Fruhling v Westreich
2020 NY Slip Op 33697(U)
November 5, 2020
Supreme Court, New York County
Docket Number: 161487/2017
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY, *Justice* — PART IAS MOTION 48EFM

INDEX NO. 161487/2017

MOTION DATE

MOTION SEQ. NO. 011

MICHAEL FRUHLING, ADAM HOCHFELDER,

Plaintiffs,

- v -

ANTHONY WESTREICH, MAX GLOBAL, LLC, FRIEDMAN, LLP, RICHARD KLASS, JOHN DOE, XYZ CO.,

Defendants.

DECISION + ORDER ON MOTION

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 265, 266, 270, 271, 272 and 273

were read on this motion to/for SEAL

In motion sequence number 011, defendant Anthony Westreich moves to seal NYSCEF Doc Nos. 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256 and 257. These court records are just 1-page placeholders that contain nothing of substance. Accordingly, the court issued an interim order on October 13, 2020 directing Westreich to file the documents he seeks to seal so that the court could inspect them. (NYSCEF Doc. No [NYSCEF] 287, 10/13/2020 Order.) Westreich complied and filed unredacted versions under temporary seal on NYSCEF 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300 and 301. These 14 court records are portions of tax returns. (NYSCEF 266, Fertig aff ¶ 10.) The motion is unopposed. There is no indication in the record that the press or public are interested in this matter.

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) [e]xcept 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].) Good cause must "rest on a sound basis or legitimate need to take judicial action." (*Danco Labs.*, 274 AD2d at 9.) For instance, the privacy interest in tax returns is "a sufficient basis for an order sealing that information so that it is not accessible to the public." (*Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 449 [1st Dept 2018].)

Here, good cause does not exist to seal NYSCEF Doc Nos. 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, and 257 because these court records are

just one-page space holders of no substance. However, good cause exists to redact NYSCEF 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300 and 301 because these court records are portions of tax returns. (*Norddeutsche Landesbank Girozentrale*, 165 AD3d at 449.) Although Westreich filed the attorney affirmation under temporary seal, good cause does not exist to seal or redact this court record because nothing sensitive is revealed. (NYSCEF 266, Fertig aff.)

Accordingly, it is

ORDERED that the motion is granted as set forth above; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall unseal NYSCEF Doc Nos. 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257 and 266; and it is further

ORDERED that the County Clerk upon service to him of this order, shall seal 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300 and 301; and it is further

ORDERED that within 10 days of this order being filed on NYSCEF, Westreich shall publicly file redacted versions of NYSCEF 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300 and 301; and it is further

ORDERED that the same tax information shall be redacted from future filings; and it is further

ORDERED that until further order of the court, the County Clerk shall deny access to the sealed 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.

11/5/2020
DATE

HON. ANDREA MASLEY

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE