

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BASSAM Y. ALGHANIM,	:
	:
Plaintiff,	:
	:
v.	:
	:
	:
KUTAYBA Y. ALGHANIM et al.,	:
	:
Defendants.	:
-----X	

Case No. 09-CIV-8098 (NRB)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS KUTAYBA Y. ALGHANIM AND OMAR K. ALGHANIM'S MOTION TO FILE DOCUMENTS UNDER SEAL

INTRODUCTION AND STATEMENT OF FACTS

On March 27, 2008, plaintiff Bassam Y. Alghanim and his brother, defendant Kutayba Y. Alghanim executed a Memorandum of Understanding (“MOU”) that outlines in detail the terms of the dissolution of the brothers’ partnership, as well as the distribution of their business and personal assets. Paragraph 13 of the MOU provides that the parties shall keep this agreement and its contents secret and confidential except under certain limited circumstances. Paragraph 15 of the MOU provides that the parties shall arbitrate “any dispute arising in the future between us related to the subject matter of this agreement.”

On September 22, 2009, plaintiff filed a complaint against defendant Kutayba and Kutayba’s son, Omar K. Alghanim, alleging that they hacked into plaintiff’s email in order to gain an unfair advantage in an ongoing dispute concerning the implementation of the MOU. On October 23, 2009, plaintiff filed an amended complaint in which he, among other things, asserted additional claims against these defendants based on the same allegations. On November 23, 2009, defendants Kutayba and Omar filed a motion to dismiss the Amended Complaint or, in the

alternative, stay this action pending arbitration based, in part, on the arbitration clause contained in the MOU. Defendants intend to submit the MOU as an exhibit to the Declaration of Omar Al-Essa in support of this motion. In order to comply with their confidentiality obligations under the terms of the MOU and to protect sensitive business information contained therein, defendants Kutayba and Omar respectfully request that this Court permit them to file the MOU under seal pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure.

ARGUMENT

Federal courts retain the inherent power to seal documents upon a showing of good cause. DiRussa v. Dean Witter Reynolds, Inc., 121 F.3d 818, 827 (2d Cir. 1997). The decision whether to seal or grant access is left to the sound discretion of the trial court. Id. at 826 (citing Nixon v. Warner comm., Inc., 435 U.S. 589, 599 (1978)). Although there is a presumption in favor of public access to judicial records, that presumption is not absolute; rather, its weight varies according to the parties' privacy interests and the relative importance of the particular documents in the adjudication of the parties' rights. United States v. Amodeo, 71 F.3d 1044, 1048-50 (2d Cir. 1995). Where a document, or a portion thereof, plays only a "negligible role in [the court's] performance of Article III duties, the weight of the presumption is low and amounts to little more than a prediction of public access absent a countervailing reason." Id. at 1050. Even where the weight of the presumption in favor of public access is high, the parties' mutual agreement to maintain the confidentiality of a document may outweigh the general presumption of public access. DiRussa, 121 F.3d at 827, 828 (affirming determination to honor the expectations of the parties by placing the case file under seal).

Here, the language of the arbitration provision contained in the MOU as well as the fact that it concerns the division of the brothers' business and personal assets is undoubtedly

relevant to the Court's resolution of defendants' motion. However, the details of the brothers' division of their business and assets and the agreed upon means of valuing those interests (which constitute sensitive business information) clearly is not. Even further, the expectations of the parties at the time they entered into the MOU were that its terms would remain confidential. Therefore, the parties' strong privacy interests significantly outweigh the general presumption of public access to the MOU.

CONCLUSION

For the foregoing reasons, defendants Kutayba Y. Alghanim and Omar K. Alghanim's motion for permission to file the MOU under seal should be granted.

Dated: New York, New York
November 23, 2009

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