third Circuit decisions **are not binding** on the Superior Court.” (emphasis added) (explaining *Hamed v. Hamed*, 63 V.I. 529, 534 (V.I. 2015), parenthetically). *Contra Hamed*, 63 V.I. at 536 (“These significant developments in Virgin Islands law over the past six years *may require* this Court to one day reexamine the binding effect of pre-2007 Appellate Division decisions on the Superior Court. *We need not do so in this case, however.*” (emphasis added)). However, *Carty* was issued by a federal magistrate judge, *see* 203 F.R.D. at 229, not a three-judge appellate panel, and refers to the parties as plaintiff and defendant, not appellant and appellee. *See id.* at 230. The Court accessed the electronic docket of *Carty*, which clearly shows that the case was filed in the District Court of the Virgin Islands by complaint not by notice of appeal from the then-Territorial Court of the Virgin Islands. Thus, the designation in the caption to “District Court, Virgin Islands, Appellate Division,” *id.* at 229, was an error. Although it is not binding, the Court agrees with its overall premise that “self-sealing” is not permitted.

Court to rule. Technically, his submission has not been under seal all this time since no order issued from this Court sealing it.

Third, and most importantly, Newton failed to give any explanation why the 2012 agreement—which is at the heart of his opposition to sending his case to another forum—must be shielded from the public’s view. “[A]s a general matter, courts tend to keep information relating to arbitration proceedings confidential, ‘particularly because: (1) parties often enter into arbitration proceedings to maintain confidentiality; and (2) it promotes the voluntary execution of private arbitration agreements—a sound public policy objective.’” *Gillette Co. v. Dollar Shave Club, Inc.*, Civ. No. 15-1158-LPS-CJB, 2017 U.S. Dist. LEXIS 148775, *7 (D. Del. Sept. 6, 2017) (quoting *Barkley v. Pizza Hut of Am., Inc.*, Case No. 6:14-cv-376-Orl-37DAB, 2015 U.S. Dist. LEXIS 137682, *2 (M.D. Fl. Oct. 8, 2015)) (remaining citations omitted).⁴ But even though Rule 5.2(d) was not in effect at the time when Newton filed his request, *see, supra*, note 2, Newton could have filed a redacted copy of the 2012 agreement, rather than “self-seal” it, or followed the Defendants’ example and excerpted relevant portions within his response. *Cf. id.* (“[T]he redactions . . . would still allow the public to understand the District Court’s ruling . . . whether the parties should be litigating their disputes here in federal court in the first place.”).

Clearly, the existence of the 2012 agreement is not confidential because Newton discusses it at length in his response and he did not “self-seal” his response. Likewise, the parties’ names are not confidential, nor the date they signed the agreement. Rather, only certain terms and provisions—but not all terms or provisions—within the 2012 agreement must be kept confidential. But those

⁴ *Gillette Company* concerned “seal[ing] portions of a judicial opinion,” 2017 U.S. Dist. LEXIS 148775 at *5, which is distinguishable from filing an arbitration agreement under seal. The analysis is nonetheless informative as to whether arbitration agreements should be filed with the court.

provisions that are germane to Newton's opposition could be quoted within his response and a full copy of the agreement e submitted to chambers in a sealed envelope for *in camera* review. It is not necessary to make the entire agreement a part of the record of the court, but under seal in perpetuity.

Having reviewed Newton's self-sealed exhibit, the Court believes that it should not remain under seal. *Cf. Verni ex rel. Burstein*, 960 A.2d at 409 ("[T]he decision to seal or unseal documents is vested in the discretion of the judge." (citations omitted)); *see also Howard v. State*, 291 P.3d 137, 141 (Nev. 2012) ("With acute awareness of the presumption favoring public access to judicial records and documents, federal and state courts have decided that a court may exercise its inherent authority to seal those materials only where the public's right to access is outweighed by competing interests."). The 2012 agreement does contain language that could subject HOVENSA (and the Defendants by association) to a negative light. But leaving the 2012 agreement under seal means the public would be at a loss to understand why a claim filed in court was sent to another forum. *Cf. Gillette Co.*, 2017 U.S. Dist. LEXIS 148775 at * 11 ("[P]roposed redactions relate to the key legal questions . . . did the 2014 Agreement revoke the arbitration provision in the 2008 Agreement, and if not, do the parties' disputes (at issue in the instant litigation) fall within the scope of what should be arbitrated? With information like this redacted, it would be difficult for the public to understand the District Court's decision, because the very issues that were before the Court would be obscured." (citations omitted)); *see also Del. Display Grp. LLC v. LG Elecs., Inc.*, 221 F. Supp. 3d 495, 497 (D. Del. 2016) ("[I]t is in the public interest to be able to understand the proceedings before a judge."); *Regents of Univ. of Cal. v. Superior Court of City and Cnty of San Francisco*, 976 P.2d 808, 828 (Cal. 1999) ("The public has a right to know what decisions government officials make and to have

