

Barrison v D'Amato & Lynch LLP
2018 NY Slip Op 31922(U)
August 8, 2018
Supreme Court, New York County
Docket Number: 653530/2011
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Andrea Masley Justice PART 48

HARVEY BARRISON,

Plaintiff,

INDEX NO. 653530/2011
MOTION DATE
MOTION SEQ. NO. 016
MOTION CAL. NO.

- v -

D'AMATO AND LYNCH LLP, LUKE D. LYNCH, JR. and HECHT
AND COMPANY, CERTIFIED PUBLIC ACCOUNTANTS, P.C.,

Defendants.

The following papers, numbered 1 to _____ were read on this motion to/for SEAL COMPLAINT

<u>NUMBERED</u>	<u>PAPERS</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that the motion is GRANTED to the extent that the parties may redact certain exhibits.

Plaintiff Harvey Barrison commenced this action on December 20, 2011 against defendants D'Amato and Lynch LLP (D&L), Luke D. Lynch, Jr., and Hecht and Company, Certified Public Accountants, P.C. seeking dissolution of D'Amato and Lynch LLP and an accounting. The documents, for which sealing is requested, will be submitted with summary judgment motions.

Defendants' moving papers consist of the affirmation of Ravindra K. Shaw who contends that the exhibits are tax returns and K-1 Forms about the private finances of both parties and non-parties to the action and contain confidential information such as home addresses, social security numbers, and taxpayer identification numbers.

On consent of all parties, defendants move pursuant to 22 NYCRR § 216 to seal eleven exhibits (NYSCEF Doc. No. 523). The parties marked the documents "confidential" pursuant to the parties' so-ordered stipulation (NYSCEF Doc. No. 148).

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

"(a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.

(b) For purposes of this rule, 'court records' shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103 (a)."

Rule 202.5 (e), entitled "Omission or Redaction of Confidential Personal Information", provides that confidential personal information such as taxpayer identification numbers, social security numbers, and bank account numbers shall be omitted or redacted (22 NYCRR § 202.5[e][i] and [iv]).

Judiciary Law § 4 provides that judicial proceedings shall be public. "The public needs to know that all who seek the court's protection will be treated evenhandedly," and "[t]here is an important societal interest in conducting any court proceeding in an open forum" (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U], *2 [Sup Ct, NY County 2006] [citation omitted]). The public right of access, however, is not absolute (see *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000]).

The "party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access" to the documents (*Mosalem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted]). The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting "an affidavit from a person with knowledge explaining why the file or certain documents should be sealed" (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], *2 [Sup Ct, NY County 2004]).

Good cause must "rest on a sound basis or legitimate need to take judicial action" (*Danco Labs.*, 274 AD2d at 8). Courts have sealed tax returns because such records contain private information about personal finances (*People ex rel. Qui Tam v Bayrock Group LLC*, 2017 NY Slip Op 30358[U], 4 [Sup Ct, NY County 2007] [explaining that like medical records, tax records contain "confidential, sensitive information" about the parties' personal finances]). Consent to seal is not sufficient as it does not establish "good cause" (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U] 9 [Sup Ct, NY County 2012]).

The parties must redact all "confidential information" as defined by Uniform Rule § 202.5(e). Parties are directed to redact all confidential information belonging to parties and non-parties including home addresses and social security numbers.

In addition, the court finds good cause based on private finance information for which the public has no interest. The parties are directed to redact all financial information from the tax returns and K-1 Forms that is unrelated to this action (see e.g. *Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815-816 [Sup Ct, NY County 1991] ["[T]he internal finances" of a party are not a matter of public interest.], *affd* 183 AD2d 678 [1st Dept 1992]). Moreover, while this motion to seal was listed on the court's public docket, neither the press nor public appeared do demonstrate interest in this case.

Pursuant to, and in accordance with, Rules 202.5 and 216, having determined that good cause exists for the redacting of the exhibits in this action and the grounds having been specified, it is now accordingly,

ORDERED that the motion is granted to the extent defendants shall redact confidential information from the following exhibits attached to the Affirmation of Plaintiff's Attorney in Support of Plaintiff's Motion for Summary Judgment and to Renew a Prior Motion (Doc. No. 425): Exhibit L - NJ Partnership Tax Returns (2010-2011) (Doc. No. 426); Exhibit M - NJ Partnership Supporting Statements accompanying NJ Partnership Tax Returns (2003, 2006, 2008, 2009, 2010) (Doc. No. 427); Exhibit O - Partnership Returns (2009-2011) (Doc. No. 429); Exhibit P - Lynch, Jr.'s 2010 NJ K-1 Form (Doc. No. 430); Exhibit Q - NYC Unincorporated Business Tax Returns (2011-2012) (Doc. No. 431); and it is further

ORDERED that defendants shall redact personal financial information from the following exhibits attached to the Affirmation in Opposition to Defendants' Motion for Summary Judgment (Doc. No. 464): Exhibit A - Lynch, Jr.'s Federal and NJ K-1 Form (Doc. No. 465); and it is further

ORDERED that defendants shall redact personal financial information in Exhibit A to the Affirmation of Philip Russotti in Opposition to Defendants' Motion (Doc. No. 475); and it is further

ORDERED that defendants shall redact personal financial information from the following exhibits attached to the Reply Affirmation of Philip Russotti in Opposition to Defendants' Motion for Summary Judgment (Doc. No. 495): Exhibit A - NJ Partnership Supporting Statements accompanying NJ Partnership Tax Returns (2003 and 2006) (Doc. No. 496); Exhibit B - NJ Partnership Supporting Statements accompanying NJ Partnership Tax Returns (2009) (Doc. No. 497); Exhibit A - NJ Partnership Supporting Statements accompanying NJ Partnership Tax Returns (2003 and 2006) (Doc. No. 503); Exhibit B - NJ Partnership Supporting Statements accompanying NJ Partnership Tax Returns (2009) (Doc. No. 504); and it is further

ORDERED that the motion is granted to the extent defendants shall redact confidential information from the exhibits as directed by this decision and file them in redacted form within 10 days of the filing of this decision. Future submissions containing or referencing confidential information, as outlined in this decision, shall be likewise redacted prior to being filed publically in NYSCEF; and it is further


NYSCEF DOC. NO. 542

RECEIVED NYSCEF: 08/09/2018

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to accept NYSCEF Doc. Nos. 426, 427, 249, 430, 431, 465, 475, 496, 497, 503, and 504 in redacted form; and it is further

ORDERED that until further order of the court, the County Clerk shall deny access to the unredacted documents to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from the counsel; and it is further

ORDERED that this order cannot be used to seal or redact any documents or evidence used at trial.

Dated: 8/8/18 
JSC
HON. ANDREA MASLEY

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST