SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER
Present:

SCAN

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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BRAD W. CRONIN,

Plaintiff,

-against-

LAUREEN C. HARRIS, MATTHEW J. CRONIN, and CRONIN, CRONIN & HARRIS, P.C.,

Defendants.

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TRIAL/IAS PART: 20

NASSAU COUNTY

Index No: 022697-10
Motion Seq. No: 1
Submission Date: 1/6/11

The following papers have been read on this motion:

Order to Show Cause, Affirmation in Support and Exhibits.....x
Memorandum of Law in Support.....x
Defendants' Affirmation in Support.....x

This matter is before the Court for decision on the Order to Show Cause filed by Plaintiff Brad W. Cronin ("Brad" or "Plaintiff") on December 10, 2010 and submitted on January 6, 2011 to which Defendants Laureen C. Harris ("Laureen"), Matthew J. Cronin ("Matthew") and Cronin, Cronin & Harris, P.C. ("CCH") (collectively "Defendants") consent. For the reasons set forth below, the Court grants Plaintiff's motion to file its Verified Complaint "under seal," but directs that no future documents or records may be filed under seal except pursuant to future court order.

BACKGROUND

A. Relief Sought

Plaintiff requests an Order, pursuant to 22 NYCRR § 216.1, granting Plaintiff leave to file its Verified Complaint "under seal," to protect certain confidential material set forth in the

proposed Verified Complaint ("Complaint").

Defendants consent to Plaintiff's application.

B. The Parties' History

Counsel for Plaintiff affirms as follows in his Affirmation in Support:

CCH is a "major and widely respected firm concentrating in tax certiorari proceedings and condemnation law" (Calica Aff. in Supp. at ¶ 1). In this action, Brad seeks declaratory and injunctive relief and judicial dissolution of CCH, allegedly to protect the welfare of CCH and its clients as a consequence of the recent disability and incapacity of Matthew, a founding partner-shareholder of CCH. As detailed in the Complaint (Ex. A to Calica Aff. in Supp.), Plaintiff alleges that Matthew's physical incapacity and mental impairment render him unable to participate in the practice, management and administration of CCH.

By Order dated December 10, 2010, the Court directed that:

> pending the hearing of this motion and further Order of this Court, the Verified Complaint shall be, and hereby is directed by the Clerk of the Court to be filed "under seal" pursuant to NYCRR § 216.1[.]

C. The Parties' Positions

Plaintiff submits that a sealing order pursuant to NYCRR § 216.1 is required to 1) protect and preserve Matthew's medical and personal, confidential information; and 2) avoid undermining and adversely affecting the welfare of CCH, the legal and financial interests of its clients, and the confidence placed in CCH by its clients and adversary counsel.

Defendants, while disputing Plaintiff's characterizations of Matthew's medical condition and alleged incapacity and Plaintiff's allegations regarding Laureen's improper conduct, agree that Plaintiff's allegations regarding Matthew's medical condition and history should not be publicly disclosed. Defendants share Plaintiff's view that a sealing order is required to protect the welfare of CCH, the legal and financial interests of its clients and the clients' confidence in CCH.

RULING OF THE COURT

A. Sealing Court Records

22 NYCRR § 216.1 provides as follows:

> (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 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).

There is a presumption that the public has the right of access to the courts to ensure the actual and perceived fairness of the judicial system, as the "bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud." *Mancheski v. Gabelli Group Capital Partners*, 39 A.D.3d 499, 501 (2d Dept. 2009), quoting *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 660 (3d Cir. 1991), *writ of mand. den.*, 951 F.2d 1414 (3d Cir. 1991), and citing *Danco Labs. v. Chemical Works of Gedeon Richter*, 274 A.D.3d 1, 7 (1st Dept. 2000) and *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.*, 464 U.S. 501, 508 (1984). 22 NYCRR § 216.1(a) was promulgated in response to a concern that, where the parties agreed that court records should be sealed, the Court properly consider and weigh the public interest in accessing those documents. *Mancheski*, *supra*, at 501, citing *Matter of Twentieth Century Fox Film Corp.*, 190 A.D.2d 483, 485-486 (1st Dept. 1993).