officials articulate fully the basis on which they act.”). In addition, if the 2012 agreement remained under seal—as well as the Defendants’ reply as discussed below—the Court would have to be extremely circumspect in its opinion addressing the motion to compel arbitration. In other words, without knowing what language, specifically, within the 2012 agreement is confidential, the Court might inadvertently disclose confidences, which could then trigger a request to redact the Court’s own opinion. *Cf. Gillette Co.*, 2017 U.S. Dist. LEXIS 137682 at *5 (addressing request to seal/redact court opinion) (“Assessing whether good cause exists to seal portions of a judicial opinion generally involves a balancing process, in which courts weigh the harm of disclosing information against the importance of disclosure to the public.” (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994))). The safer course here is to not have the exhibit on file, rather than run the risk of an inadvertent disclosure. Rather than grant Newton’s Request, the Court will instead strike the self-sealed submission and return it to counsel for Newton. “[T]he authority of a court to control its docket, including what papers and other items become part of the record” is “inherent.” *Der Weer*, 64 V.I. at 126 (citations omitted). Striking the exhibit also means it will not be a part of the court’s record. Newton must retrieve the exhibit and resubmit a redacted copy.

B. Defendants’ Motion for Leave to File their Motion Paper Under Seal

Defendants recognize the public’s right to access court record, but counter that “the right of access is not absolute.” (Mot.1 (citation omitted).) Instead, “[c]ourts must balance the strong common law presumption of access against the factors weighing against access.” *Id.* (citation omitted). But the public should not be allowed to access “[d]ocuments containing confidential information,” Defendants argue, because “the need for secrecy outweighs the presumption of access that normally attaches to such documents.” *Id.* (citations omitted). But they seek leave to file not

just the documents attached to the reply under seal, but their entire motion paper. And unlike Newton, Defendants ask for “an order permitting them to file their *Reply* . . . and *all attached exhibits under seal*.” *Id.* (emphasis added). The explanation given in support is that “the Reply cites to the terms of a confidential Agreement and General Release.” *Id.* Newton did not file a response to the Defendants’ motion and the Defendants did not simultaneously file a “self-sealed” reply.

As Defendants point out, courts generally disapprove of sealing motion papers or filing motion papers under seal, particularly dispositive motion papers. *E.g., L.K. Station Grp., LLC v. Quantek Media, LLC*, 872 N.Y.S.2d 691, 691 (Sup. Ct. 2008) (“[T]he First Department rejects wholesale sealing of motion papers, even when both sides to the litigation request sealing.”). But courts also disagree as to what court papers qualify as “judicial documents” that are viewable by the public. *See, e.g., United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) (“Faced with the issue of whether a document may be classified as a ‘judicial document,’ and therefore accessible to the public, courts have applied varying standards. The Third Circuit has focused on the technical question of whether a document is physically on file with the court. According to the Third Circuit, if the document is not filed, it is not a judicial record. . . . The First Circuit has taken a somewhat different approach . . . documents must have a role in the adjudication process in order to be accessible and that documents that have no such role, such as those used in discovery, cannot be reached.” (quotation marks, citations, and paragraph break omitted)); *see also id.* (“We think that the mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access. We think that the item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document.”); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 970 A.2d 656, 677

(Conn. 2009) (“[N]ot all documents in the court’s possession are presumptively open. The presumption of public access applies only to ‘judicial’ documents and records.” (citations omitted)).

However, “[t]he records of every court . . . shall be public . . . and . . . open to the inspection of any citizen or party in interest under the supervision of the clerk of the court” in the Virgin Islands. 4 V.I.C. § 241. All court records (except those excluded by statute) are open to inspection by the public or the parties. That includes motion papers, not just dispositive motion papers. Defendants have not represented that they would be unable to redact copies of the documents they intend to attach to their reply or submit an unredacted copies *in camera*. Documents provided *in camera* are not considered filed with the court and therefore are not available for public inspection. Similarly, Defendants have also not explained why they must file their entire reply—rather than certain documents attached to that reply—under seal rather than draft their motion in such a way as to avoid disclosing any confidences. The Court is simply not convinced that the motion and the opposition can be part of the public record, but the reply cannot. In short, the Court finds that Defendants have not carried their heavy burden here.

III. CONCLUSION

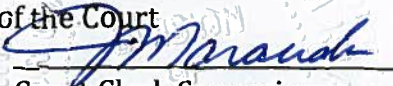
For the reasons stated above, the Court will construe Newton’s Request as a motion and deny it, strike his self-sealed exhibit, and grant him leave to refile a redacted copy. The Court will also deny the Defendants’ motion for leave to file their reply under seal. An appropriate order follows.

Date: April 23, 2018.

ATTEST:

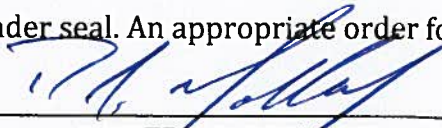
ESTRELLA H. GEORGE

Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 4/23/18


ROBERT A. MOLLOY
Judge of the Superior Court