

Abrams v Abrams

2023 NY Slip Op 32220(U)

June 26, 2023

Supreme Court, New York County

Docket Number: Index No. 654992/2022

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MARCUS ABRAMS, CLEARWATER VENTURES, INC.,
LISA ABRAMS, LISA ABRAMS,

Petitioners,

- v -

RUSSELL ABRAMS, RUSSELLCAR INVERSORA, S.A.,
CROSSTAX, S.A., TAXCORP, S.A., CARCORP, S.A.,
RUSSELLCAR S.R.L., ARACAR GROUP HOLDINGS
CORP., ARACAR FINANCIERA, S.A., ARACAR
SERVICIOS, S.A., ARACAR GROUP SPV I LLC, ARACAR
GROUP SPV II LLC

Respondents.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 97, 98, 99, 100,
101, 102, 103, 104

were read on this motion to SEAL.

Respondents Russel Abrams, RussellCar Invesora S.A., Crosstax, S.A., Taxcorp, S.A.,
Carcorp, S.A., Russellcar S.R.L., Aracar Group Holdings Corporation, Aracar Financiera, S.A.,
Aracar Servicios, S.A., Aracar Group SPV I LLC, and Aracar Group SPV III LLC’s

(“Respondents”) seek an order sealing exhibits from the arbitration that were filed in connection
with this proceeding as NYSCEF Document Numbers 20, 29, 31, 32, 34, 39, 44, 46, 56, 73. 75.
78, 80, 83, 84, 85, 86, 88, 91, and 92 (the “Exhibits”). For the following reasons, Respondents’
unopposed motion is **granted in part**.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal a filing
“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 of the parties” (22 NYCRR § 216.1 [a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public's right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The fact that this matter arises out of an arbitration may be a relevant consideration favoring sealing if the parties had a reasonable expectation of confidentiality in that proceeding (which is often the case) and public interest in the documents to be sealed is minimal (*Allstate Life Ins. Co. v Lincoln Ben. Life Co.*, 2020 WL 3819037 [N.Y. Sup Ct, New York County 2020] [Friedman, J.]). However, as this Court has observed, there is no per se rule requiring sealing of arbitration-related documents (*id.*). It remains a careful balancing of public and private interests.

The Court has reviewed Respondents’ proposed sealing of the documents filed as NYSCEF Document Numbers 31, 32, 56, 74, 75, and 92 and finds that they comport with the applicable sealing standard as laid out in *Mosallem*, 76 AD3d at 348-350, and its progeny, in that they contain sensitive and confidential business and financial information.

However, Respondents' generalized assertions of good cause for the remaining Exhibits filed as NYSCEF Document Numbers 20, 29, 39, 44, 46, 78, 80, 83, 84, 85, 86, 88, and 91 do not establish a compelling justification for the complete sealing that is proposed. While *portions* of these documents may include confidential business and financial information, the proposed sealing is not adequately explained or justified. Thus, Respondents should propose and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 [a] and applicable case law. They may also provide evidence of the parties' reasonable expectation of confidentiality in the arbitration to support sealing of records and the public interest (or lack thereof) in the subject matter of the documents.

Any subsequent motion seeking to address the above concerns should adhere to this Part's Sealing Practices and Procedures (*see* <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part3-sealing-practices.pdf>), including the requirement to submit an affidavit based on personal knowledge attesting to the factual bases for redaction and a spreadsheet setting forth a non-conclusory good faith basis for each proposed redaction.

Accordingly, it is

ORDERED that Respondents' motion to seal the Exhibits is **granted** insofar as it seeks to seal the documents filed as NYSCEF Document Numbers 31, 32, 56, 74, 75, and 92, and is otherwise **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of the remaining Exhibits consistent with this Decision and Order and applicable case law; it is further

ORDERED that the County Clerk shall maintain the documents filed as NYSCEF Document Numbers 31, 32, 56, 74, 75, and 92 under seal, so that the documents may be accessible by the parties, their counsel, and authorized court personnel; it is further

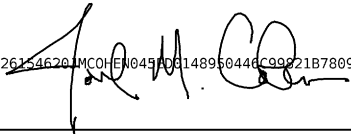
ORDERED that Respondents file redacted copies of NYSCEF Document Numbers 31, 32, 56, 74, 75, and 92 within 21 days of this Decision and Order; it is further

ORDERED that the documents filed as NYSCEF Document Numbers 20, 29, 39, 44, 46, 78, 80, 83, 84, 85, 86, 88, and 91 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If Respondents file a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed within 21 days from the entry of this Decision and Order, the parties shall alert the County Clerk that the motion to seal the above-referenced documents has been denied by the Court and that the documents should be unsealed on NYSCEF; it is further

ORDERED that as it relates to future submissions, made by any party, that contain subject matter that the court has authorized to be sealed by this Decision and Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any document is contemporaneously filed under seal.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

6/26/2023

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE