

<b>Mano Enters., Inc. v Metropolitan Life Ins. Co.</b>
2019 NY Slip Op 30357(U)
February 9, 2019
Supreme Court, New York County
Docket Number: 652486/2013
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL PART 48

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MANO ENTERPRISES, INC.,

Plaintiff,

Index No.: 652486/2013

-against-

Motion Seq. No. 015

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant.

-----X  
Masley, J.:

In motion sequence number 015, defendant Metropolitan Life Insurance Company (MetLife) moves to seal NYSCEF Doc. Nos. 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724 and 725. MetLife also moves to redact all material quoting or referencing the contents of these documents.

MetLife issued a life insurance policy insuring the life of Marcus Molina in the amount of \$5,000,000 under policy number 208097103MLU. (NYSCEF Doc. No. 1 at ¶ 6.) This policy was assigned to plaintiff Mano Enterprises, Inc., (Mano) on August 23, 2010. (NYSCEF Doc. No. 1 at ¶ 8.) Mano requested to assign ownership of the policy and amend the beneficiary to Jaffa Group LLC on March 6, 2012 and March 21, 2012. (*Id.* at 10.) However, MetLife declined to process the requests and Mano commenced this action for breach of contract, tortious interference with a business relationship, breach of the covenant of good faith and fair dealing, and promissory estoppel.

On November 4, 2018, MetLife moved for summary judgment in motion sequence number 014. MetLife appended certain documents that it now maintains should be sealed. They are the subject of this motion and include: the affidavit of Michael J. Eng, formerly the Vice President and Associate General Counsel for MetLife; emails to and from Michael J. Eng; handwritten notes of Michael J. Eng; emails concerning a related litigation in the Southern District of New York; the confidential settlement and release agreement from that litigation; MetLife's Beneficiary and Ownership Policy Guidelines; MetLife's Policy Illustrations; and other emails and notes.

At oral argument on November 30, 2018, Mano informed the court that it does not object to Metlife's redacting of NYSCEF Doc. Nos. 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, and 720, otherwise known as exhibits B through U. (tr at 7.) Indeed, both parties note that this court (Oing, J.) conducted an *in camera* review of these materials and found that they contained

attorney work product and privileged communications. (NYSCEF Doc. No. 141.) Furthermore, these documents are covered by the confidentiality agreement so ordered by Justice Oing. (NYSCEF Doc. No. 8.) The balance of the documents at issue are NYSCEF Doc. No. 700 (the affidavit of Michael J. Eng.), 721 (Metlife's Beneficiary and Ownership Policy Guidelines), 722 (the confidential settlement and release agreement), 723 (the parties confidentiality agreement), 724 (a 2015 correspondence from the parties to the court concerning the *in camera* review) and 725 (Justice Oing's decision concerning the *in camera* review).

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

"(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 an 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)."

Judiciary Law § 4 provides that judicial proceedings shall be public. "The public needs to know that all who seek the court's protection will be treated evenhandedly," and "[t]here is an important societal interest in conducting any court proceeding in an open forum." (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U],\*2 [Sup Ct, NY County 2006] [citation omitted]). The public right of access, however, is not absolute. (see *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000]).

The "party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access" to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted]). The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting "an affidavit from a person with knowledge explaining why the file or certain documents should be sealed." (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], \*2 [Sup Ct, NY County 2004]). Good cause must "rest on a sound basis or legitimate need to take judicial action." (*Danco Labs.*, 274 AD2d at 9). Agreements to seal are insufficient as such agreements do not establish "good cause." (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], \* 9 [Sup Ct, NY County 2012]). In the business context, courts have sealed records where trade secrets are involved or where the disclosure of documents "could threaten a business's competitive advantage." (*Mosallem*, 76 AD3d at 350-351 [citations omitted]).

Preliminarily, good cause exists to redact NYSCEF Doc. Nos. 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, and 720. These materials, as Justice Oing previously found, contain attorney work product and communications protected by the attorney client privilege. Good cause exists to redact NYSCEF Doc No. 721 insofar as MetLife's Beneficiary and Ownership Policy Guidelines contains proprietary information such as how it pursues underwriting decisions and how it reviews applications before issuing policies. Such information, if disclosed, could threaten MetLife's competitive advantage in the insurance market and enable fraud. Good cause further exists to redact NYSCEF Doc. No. 722 insofar as this is a confidential settlement agreement pertaining to a separate action previously filed in federal court. (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2013 NY Slip Op. 30184(U) [Sup Ct, NY County 2013]; *In re East 51st Street Crane Collapse Litigation*, 31 Misc 3d 406, 413 [Sup Ct, NY County 2011].) Good cause further exists to redact NYSCEF Doc. No. 700 to the extent that Michael J. Eng references materials entitled to protection as set forth in this decision. However, good cause does not exist to redact NYSCEF Doc Nos. 723, 724, and 725 insofar as these public documents are bereft of sensitive information and have been filed on NYSCEF for the past four to five years. (see NYSCEF Doc. Nos. 8, 131 and 141.)

Pursuant to, and in accordance with, Rule 216, having determined that good cause exists for the redacting of NYSCEF Doc. Nos. 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, and 722 as detailed in this decision, and the grounds having been specified, it is now accordingly,

ORDERED that the motion is granted such that MetLife shall redact all references to information and communications concerning attorney work product, the attorney client privilege, proprietary information in MetLife's Beneficiary and Ownership Policy Guidelines, the confidential settlement agreement, and Michael J. Eng's references to such information as directed by this decision from NYSCEF Doc. Nos. 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, and 722, and it is further

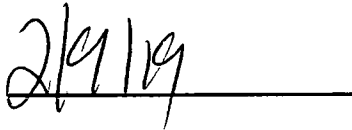
ORDERED that MetLife is directed to re-file NYSCEF Doc. Nos. 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, and 722 in redacted form within 10 days of the date of this decision. Future submissions containing or referencing confidential information, as outlined in this decision, shall likewise be redacted prior to being filed publicly in NYSCEF, and shall also be filed in unredacted form and sealed; and it is further

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to unseal this action and accept NYSCEF Doc. Nos. 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, and 722 in redacted form; and it is further

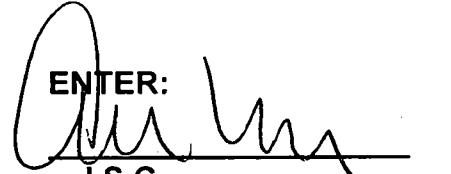
ORDERED that NYSCEF Doc. Nos. 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, and 722 shall also be filed in unredacted form and sealed. Until further order of the court, the County Clerk shall deny access to the unredacted documents to anyone (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 the counsel; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.

Dated: 2/19/19



ENTER:



J.S.C.

**HON. ANDREA MASLEY**