Given that confidentiality is the exception, the court must make an independent determination whether to seal court records in whole or in part for "good cause." *Mancheski*, 39 A.D.3d at 502, citing *Matter of Hoffman*, 284 A.D.2d 92, 93-94 (1st Dept. 2001). This task involves weighing the interests of the public against the interests of the parties. *Id.*, citing *Danco*, *supra*. The party seeking to seal documents must demonstrate compelling circumstances. *Id.*, citing *Coopersmith v. Gold*, 156 Misc. 2d 594, 606 (Rockland Cty. 1992), *aff'd*, 223 A.D.2d 572 (2d Dept. 1996), *aff'd*, 89 N.Y.2d 957 (1997), *rearg. den.*, 89 N.Y.2d 1086 (1997), *rearg. dism.*, 90 N.Y.2d 889 (1997). A finding of "good cause" presupposes that public access to the documents at issue will likely result in harm to a compelling interest of the movant, and that no alternative to sealing can adequately protect the threatened interest. *Id.*, citing, *inter alia*, *Application of The Herald Co.*, 734 F.2d 93, 100 (2d Cir. 1984).

Mancheski involved an action by minority shareholders for dissolution of the corporation or, alternatively, a judgment declaring that their stock was unrestricted and freely transferable. 39 A.D.3d at 500. The complaint alleged that the corporation's majority shareholder and chief executive officer breached his fiduciary duties by, *inter alia*, looting the corporation's assets to the detriment of the minority shareholders. *Id.* The parties had entered into a stipulation, which was so-ordered by the trial judge, pursuant to which any documents, or portions of documents, deemed confidential would be kept in confidence. *Id.*

Bloomberg News moved for leave to intervene for the limited purpose of unsealing and obtaining public access to the summary judgment motion papers that had been submitted in camera. The trial court granted Bloomberg News leave to intervene, and independently reviewed each document at issue. The trial court concluded that 1) documents containing information in the nature of "recent non-public financial information" of the corporation, and "confidential financial information concerning third-parties" would be sealed; and 2) refused to seal certain exhibits that a) were already "made public;" b) contained information that was "historical in nature" and "would not compromise [the corporation's] current business strategies;" or c) was simply "potentially embarrassing" to the corporation. *Mancheski*, 39 A.D.3d at 500-501.

In affirming the trial court's order, the Second Department noted that the trial court had made an independent review and specific factual findings for each document at issue. *Mancheski*, 39 A.D.3d at 502. The Second Department concluded that there was a compelling interest in 1) sealing the third-party financial information because disclosure could impinge on the privacy rights of third parties who were not litigants in the action at issue; and 2) sealing documents containing the corporation's proprietary financial information because disclosure could harm the private corporation's competitive standing. *Id.* The Second Department determined that the trial court had appropriately struck a balance by refusing to seal documents containing corporate financial information that was historical in nature, and therefore could not compromise its current business strategies. *Id.* at 503.

B. Application of these Principles to the Instant Action

The Court concludes that good cause exists to permit Plaintiff to file the Complaint under seal, in light of the parties' shared concerns that public access to the Complaint would

potentially undermine and adversely affect the legal and financial interests of CCH's clients, who are not parties to this litigation. The Court's review indicates that these concerns are not unwarranted.

Nevertheless, the Court is not persuaded that the sealing order is appropriate to protect and preserve Matthew's medical and personal information, given that 1) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") was enacted to address concerns regarding the confidentiality of medical information; and 2) the fact that the information regarding Matthew is potentially embarrassing does not, in and of itself, warrant the requested sealing. Thus, while the Court authorizes the filing of the complaint under seal, the Court declines to grant a blanket imprimatur to authorize the parties to file any future documents or records under seal absent an express Order of the Court. Accordingly, upon any future application by a party to file documents or records under seal, the Court will conduct an independent review of the documents or records at issue, prior to issuing its ruling.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a conference on March 9, 2011 at 9:30 a.m.

ENTER

DATED: Mineola, NY
March 1, 2011

HON. TIMOTHY S. DRISCOLL
J.S.C.

ENTERED
MAR 04 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE