

<b>Prager Metis CPAS, LLC v Castellanos</b>
2019 NY Slip Op 32417(U)
August 12, 2019
Supreme Court, New York County
Docket Number: 652329/2015
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

*Justice*

-----X

PRAGER METIS CPAS, LLC,  
Plaintiff,

- v -

ALICEA CASTELLANOS and INTERNATIONAL WEALTH  
TAX ADVISORS, LLC

Defendants.

-----X

INDEX NO. 652329/2015  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 002

DECISION + ORDER ON  
MOTION

MASLEY, J.S.C.:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 56, 57

were read on this motion to/for SEAL

In motion sequence number 002, defendants Alicea Castellanos and International Wealth Tax Advisors, LLC (IWTA) move to seal the complaint, any filings where the complaint is annexed as an exhibit, and the answer with counterclaims. (NYSCEF Doc. No. 51 at ¶ 2; NYSCEF Doc. No. 53.)

**Background**

Four years ago, plaintiff Prager Metis CPAS, LLC (Prager), an accounting firm, commenced this action against its former employee Castellanos, a certified public accountant, and IWTA, the accounting firm that she formed upon her departure from Prager. (NYSCEF Doc. No. 51 at ¶¶ 4-5; NYSCEF Doc. No. 1 at ¶ 12.) Prager claimed that Castellanos breached her employment agreement, her fiduciary duty, and misappropriated confidential information among other things for IWTA's benefit to Prager's detriment. (NYSCEF Doc. No. 1 at ¶¶ 56-135.) The complaint also references similar conduct by another Prager employee, nonparty Jack Brister, who Prager pursued

claims against in an arbitration. (NYSCEF Doc. No. 51 at ¶ 5.) On May 9, 2018, the parties filed a stipulation of discontinuance for this action. Although the complaint and answer with counterclaims have been open to the public’s viewing for the last four years, Castellanos and IWTA now argue that these public filings contain “scandalous” information that should be redacted. (*Id.*) Indeed, they argue that these allegations in the pleadings “unfairly tarnish the reputation” of defendants and Brister. (*Id.* at ¶¶4, 6.) Plaintiff takes no position on this motion to seal despite asserting that all factual allegations in Prager’s pleadings were made in good faith under New York law. (NYSCEF Doc. No. 56 at ¶¶ 2, 3.) At oral argument, the court provided defendants with an opportunity to submit redactions for the court’s consideration. (Tr. at 14:21-23.)

**Discussion**

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, v Chemical Works of Gedeon Richter*, 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. (*Mosalleem 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.” (*Mosalleem*, 76 AD3d at 350-351 [citations omitted].)


Upon review of the proposed redactions, the court finds that defendants have not demonstrated compelling circumstances to justify restricting the public’s access to these pleadings. Defendants waited approximately four years to redact this public information, calling into question whether there is truly “a sound basis or legitimate need to take judicial action.” (*Danco Labs*, 274 AD2d at 9.) Moreover, defendants posit that certain allegations in the pleadings unfairly tarnish their reputations but “neither the potential for embarrassment or damage to reputation ... constitutes good cause to seal court records.” (*Mosalleem*, 76 AD3d at 351.) The potential impact to defendants is not

tantamount to the kind of threat to a business's competitive advantage that warrants judicial action. Indeed, the pleadings do not reveal trade secrets, financial arrangements, or other information of that sort. Indeed, the portions sought to be redacted are nothing more than dramatically phrased allegations.

Accordingly, it is

ORDERED that defendants' motion to seal is denied.

8/12/19  
DATE

  
HON. ANDREA MASLEY  
ANDREA MASLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: