

**Martin v Daily News LP**

2012 NY Slip Op 32586(U)

September 24, 2012

Supreme Court, New York County

Docket Number: 100053/08

Judge: Martin Shulman

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

PRESENT: **MARTIN SHULMAN**  
J.S.C. Justice

PART 1

Index Number : 100053/2008  
MARTIN, LARRY D.  
vs  
DAILY NEWS L.P.  
Sequence Number : 011  
SEAL ORDER

INDEX NO. 100053/08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 011

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion ~~to~~ for sealing order

Notice of Motion/Order to Show Cause — Affidavits — Exhibits A-5 | No(s) 1

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s) 2

Replying Affidavits - Exhibit A | No(s) 3

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

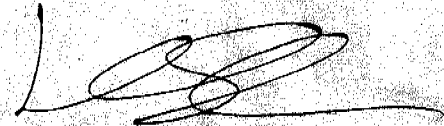
## FILED

OCT 12 2012

NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: Sept. 24, 2012

  
\_\_\_\_\_  
J.S.C.

**MARTIN SHULMAN**

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 1

-----X  
LARRY D. MARTIN,

Plaintiff,

-against-

DAILY NEWS LP, ERROL LOUIS and  
RAVI BATRA,

Defendants.  
-----X

Index No. 100053/08

**Decision & Order**

Motion Seq. 011

**Martin Shulman, J.:**

Defendants Daily News LP and Errol Louis (collectively "defendants") move for an order sealing portions of their motion for summary judgment (Motion seq. 010) which is presently *sub judice* before this court and permitting redacted versions of the motion papers to be filed publicly. By way of background, the parties entered into a confidentiality agreement dated October 26, 2009 (Exh. C to Motion) with regard to certain documents plaintiff produced during discovery concerning proceedings he was involved in before the Commission on Judicial Conduct ("CJC"), and the information contained therein (hereinafter "confidential materials").

The parties agreed that the confidential materials would be used only "for the purpose of defending this action" and would be disclosed only to defendants, their counsel and experts retained by defendants. In the event the confidential materials were to be referenced or included in court papers, the confidentiality agreement provided that "the party seeking sealing of such references and/or documents shall move the court for such sealing pursuant to Part 216.1 of the Uniform Rules of the Trial Courts" and the non-moving party agreed not to oppose such a motion.

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Prior to filing the summary judgment motion, defense counsel notified plaintiff's counsel of their intention to reference and include confidential materials in the summary judgment motion, subject to the confidentiality agreement. Defendants' counsel prepared and forwarded plaintiff's counsel a proposed stipulation sealing the portions of the summary judgment motion containing confidential materials. Ultimately, plaintiff refused to sign the stipulation and notwithstanding that the confidentiality agreement made it plaintiff's burden to move to seal, plaintiff failed to bring such a motion. Accordingly, defendants bring the instant motion, presumably in an abundance of caution and in accordance with the letter and spirit of the confidentiality agreement.

Plaintiff does not oppose this motion outright.<sup>1</sup> Rather, plaintiff objects to defendants relying on the confidential materials at all and urges this court not to consider them on the summary judgment motion, claiming they are irrelevant.<sup>2</sup>

### Analysis

Relevant to this discussion is 22 NYCRR § 216.1(a) which states:

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

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<sup>1</sup> Plaintiff's responsive affirmation is entitled "Affirmation on Behalf of Plaintiff With Regard to Motion to Seal."

<sup>2</sup> As more clearly stated in plaintiff's counsel's prior letter to defense counsel dated August 10, 2012 (Exh. R to Motion), plaintiff contends defendants' use of the subject documents serves only to further vilify plaintiff and impugn his character. That letter concludes with a warning that plaintiff will hold defendants and their counsel "liable for any breach of confidentiality of CJC proceedings . . ." and any "[s]uch breach will constitute yet a further example of malice and will also serve as an additional basis for exemplary damages."

been shown, the court shall consider the interests of the public as well as of the parties. . .

Courts are generally reluctant to allow court records to be sealed even when both parties request such relief (*see Gryphon Domestic VI, LLC v. APP Intl. Fin. Co., B.V.*, 28 AD3d 322 [1<sup>st</sup> Dept 2006]). “Since the right 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.” *Id.* at 324.

Regardless of the parties’ agreement, the “court is always required to make an independent determination of good cause before it may grant a request for sealing. . .” *Id.* Good cause can be shown when a sealing order has a sound basis. *Id.* at 325.

