

Carlin v William Gottlieb Mgt. Co., LLC
2020 NY Slip Op 32353(U)
July 16, 2020
Supreme Court, New York County
Docket Number: 655906/2018
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 3EFM

Justice

-----X

ALLAN CARLIN

INDEX NO. 655906/2018MOTION DATE 02/07/2020

Plaintiff,

MOTION SEQ. NO. 003

- v -

WILLIAM GOTTLIEB MANAGEMENT CO., LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140

were read on this motion to

SEAL

This action concerns a dispute over legal fees. Plaintiff, an attorney, was retained by Defendant, a property management company, to provide general legal and advisory services (*see generally* NYSCEF 1 [Complaint]). In Motion Sequence No. 003, Defendant moves to seal four sets of documents that Plaintiff previously filed under seal (using placeholders rather than submitting the documents under provisional seal on NYSCEF) in connection with its cross motion in Motion Sequence No. 002. The documents Defendant now seeks to have sealed, Exhibits J, T, U, and X to Plaintiff's affirmation submitted in connection with that cross motion (NYSCEF 93, 103, 104, 107; *see also* NYSCEF 117-120 [same in connection with Motion 003]), are comprised of the following:

- Exhibit J is Plaintiff's response to defendant's demand for documents and contains, in "Response to Demand No. 4," a description of confidential and sensitive documents that Plaintiff claims demonstrate the work he performed while engaged by Defendant. Defendant asserts that the 5-page description warrants sealing because it "provides an opportunity for

Defendant's competitors to gain an understanding of its business, including, but not limited to, many of the matters that it is involved with" (NYSCEF 121).

- Exhibit T contains financial spreadsheets that list "amounts of money involved in various aspects of" certain property development projects (NYSCEF 121 [Def's mem]). Defendant asserts Exhibit T warrants sealing because the spreadsheets have "confidential business information that would benefit Defendant's competitors and should not be disclosed to third parties" (NYSCEF 121).
- Exhibit U is a compilation of "daily reports" from Plaintiff to Defendant demonstrating the work that Plaintiff performed on each date and assertedly "represent attorney client communications that should be protected from disclosure to third parties" (NYSCEF 121).
- Exhibit X are email communications between Plaintiff and Defendant's other (outside) counsel, Brian Ullman of Eisenberg & Baum, LLP, regarding Defendant, which was both attorneys' client at the relevant times (NYSCEF 121).

Plaintiff opposes this motion to seal on a variety of grounds, including that Defendant failed to establish compelling reasons to seal the documents and that Defendant waived any attorney-client privilege by producing the documents in discovery and by placing the communications at issue in this action.

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal or redact a filing "upon a written finding of good cause, which shall specify the grounds thereof." "[T]he court shall consider the interests of the interests of the public as well as of the parties" in determining whether there is good cause (22 NYCRR § 216.1 [a]). The Court must balance the risk of privacy concerns stemming from public access to the information against the "compelling public interest in exposure of this information," if any (*see MBLA Ins. Corp. v Countrywide*

Home Loans, Inc., 2013 WL 450030, *9 (Sup Ct, NY County Jan. 3, 2013). The moving party has the burden to set forth compelling circumstances to justify restricting public access and must demonstrate “a sound basis or legitimate need to take judicial action” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]; see *Mosallem v Berenson*, 76 AD3d 345, 348-350 [1st Dept 2010] [noting “there is a broad presumption that the public is entitled to access to” court filings]).

The Court has reviewed Defendants’ submissions and finds that it has demonstrated good cause to seal Exhibit T as it contains confidential financial information for which public interest would be minimal, if any. Defendant has also established good cause to seal Exhibits U and X as they are comprised of private attorney-client communications and Defendant did not waive such privilege by producing those documents to Plaintiff—who was a recipient of those messages in the first place—since he was serving as Defendant’s counsel when those documents were created. (If additional information provided during the course of the litigation supports a finding that the privilege has been waived, this issue can be revisited.)

Defendant has not, however, met his burden of demonstrating good cause to redact the entire 5-pages of Plaintiff’s document demand response in Exhibit J. Though there may be some sensitive business information in the list of documents, Defendant has not established a basis to seal the entire document or to redact the entire 5-page response to the fourth discovery demand. In particular, Defendant has not explained why any particular portion of that 5-page response, let alone the entire document submitted as Exhibit J, would actually harm its business. It appears likely that narrowly tailored redactions would be sufficient to protect legitimate interests, including the identification of nonparties (see *Landberg v National Enterprises*, 2007 N.Y. Slip Op. 32057[U] [Sup Ct, NY County 2007] [noting that “(c)onclusory assertions of harm do not

suffice” and “a generalized preference for confidentiality is not enough”)). Exhibit J will remain *provisionally* under seal to permit the prompt filing of a follow-up motion proposing appropriate redactions and explaining the particularized need for each such redaction.

* * * *

Accordingly, it is:

ORDERED that Motion 003 is **granted** to the extent that Exhibits T, U, and X to Plaintiff’s Affirmation (NYSCEF 103, 104, 107; NYSCEF 118, 119, 120) may be filed under seal; it is further

ORDERED that, upon service of a copy of this Order upon the Clerk of the Court, the Clerk shall permit Exhibits T, U, and X to Plaintiff’s Affirmation (NYSCEF 103, 104, 107; NYSCEF 118, 119, 120) to be and remain filed in sealed form as set forth in this Decision and Order wherever they shall appear in connection with this action. Until further Order of the Court, the Clerk of the Court shall deny access to those unredacted documents to anyone other than the staff of the Clerk or the Court, counsel of record for any party to this case, and any party; it is further

ORDERED that Motion 003 is **denied**, without prejudice to a new motion, to the extent that it seeks to seal Exhibit J (NYSCEF 93; NYSCEF 117) in its entirety; it is further

ORDERED that Defendant shall have 20 days to file a motion to redact confidential portions of Exhibit J. If no such motion is filed, the parties shall file unredacted/unsealed copies of Exhibit J (NYSCEF 93, 117) and any other improperly sealed or redacted documents within 20 days of the Court’s entry of this Decision and Order on NYSCEF. If such motion is filed, however, the documents shall remain provisionally sealed pending resolution of the motion; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial. A motion to seal or redact such documents or evidence may be made prior to trial.

This constitutes the Decision and Order of the Court.

7/16/2020

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐

CASE DISPOSED

☐

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

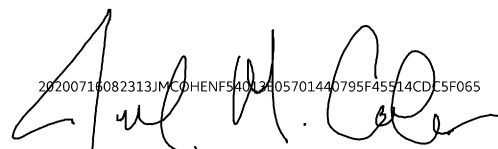
SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

20200716082313JMC0HENF54012005701440795F45514CDE5F065

JOEL M. COHEN, J.S.C.