

<b>Delaney v HC2 Inc.</b>
2021 NY Slip Op 31829(U)
May 27, 2021
Supreme Court, New York County
Docket Number: 651740/2021
Judge: Alexander M. Tisch
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ALEXANDER M. TISCH PART IAS MOTION 18EFM**

*Justice*

-----X

ANDREW DELANEY

Plaintiff,

- v -

HC2 INC. D/B/A/ HIRE COUNSEL,

Defendant.

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INDEX NO. 651740/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28

were read on this motion to/for SEAL

Upon the foregoing documents, defendant moves to seal paragraphs four through eleven (4-11) of plaintiff’s complaint.

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v. Berenson*, 76 AD3d 345, 348 [1st Dept 2010; see *Danco Labs. v Chemical Works of Gedeon Richter*, 274 AD2d 1, 7-8 [1st Dept 2000]). Courts may, under limited circumstances, restrict such rights and direct that certain records be sealed only upon “upon a written finding of good cause, which shall specify the grounds thereof” (22 NYCRR 216.1[a]). “In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (*id.*) and “make an independent determination of whether to seal court records in whole or in part for ‘good cause’” (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]).

As “there is a presumption of openness embodied in the rule [Section 216.1],” records should not be sealed “where good cause has not been demonstrated” (*Coopersmith v Gold*, 156 Misc 2d 594, 605 [Sup Ct, Westchester County 1992]). “Confidentiality is clearly the exception,

not the rule,' and the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access" (*Mosallem*, 76 AD3d at 349, quoting *Matter of Hofmann*, 284 AD2d 92, 93-94 [1st Dept 2001]; see *Danco Labs.*, 274 AD2d at 8; *Mancheski*, 39 AD3d at 502). The movant should submit proof by way of "an affidavit from a person with knowledge explaining why the file or certain documents should be sealed" (*B2 Payment Sols., Inc. v UL LLC*, 2018 NY Slip Op 32043[U], 2018 WL 3995970 [Sup Ct, NY County 2018], quoting *Grande Prairie Energy LLC v Alstom Power, Inc.*, 5 Misc 3d 1002(A), 2004 NY Slip Op 51156[U], \*2 [Sup Ct, NY County 2004]).

The Court finds that defendant adequately demonstrated that most, but not all of the allegations in subject paragraphs of the complaint contain confidential, privileged and/or non-public information or were otherwise only known to plaintiff through his contract work with Wilmer Hale and its client, Toyota (*see generally* NYSCEF Doc. Nos. 10, 21, 24).

While it is true that some public information appears in the subject paragraphs, it is also true that they are so intertwined with other information that appears to be privileged or otherwise confidential and nonpublic. This is certainly the case with paragraphs 5-7 and 9-10. Accordingly, those paragraphs should be sealed. As to paragraphs 4 and 8, while a bulk of the allegations appear to be public, the Court finds that they should also be sealed, as they bear no legitimate relevance to the claims asserted in this action. There is no legitimate need for the public to access the information in order to validly assess the sum and substance of plaintiff's claims. The Court finds plaintiff's arguments in opposition unavailing in this regard.

Although, the same cannot be said as to paragraph 11 — most of the allegations therein may be relevant to the breach of confidentiality claim, wherein plaintiff alleges that defendant disclosed his name and email address to individuals in Thailand, and, relatedly, the intentional

infliction of emotional distress claim. Most of the allegations in that paragraph provide a broad and general context for plaintiff's work situation, which are relevant to his other claims. However, there is one sentence that should be redacted, as it appears to be confidential, privileged, or otherwise not public — namely, the sentence beginning with “This is . . .” and ends in footnote number 3. The entire sentence and footnote shall be redacted.

Accordingly, it is hereby ORDERED that the motion is granted in part to the extent that the Court finds good cause exists to redact paragraphs 4-10 and partially redacting paragraph 11 of plaintiff's complaint; and it is further

ORDERED that plaintiff file a complaint within twenty (20) days bearing the redactions as set forth by this Court, to wit, redactions of paragraphs 4-10 in their entirety, and the one sentence in paragraph 11 and related footnote number 3; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry, to seal the original complaint, NYSCEF Doc. No. 1 and to separate this document and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.

5/27/2021

DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE