

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Cahn
Justice

PART 49m

L. K. Station Group, LLC,

INDEX NO. 601015/08

MOTION DATE _____

- v -

MOTION SEQ. NO. 007

Quarters Medical, LLC et al

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

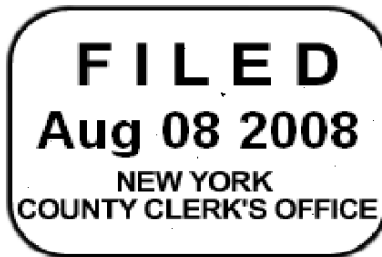
Answering Affidavits – Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION IN MOTION SEQUENCE**



Dated: 8-8-08

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

-----X

L.K. STATION GROUP, LLC,

Plaintiff-Counterclaim Defendant,

-against-

Index No. 601015/08

QUANTEK MEDIA, LLC, f/k/a QUANTEK MEDIA,
LP, QUANTEK ASSET MANAGEMENT, LLC,
QUANTEK MASTER FUND SPC LTD, QUANTEK
OPPORTUNITY FUND, LP, QUANTEK
OPPORTUNITY FUND II, LP, TVESTMENTS,
LTD, BULLTICK NY, LLC, BULLTICK FINANCIAL
SERVICES, LLC, BULLTICK, LLC, BULLTICK
CAPITAL MARKETS IP, LLC, and BULLTICK
CAPITAL MARKETS, LP,

Defendants-Counterclaimants.

-----X

HERMAN CAHN, J.:

Defendants move for an order that all papers filed by the parties in connection with defendants' previously decided motion to dismiss, including exhibits, be filed under seal, 22 NYCRR 216.1. Plaintiff does not consent.

The parties entered into a confidentiality agreement, dated April 29, 2008, which was "so-ordered" by the Court on May 9, 2008, in connection with discovery. The agreement provides that counsel "shall, in advance of the filing or use of such materials, obtain an appropriate order from the Court pursuant to section 216.1 (a) of the Uniform Rules for the New York State Trial Courts finding good cause to seal the Court records in which the confidential matter appears." Confidentiality Agreement, ¶ 13.

The amended complaint was based, in part, on six documents that had been designated as

“Confidential-Counsel Only.” As a result, the amended complaint was filed under seal. The motion to dismiss also refers to contents of documents designated as “Confidential,” or “Confidential-Counsel Only.”¹

DISCUSSION

Defendants argue that, in accordance with the confidentiality agreement, the documents that were designated as “Confidential” or “Confidential - Counsel Only” should be sealed, as well as any documents that refer to those documents. Plaintiff contends that the seal that was placed on all papers temporarily should be lifted. Plaintiff points out that the stipulation and order under which the filing occurred under seal was without prejudice to an application to lift the seal and file the document publicly. Similarly, the order to show cause that provided for sealing was not a final determination of the issue, but was made pending hearing of the application.

Plaintiff correctly maintains that the First Department rejects wholesale sealing of motion papers, even when both sides to the litigation request sealing. *Matter of Hofmann*, 284 AD2d 92 (1st Dept 2001). Instead, the presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public’s right to access, i.e. in the case of trade secrets and the like. *See Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 (1st Dept 2000). Thus, the Court is required to make its own inquiry to determine whether sealing is warranted. *Gryphon Domestic VI, LLC v APP Intl. Fin. Co.*, 28 AD3d 322, 324 (1st Dept 2006).

¹ The amended complaint was dismissed by decision and order dated July 29, 2008.

Here, plaintiff argues that there is a substantial public interest in access to the filed documents, because the matter at issue involves activities of a prominent private equity company and hedge fund, which is a public concern. It further contends that defendants have not made any showing of “good cause” for the proposed sealing order. The documents do not constitute or contain proprietary information. Plaintiff also notes that none of the documents are attached as exhibits to the complaint; therefore, plaintiff concludes that the complaint should not be sealed.

With respect to the documents referred to, plaintiff contends that many of the documents were addressed to third parties and either shared with plaintiff, or originated with plaintiff, and are not proprietary or contain trade secrets or are confidential in any other respect. Plaintiff concludes that, since defendants have not shown good cause to seal, the seal should be lifted.

In their reply papers, defendants contend that sealing is required to protect the sensitive and private business information contained in the papers. Defendants maintain that the confidentiality designations are based, in large part, on their efforts to protect the interests of third parties unrelated to this litigation. Counsel discusses, specifically, the loan agreement dated October 30, 2008 [*sic*], exhibit 3 to the motion to dismiss, which counsel states contains information that has never been made public, for example, the exact identities of the parties to the agreement.

Defendants do not address the specific documents that they seek to seal, which is required in order to carry their burden. *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d at 8. Nor do they explain how these documents constitute trade secrets, which would be a proper basis for granting a sealing order. In order for the Court to grant a sealing order, the party seeking that order must demonstrate, with respect to each specific document which it seeks to

have sealed, that there is good cause for the particular document to be sealed, and that there is no feasible alternative to sealing. *Id.* Defendants have not met this burden. Therefore, the motion to seal all documents is denied.

The Court notes that many litigants have referred to the standard applied in the federal courts, which appears to allow sealing more freely than in the New York courts. While it is true that sealing is permitted more freely with respect to documents produced during discovery, the federal courts also require parties to demonstrate “good cause” before permitting the sealing of documents that have been filed in court in support of, or in opposition to, a motion. *See* Federal Rules of Civil Procedure rule 26 (c); Manual for Complex Litigation, § 11.423 (4th ed 2004); *see also Hartford Courant Co. v Pellegrino*, 380 F3d 83, 91-92 (2d Cir 2004); *Johns v International Bus. Machines Corp.*, 361 F Supp 2d 184, 192-93 (SDNY 2005). The manner in which “good cause” is construed, however, seems to be broader in the federal courts than in New York courts. This broader standard is beneficial to litigants who are concerned about the adverse impact on their affairs when documents filed during the course of litigation become public.

While the public has an interest in having court files open and available, there are other interests which must be balanced. The State has an interest in having its courts, and especially the Commercial Division, be “user friendly.” Litigants have an interest in having documents containing confidential information, i.e. information which might put the litigant at a competitive disadvantage if made available to competitors by means of a public filing, kept confidential. It could be argued that trial courts should be given more discretion in arriving at a proper balance.

However, this Court is bound by the case law of this state. It cannot apply the standards of the federal courts unless and until the New York rule is changed to make sealing more widely

available, either through legislative action or through judicial review of the current standards.

Where the parties argue that some documents should be kept from public view, they have sometimes agreed to deliver those documents to the Court for its use in deciding a motion. The documents are then returned to the litigant when the motion is decided, with appropriate arrangements made that they be available to an appellate court in case of an appeal. However, such arrangements can only be entered into if both parties agree to them.

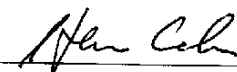
CONCLUSION

Accordingly, it is hereby

ORDERED that defendants' motion to seal all motion papers submitted with respect to the motion to dismiss (motion sequence 008) is denied, and the temporary sealing order is vacated.

Dated: August 7, 2008

ENTER:



J.S.C.

