

People v National Rifle Assn. of Am.

2023 NY Slip Op 32386(U)

July 14, 2023

Supreme Court, New York County

Docket Number: Index No. 451625/2020

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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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK,

Plaintiff,

- v -

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, WAYNE LAPIERRE, WILSON PHILLIPS, JOHN
FRAZER, JOSHUA POWELL,

Defendants.

INDEX NO. 451625/2020

MOTION DATE 01/31/2023

MOTION SEQ. NO. 043

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 043) 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1160, 1161, 1162, 1163, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250

were read on this motion to SEAL.

Defendant the National Rifle Association of America (“NRA”) moves to file certain deposition transcripts with redactions. The motion is **granted in part**.

The NRA relies on deposition testimony of, among others, Sonya Rowling, Wayne LaPierre and John Frazer in connection with its motion to review certain discovery rulings of the Special Master (Mot. Seq. 037). The NRA seeks leave to file the relevant transcripts with limited redactions to protect the “identity of whistleblowers” as well as confidential settlement terms.

Plaintiff the People of the State of New York, By Letitia James, Attorney General of the State of New York (“OAG”) does not oppose that portion of the NRA’s motion seeking to seal, temporarily, information pertaining to whistleblowers, other than Exhibit E (NYSCEF 1140 [Rowling Depo.]). The OAG contends that the information sought to be redacted in that Exhibit

was disclosed in connection with the NRA's bankruptcy proceedings in 2021. The OAG also objects to the sealing of information pertaining to certain settlement agreements in connection with confidential arbitration proceedings, principally on the ground that this is a matter of public interest.

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 Court has reviewed the deposition transcripts, the NRA's proposed redactions, and the evidence advanced by the parties. The Court finds that the NRA's proposed redactions to the Rowling transcript are overbroad in light of the Court's recent decision declining to seal the “Top Concerns Memo” (NYSCEF 2030). Thus, the Rowling transcript may be filed with redactions only to the extent necessary to protect the identity of whistleblowers other than Ms.

Rowling herself. The Court finds that the NRA's proposed redactions with respect to such other whistleblowers comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny.

With respect to prior settlement agreements, there is authority for sealing settlement terms that are legitimately confidential (e.g., *Matter of In re E. 51st St. Crane Collapse Litig.*, 31 Misc 3d 406, 416 [Sup Ct New York County 2011] *citing Mosallem*). Courts have also recognized generally the importance of maintaining the confidentiality of arbitration proceedings (*Matter of Cohen v S.A.C. Capital Advisors, LLC*, 11 Misc 3d 1054(A) [Sup Ct New York County 2006] *citing Feffer v. Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc.2d 812, 815–816 [Sup.Ct. N.Y. Cty.1991], *affd.* 183 A.D.2d 678 [1st Dept.1992] [other citations omitted]). The Court agrees that a rule mandating public disclosure of settlement terms in unrelated litigation or arbitration, solely on the ground that there is some public interest in a subsequent litigation, could have a chilling effect on settlement. On the other hand, there is no rigid rule mandating sealing of settlement terms in all cases. As in many sealing decisions, the analysis involves a balancing of the private interests of the settling parties against the public interest in disclosure of facts relevant to an otherwise public court proceeding.

In this case, the details of the NRA settlement agreements are not critical to understanding the issues presently being litigated (that is, the Special Master's discovery rulings – NYSCEF 944, 1034). However, this ruling does not determine in advance whether sealing would remain permissible at later stages of the case, including at trial, if it is determined that the details of particular settlements are relevant to understanding the nature of the claims, defenses, or decisions in this case. To the extent that the information now being sealed is submitted in

court filings at a later stage, the Court will have to balance the appropriate private and public interests in determining whether the settlement terms should remain under seal.

Accordingly, it is:

ORDERED that Defendant the NRA's motion is **GRANTED IN PART**; it is further

ORDERED that the Clerk shall maintain unredacted NYSCEF docket entries 1140, 1145, and 1147 under seal, accessible only by the parties, the Court, and the Court's staff; it is further

ORDERED that the NRA may file a redacted version of NYSCEF Docket Entry 1140 with the proposed redactions on page 410 lines 11-12 and NYSCEF Docket Entries 1145 and 1147 with their respective proposed redactions, it is further

ORDERED as it relates to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this 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 redacted document is contemporaneously filed under seal; and it is further

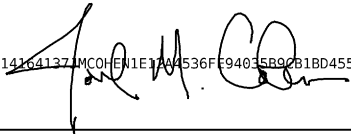
ORDERED that this Order is without prejudice to the OAG seeking to unseal the relevant transcripts at a later stage of these proceedings;

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial; it is further

ORDERED that all future sealing motions comply with the Part 3 Sealing Practices including the submission of a sealing spreadsheet or chart on NYSCEF.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/14/2023

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