

**Guberman v West**

2019 NY Slip Op 33508(U)

November 21, 2019

Supreme Court, New York County

Docket Number: 653394/2019

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY

PART IAS MOTION 48EFM

Justice

-----X

INDEX NO. 653394/2019

JOSH GUBERMAN,

MOTION DATE \_\_\_\_\_

Plaintiff,

MOTION SEQ. NO. 002

- v -

LARRY WEST, SCOTTALI EQUITY PARTNERS, LLC

DECISION + ORDER ON  
MOTION

Defendant.

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MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for SEAL

This case is about a 33-carat precious pink diamond. (NYSCEF Doc. No. [NYSCEF] 1 at ¶ 1.) Defendant Larry West allegedly formed defendant Scottali Equity Partners, LLC (Scottali) to acquire and sell this diamond for a profit. (*Id.*) One of Scottali’s members, plaintiff Josh Guberman, invested millions of dollars in Scottali allegedly with the understanding that West would promptly sell the diamond before the costs of carrying the diamond eroded the investment. (*Id.* at ¶¶ 1, 19.) However, West allegedly declined to sell the diamond despite numerous offers at or above market value. (*Id.* at ¶ 2.) Additionally, West allegedly sold various interests in the diamond in violation of the Scottali operating agreement<sup>1</sup>. (*Id.* at 37.) Guberman commenced this action for breach of contract, breach of fiduciary duty, breach of the implied covenant of

<sup>1</sup> It appears that Guberman filed the Scottali operating agreement in redacted form. (NYSCEF 2.) To the extent that these redactions, the contents of which are unknown to the court, are unpermitted by court rule or this order, Guberman is directed within 30 days of this order to file an unredacted copy, or move by Order to Show Cause to seal.

good faith and fair dealing, violations of the New York Limited Liability Company Law, and dissolution.

In motion sequence number 002, defendants move to seal and redact the acquisition price of the diamond, the parties' strategies for selling the diamond, West and Guberman's phone numbers, medical information that Guberman disclosed over text message to West, and the password to a confidential FileShare. Defendants argue that disclosure of the diamond's acquisition price would impede Scottali's ability to negotiate a sale price of the diamond. Defendants also argue that disclosure of the secure file-sharing system would jeopardize the data security of Guberman's counsel. Guberman does not oppose.

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:

"(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)."

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 (*Mosallem 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 9). Agreements to seal are insufficient as such agreements do not establish “good cause” (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], \* 9 [Sup Ct, NY County 2012]).

In the business context, courts have sealed records where trade secrets are involved or where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosallem*, 76 AD3d at 350-351 [citations omitted]). Additionally, the First Department has affirmed the sealing of records concerning financial information where there has not been a showing of relevant public interest in disclosure of the financing. (see *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) For instance, in *Dawson v White & Case*, the First Department stated that the plaintiff appellant failed to show “any legitimate public concern, as opposed to mere curiosity, to counter-balance the interest of defendant’s partners and clients in keeping their financial arrangement private.” (*Id.* [internal quotation marks and citation omitted]). Here, neither the press nor

public were present for argument, though the date and time of the argument on the motion to seal was publicly posted for almost 30 days.

Accordingly, good cause exists to seal the acquisition price of the diamond because disclosure could threaten Scottali's competitive advantage in the diamond industry. Moreover, there has been no showing of public interest sufficient to outweigh the parties' interest in keeping their financial arrangement private. (*Dawson*, 184 AD2d at 247.) Disclosure of the parties' strategies to sell the diamond, as memorialized in their text messages, could also threaten Scottali's competitive advantage, and therefore, good cause exists to seal this information. Good cause further exists to redact the password to the file-sharing system, a system apparently used by Guberman and West to facilitate the transfer of documents in discovery. Disclosure of this password would give viewers carte-blanche access to all of the documents uploaded regardless of their confidential content, in spite of the parties' decision not to file them on the docket, and before the parties had an opportunity to request sealing of these specific documents. Accordingly, good cause exists especially because disclosure could jeopardize the parties' data security.

Good cause does not exist to redact the parties' phone numbers. Neither Guberman, nor West, articulates in an affidavit any reason to seal this information other than a general desire for privacy. This general desire for privacy does not constitute good cause to seal court records. (*Mosallem*, 76 AD3d at 350, 351, 352.) Phone numbers are not per se confidential. (See Uniform Rules for Trial Courts NYCRR 202.4(e)).

Lastly, good cause does not exist to seal the medical information that Guberman disclosed to West over text message. On more than one occasion, the Appellate

Division has declined to seal official medical records, even those involving a minor. (*Ava v NYP Holdings, Inc.*, 64 AD3d 407, 416 [1st Dept 2009]; *Kelly D. v Niagara Frontier Tr. Auth.*, -NYS3d-, 2019 NY Slip Op. 08021 [4th Dept 2019].) At issue here, however, is an adult's voluntary discussion of his health over text message with a business associate. Although a person's health may be one of the most sensitive matters of his, her or their life, on this record at least, the only arguments in favor of sealing are those explicitly rejected by the Appellate Division, such as, "the general desire for privacy", "the potential for embarrassment" or "damage to reputation." (*Mosalleh*, 76 AD3d at 351.) This court is bound to follow that precedent, especially when the parties have not articulated any distinguishing facts or circumstances that would merit an alternative result.

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists for the redacting the acquisition price of the diamond, the parties' strategies to sell the diamond, and the password to the file-sharing system as proposed in the redactions filed on NYSCEF Doc. No. 28, and as detailed in this decision, and the grounds having been specified, it is now accordingly,

ORDERED that the motion is granted to the extent that defendants shall redact all references to the acquisition price of the diamond, the parties' strategies to sell the diamond, and the password to the file-sharing system as directed by this decision from NYSCEF 28; and it is further

ORDERED that defendants are directed to re-file NYSCEF Doc. No. 28 in redacted form within 10 days of this date of this decision. Future submissions containing or referencing the acquisition price of the diamond, the parties' strategies to sell the diamond, and the password to the file-sharing system, as outlined in this

decision, shall likewise be redacted prior to being filed publicly in NYSCEF; and it is further

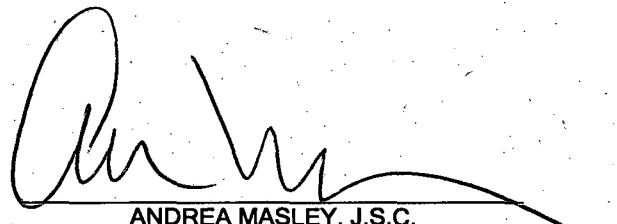
ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to accept NYSCEF Doc. No. 28 in redacted form; and it is further

ORDERED that NYSCEF Doc. No. 28 shall also be filed in unredacted form and sealed. 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 does not authorize sealing or redacting for purposes of trial.

11/21/19

DATE

  
ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART **HON. ANDREA MASLEY**

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE