

Maffei v Burnham, LLC

2023 NY Slip Op 33445(U)

October 3, 2023

Supreme Court, New York County

Docket Number: Index No. 190378/2018

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

IN RE: NEW YORK CITY ASBESTOS LITIGATION

INDEX NO. 190378/2018

ROMEO MAFFEI and ROSA MAFFEI,

MOTION DATE 08/04/2023

Plaintiffs,

MOTION SEQ. NO. 011

- v -

BURNHAM, LLC,

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 635, 636, 637, 638, 639, 640, 641, 645, 646, 647, 648

were read on this motion to/for

SEAL

Upon the foregoing documents, good cause having been shown, Defendant Burnham LLC's ("Defendant") motion to seal the July 25, 2023 Affidavit of Jacob Graham and the exhibit attached thereto (NYSCEF Doc. 640) (the "7/25 Affidavit"), and the August 1, 2023 Affidavit of Jacob Graham (NYSCEF Doc. 641) (the "8/1 Affidavit") (together the "Graham Financial Affidavits"), is granted in part.

I. Discussion

A. Standard

22 NYCRR 216.1 grants courts the ability to seal court records upon a finding of good cause. In determining whether good cause exists, the Court must "use its discretion in balancing [parties'] privacy interest[s] against the presumption in favor of open trials and against prejudice to defendant." (Anonymous v Lerner, 124 AD3d 487 [1st Dept 2015]; Doe v New York Univ., 6 Misc3d 866, 874-75 [Sup Ct, New York County 2004]). The ancient presumption of openness exists for several reasons: it is believed that open proceedings are a defense against injustice,

incompetence, perjury, and fraud (*Danco Laboratories, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 7 [1st Dept 2000]) To overcome the presumption of openness, a party must establish that “compelling circumstances” exist to justify secrecy (*Coopersmith v Gold*, 156 Misc.2d 594, 606). However, the general public interest in disclosure of court records “do[es] not preclude a court’s exclusion of the public when such exclusion is necessary or appropriate to the protection of confidential trade information” (*In re Crain Comme ’ns v. Hughes*, 135 AD2d 351, 351-52 [1st Dept 1987]) (citing *In re N.Y. Tel. Co. v. Pub. Serv. Comm’r*, 56 NY2d 213, 219-20 [1982]).

B. Defendant’s Motion to Seal the 7/25 Affidavit

The Court finds that good cause and compelling circumstances exist to warrant sealing of the 7/25 Affidavit. The Affidavit of Defendant’s General Manager, Jacob Graham (the “Graham Affidavit”) (NYSCEF Doc. 638), offered in support of Defendant’s motion to seal, states the compelling circumstances for sealing the 7/25 Affidavit, explaining that the tax return attached “contains Burnham’s proprietary financial information, including information of commercial value,” the disclosure of which “would likely cause substantial harm to Burnham’s competitive position” (NYSCEF Doc. 638 at ¶¶ 4-5). The good cause shown by Defendant to seal the 7/25 Affidavit is not sufficiently counterbalanced by public curiosity. Plaintiffs Romeo Maffei and Rosa Maffei (“Plaintiffs”) have already entered the 7/25 Affidavit into the evidentiary record during the punitive damages phase of the trial and have shown no further need to use the document. In opposition, Plaintiffs have proffered no public concern beyond mere curiosity, nor shown any prejudice to prevent the sealing of the 7/25 Affidavit. In light of the foregoing, Defendant’s motion to seal the 7/25 Affidavit is granted.

C. Defendant's Motion to Seal the 8/1 Affidavit

Defendant's motion to seal the 8/1 Affidavit is denied without prejudice. Although the Graham Affidavit states that "[t]he tax return attached to [his] July 25, 2023 affidavit contains Burnham's proprietary financial information, including information of commercial value" the public disclosure of which "would likely cause substantial harm to Burnham's competitive position," the Graham Affidavit contains no reference to the 8/1 Affidavit. While the Affirmation of John J. Burbridge states that "the 8/1 Affidavit contain[s] information directly relating to Burnham's proprietary business information, including, but not limited to Burnham's most recent tax records," (NYSCEF Doc. 637 at ¶4), Mr. Burbridge does not purport to have any personal knowledge of the facts. It is well settled that "[a]n affirmation by an attorney who does not claim to have personal knowledge of the facts has no probative value" (*Dempsey v Intercontinental Hotel Corp.* 126 AD2d 477 [1st Dept 1987]). As Defendant has failed to provide an affidavit of someone with personal knowledge of the facts showing compelling circumstances for sealing the 8/1 Affidavit, Defendant's motion with respect to the 8/1 Affidavit is denied without prejudice.

Accordingly, it is hereby,

ORDERED that Defendant's motion is granted with respect to the July 25, 2023 Affidavit of Jacob Graham and the exhibit attached thereto (NYSCEF Doc. 640); and it is further

ORDERED that Defendant's motion is denied without prejudice with respect to the August 1, 2023 Affidavit of Jacob Graham; and it is further

ORDERED that the Clerk of the Court is directed to seal the July 25, 2023 Affidavit of Jacob Graham and the exhibit attached thereto (NYSCEF Doc. 640); and it is further

ORDERED that thereafter, the Clerk of the Court shall deny access to the July 25, 2023 Affidavit of Jacob Graham and the exhibit attached thereto (NYSCEF Doc. 640) to anyone (other than the staff of the Clerk of the Court) except for counsel of record for any party to this case; and it is further

ORDERED that Defendant shall serve a copy of this Order upon the Clerk of the Court in accordance with the procedures set forth in the protocol on Courthouse and County Clerk procedures for electronically filed cases.

This constitutes the Decision and Order of this Court.

10/3/2023
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE