

PricewaterhouseCoopers LLP v Lewis
2020 NY Slip Op 33217(U)
September 30, 2020
Supreme Court, New York County
Docket Number: 654520/2019
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY****PRESENT: HON. CAROL R. EDMOND****PART****IAS MOTION 35EFM***Justice*

-----X

PRICEWATERHOUSECOOPERS LLP

INDEX NO. 654520/2019**MOTION DATE** 9/24/2020

Plaintiff,

MOTION SEQ. NO. 002 003

- v -

DAVID LEWIS,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12
were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 28, 29, 30
were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

ORDERED that respondent's motion for an order permitting it to file under seal the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of April 1, 2001 (motion sequence no. 002) is granted; and it is further

ORDERED that petitioner's motion for an order permitting it to file under seal (1) the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of July 1, 1998 (the 1998 partnership agreement); (2) the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of April 1, 2001; and (3) the Agreement between PricewaterhouseCoopers LLP and David B. Lewis, dated as of September 27, 2002 (motion sequence no. 003), is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

MEMORANDUM DECISION

In this special proceeding brought pursuant to CPLR Article 75, petitioner PricewaterhouseCoopers LLP (PwC or the firm) seeks an order enjoining its former partner, respondent David B. Lewis, from continuing to prosecute claims he brought against the firm in Missouri state court, in contravention of his alleged contractual obligation to arbitrate such claims exclusively in New York.

Motion sequence nos. 002 and 003 are consolidated for disposition. In motion sequence no. 002, respondent moves, pursuant to 22 NYCRR § 216.1, for an order permitting him to file under seal the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of April 1, 2001 (the 2001 partnership agreement), as exhibit 2 to respondent's Memorandum of Law in Opposition to Petitioner's Petition to Compel Arbitration (NYSCEF Doc No. 13). This motion is made on petitioner's consent (*see* affirmation of Gregory S. Chiarello, Esq., ¶ 2 [NYSCEF Doc No. 12]).

In motion sequence no. 003, petitioner moves, pursuant to 22 NYCRR § 216.1, for an order permitting it to file under seal the following documents that it seeks to submit in support of its Petition to Compel Arbitration (NYSCEF Doc No. 1): (1) the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of July 1, 1998 (the 1998 partnership agreement); (2) the 2001 partnership agreement; and (iii) the Agreement between PricewaterhouseCoopers LLP and David B. Lewis, dated as of September 27, 2002.

For the reasons set forth below, both motions to seal are granted.

BACKGROUND FACTS

Respondent, a former partner of PwC, commenced an action in Missouri state court (*David B. Lewis v PricewaterhouseCoopers LLP* [No. 19SLCC02080, Circuit Court, St. Louis County,

MO)) against PwC based on allegations that the firm made (or failed to make) certain representations to him in his status as a PwC partner regarding his participation in a life insurance plan that caused monetary damages to him and the family trust that holds that life insurance policy. Specifically, respondent asserts claims against PwC and the insurance company that issued and administered the policy based on fraudulent concealment, negligent misrepresentation and breach of fiduciary duty, as well as claims (against the insurance company only) for breach of contract and breach of the covenant of good faith and fair dealing.

Significantly, however, the 2001 partnership agreement contains a broad agreement to arbitrate all claims or disputes between the parties that arise out of the practice, business or affairs of PwC, and further requires respondent to submit any such claims to arbitration conducted by the American Arbitration Association (the AAA) exclusively in the City of New York, in accordance with the AAA's Commercial Arbitration Rules then in effect.

Pursuant to that arbitration provision, which was in effect at the time of respondent's withdrawal from the firm, PwC commenced this Proceeding by Order to Show Cause on August 9, 2019, seeking to enjoin respondent from continuing to prosecute the Missouri state court action against the firm, in violation of his contractual obligation to arbitrate all claims or disputes between PwC and respondent that arise out of the practice, business or affairs of PwC.

In his opposition to PwC's moving papers in this proceeding, respondent contends that neither the 1998 partnership agreement by which PwC was originally formed (by merger of the firms of Price Waterhouse LLP and Coopers & Lybrand L.L.P.), nor the 2001 partnership agreement in effect at the time of his withdrawal, is valid or enforceable as against him.

As part of its reply to respondent's contention, PwC asserts that it seeks to place before the court copies of certain confidential business records that it contends disprove respondent's

argument that he was not a party to either the 1998 partnership agreement or the 2001 partnership agreement. Included among such business records are the three agreements that PwC now requests be filed under seal.

Pursuant to stipulation and agreement of the parties in the Missouri state court action, two of whom are parties in this action and two of whom are not, petitioner produced the 2001 partnership agreement to respondent under condition of confidentiality, with that agreement deemed to be Confidential Information for the purposes of any potential filing with the court.

DISCUSSION

With respect to the sealing of court records, the Uniform Rules for the New York State Trial Courts provides, in relevant part, as follows:

“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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard”

(see 22 NYCRR 216.1 [a]).

New York law presumptively favors broad access by the public and the press to judicial proceedings and court records, placing the burden on the party favoring sealing to show a compelling interest that likely would be harmed by granting public access (see *Mosallem v Berenson*, 76 AD3d 345, 348–349 [1st Dept 2010]; *Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 501–502 [2d Dept 2007]). However, “the right of access is not absolute” (*Danco Labs. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 6 [1st Dept 2000]), and a court determining whether there is good cause for sealing court records (see 22 NYCRR 216.1 [a]) must

weigh the competing interests of the public and the parties, authorizing the sealing only in the prudent exercise of the court's discretion (*see Mancheski*, 39 AD3d at 502).

Good cause exists where the documents sought to be sealed will disclose confidential or proprietary information, the public disclosure of which would cause harm, and where there is no overriding public interest in disclosure of the documents (*see e.g. Mancheski*, 39 AD3d at 502 [there is "a compelling interest in sealing the documents containing (the respondent's) proprietary financial information because disclosure could harm the private corporation's competitive standing"]; *Matter of Crain Communications, Inc. v Hughes*, 135 AD2d 351, 351-52 [1st Dept 1987], *affd* 74 NY2d 626 [1989] [holding that "the . . . right to inspect and copy judicial records is not absolute . . . where such records are a source of business information which might harm a litigant's competitive standing," and that in such case the court may order exclusion of access], *affd* 74 NY2d 626 [1989]; *Jetblue Airways Corp. v Stephenson*, 31 Misc 3d, 1241[A], 2010 NY Slip Op 52450[U], *7 [Sup Ct, NY County 2010] ["[p]etitioners have established good cause to have the records in this proceeding sealed [as] [t]he exhibits to this motion contain sensitive proprietary and business information [and] [t]he parties have an interest in protecting these documents"], *affd* 88 AD3d 567 [1st Dept 2011]; *Banna v Merrill Lynch*, 2007 WL 4352724 [Sup Ct, NY County 2007] ["A finding of good cause to seal the record will be found where there is a risk of exposure of a parties' proprietary information which is included in court documents"]; *D'Amour v Ohrenstein & Brown, LLP*, 17 Misc 3d 1130[A], 2007 NY Slip Op 52207[U]), *20 [Sup Ct, NY County 2007] ["Sealing a court file may be appropriate to preserve the confidentiality of material which involve the internal finances of a party and are of minimal public interest"]).

This court finds that there is good cause to seal the agreements in question. With respect to the 1998 partnership agreement and the 2001 partnership agreement, it is clear that the terms

and contents of such agreements constitute confidential and proprietary information of PwC and its partners. Indeed, in support of its motion, PwC asserts that it takes reasonable measures to maintain such confidentiality, including, without limitation, requiring that disputes thereunder be submitted to confidential arbitration rather than publicly litigated. PwC further asserts that, in such arbitrations, it routinely obtains stipulations and orders of confidentiality to further protect its confidential and proprietary materials, including its partnership agreements, and that, were the agreements to be publicly filed, PwC and its partners would suffer irreparable competitive and commercial harm. The third agreement PwC seeks to file under seal is a private agreement entered into between PwC and respondent in connection with his September 2002 withdrawal from the film. PwC asserts that this agreement also contains confidential and proprietary information of PwC and respondent.

This court finds that, under these circumstances, no public interest would be served by disclosing the confidential information contained in the agreements. Good cause therefore exists to permit the parties to file the requested documents under seal (*see Abe v New York Univ.*, 169 AD3d 445, 448–49 [1st Dept 2019] [upholding sealing order, and finding that the lower “court made a finding of good cause before ordering [the documents] sealed”]; *Carver Fed. Sav. Bank v Shaker Gardens, Inc.*, 167 AD3d 1337, 1344 [3d Dept 2018] [“we find no basis upon which to disturb Supreme Court’s decision to seal the two letters proffered by defendant’s counsel as well as the transcript of the in camera conference”])).

CONCLUSION

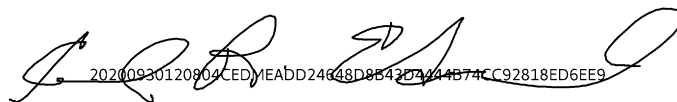
Accordingly, it is

ORDERED that respondent’s motion for an order permitting it to file under seal the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of April 1, 2001 (motion sequence no. 002) is granted; and it is further

ORDERED that petitioner's motion for an order permitting it to file under seal (1) the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of July 1, 1998 (the 1998 partnership agreement); (2) the PricewaterhouseCoopers LLP Partners and Principals Agreement dated as of April 1, 2001; and (3) the Agreement between PricewaterhouseCoopers LLP and David B. Lewis, dated as of September 27, 2002 (motion sequence no. 003), is granted; and it is further

ORDERD that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.


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DATE

CHECK ONE:

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CASE DISPOSED

☒

GRANTED

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DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

CAROL R. EDMED, J.S.C.