IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Kmart Corporation v Capital One Financial Corp**
Docket No. **267130**
L.C. No. **03-055092-CK**

Michael J. Talbot, Judge, acting under MCR 7.211(E)(2), orders:

The motion for leave to file the application under seal is DENIED. Summarily stating that the application and its exhibits contain information that has been designated "confidential or highly confidential" under the stipulated trial court protective order, which was not attached to the motion, does not sufficiently comply with MCR 7.211(C)(9). However, the denial of this motion is without prejudice, and defendant-appellant may file another motion, which shall address why the sealing of the entire application, as opposed to certain exhibits, is necessary to protect the specific interest asserted, and whether there are less restrictive means to protect the interest.

This Court's file will not be sealed without a motion setting forth the standards under MCR 8.119(F), as required by MCR 7.211(C)(9)(c). Thus, the answer filed by plaintiff-appellee cannot be sealed without a motion. The parties shall also consider whether the sealing of the application and answer, or any additional pleadings, effectively amounts to the sealing of this Court's file, which requires a finding of good cause under MCR 8.119(F) and a finding that there is no less restrictive means to adequately and effectively protect the specific interest asserted. MCR 7.211(C)(9)(e).

Any new motion to seal that is submitted in response to this order shall be filed within 14 days from the Clerk's certification of this order. In the interim, the public will not have access to the application or answer filed with this Court for 14 days or until this Court's disposition of any new motion to seal that is filed in response to this order, whichever is later.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 09 2006
Date

Sandra Schultz Mengel
Chief Clerk