Defendants’ motion provides little basis to evaluate the competing interests of the parties *vis a vis* the public’s right to access public records, focusing instead on the parties’ confidentiality agreement. However, the documents to be sealed are non-public documents concerning CJC proceedings, along with the portions of plaintiff’s deposition testimony pertaining to such matters and defendants’ references thereto in their summary judgment motion. Also included in the documents to be sealed are witness lists containing the addresses of plaintiff and other jurists.<sup>3</sup>

Notwithstanding this motion’s limited analysis and plaintiff’s puzzling lack of cooperation with defendants’ efforts which is at odds with his clear desire to prevent disclosure of the confidential materials, this court must be cognizant of Judiciary Law (“JL”) §45, which provides in pertinent part that “all complaints, correspondence,

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<sup>3</sup> Plaintiff notes his appreciation for defendants’ efforts to maintain the confidentiality of witness addresses. See Schwab Aff. at ¶10.

commission proceedings and transcripts thereof, other papers and data and records of the [CJC] shall be confidential and shall not be made available to any person except pursuant to [JL §44].”

In *Nicholson v State Commn. on Jud. Conduct*, 50 NY2d 597, 613 (1980), the Court of Appeals found that “a blanket rule requiring the sealing of all court records involving proceedings by the [CJC] is unjustified in the absence of legislative mandate.” However, the Court went on to note that “[p]ublic access to court records need not and should not signal access to the [CJC’s] internal proceedings” and noted that precautions such as in camera hearings could be used to preserve confidentiality. *Id.*

Here, the documents sought to be sealed are either non-public internal CJC documents or they discuss the contents of such materials. Given the statutory mandate, plaintiff has an interest in protecting his right to keep the CJC proceedings in question confidential. This court further notes that the documents to be sealed comprise only a small fraction of the record on summary judgment. As redacted versions of the motion are also being filed, the public will not be denied access to the motion’s sum and substance.

Accordingly, this court, pursuant to and in accordance with Part 216 of the Uniform Rules for the Trial Courts, hereby determines that good cause exists for the sealing in part of the motion files in this action with respect to the original unredacted motion papers filed in connection with motion sequences 010 and 011.<sup>4</sup> The grounds

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<sup>4</sup> Although defendants designate the instant motion papers as being “**FILED UNDER SEAL**”, no prior sealing order has been issued nor do defendants specifically request that this motion be sealed. However, in the interest of consistency and provided that defendants submit redacted versions of the motion papers forthwith, this

for the court's determination are as follows: the motions contain information of a confidential nature relating to proceedings before the CJC. For reasons of judicial security, it is also appropriate to seal documents containing plaintiff's and other jurists' personal information. This court has considered the interests of the public and finds that such interests are protected by virtue of defendants' submission of redacted copies of the motion papers which shall be part of the public record.

As a final point, this court agrees that plaintiff's objections are not properly raised on this motion to seal. The confidential materials' relevancy will be addressed when this court determines the summary judgment motion.

Accordingly, for the foregoing reasons, it is

ORDERED that defendants' motion is granted; and it is further

ORDERED that on or before September 28, 2012, defendants shall file redacted versions of the motion to seal as indicated below with the Part 1 Clerk, and those papers shall be sealed until such date or until the redacted versions are filed, whichever is sooner; and it is further

ORDERED that the County Clerk, upon service on him of a copy of this decision and order, is directed to seal the following documents and to separate these papers and to keep them separate from the balance of the file in this action:

<u>Date</u>	<u>Documents</u>
7/3/12	Affirmation of Laura R. Handman, Esq.; Exhibits A-EE;

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court *sua sponte* extends the sealing order to the motion papers herein, as they contain copies of and references to the same documents being sealed in connection with the summary judgment motion.

- 7/6/12 Memorandum of Law of Daily News Defendants in Support of Their Motion for Summary Judgment Dismissing This Case;
- 9/14/12 Defendants' Reply in Support of Summary Judgment;
- 8/29/12 Affirmation of Erin Nedenia Reid, Esq. in Support of Motion to Seal Portions of Defendants' Motion for Summary Judgment; Exhibits A-S; and
- 9/17/12 Affirmation in Reply of Erin Nedenia Reid, Esq. and in Further Support of Motion to Seal; Exhibit A; and it is further

ORDERED that thereafter, or until further order of the court, the County Clerk shall deny access to the said sealed papers to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from said counsel.

This constitutes this court's Decision and Order. Courtesy copies of same have been furnished to counsel for the parties.

Dated: New York, New York  
September 24, 2012

**FILED**   
HON. MARTIN SHULMAN, J.S.C.  
OCT 12 2012  
NEW YORK  
COUNTY CLERK'S OFFICE