

Pecile v Abrams

2021 NY Slip Op 32301(U)

October 29, 2021

Supreme Court, New York County

Docket Number: Index No. 655374/2021

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE BLUTH **PART** **14**

Justice

-----X

DANIELLE PECILE, CRISTINA CAPPELLI,

Plaintiffs,

- v -

RUSSELL ABRAMS, MARC ABRAMS, SANDRA ABRAMS,
TITAN CAPITAL GROUP LLC

Defendants.

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INDEX NO. 655374/2021

MOTION DATE N/A, N/A

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45, 46, 47, 52

were read on this motion to/for REARGUE/RENEWAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 54, 55, 56, 58

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Motion Sequence Numbers 003 and 004 are consolidated for disposition.

The motion (MS003) by defendants to renew and reargue this Court's decision denying the request to seal NYSCEF Doc. Nos. 3-10 and 12-13 is granted, and upon reargument and renewal, the Court adheres to its previous decision. The motion (MS004) to seal NYSCEF Doc. No. 14 is denied.

MS003

Defendants claim that the Court, when denying plaintiffs' motion to seal certain documents, overlooked motion papers that supported plaintiffs' position. The Court noted in the underlying motion that plaintiffs did not offer an affidavit in support of the motion to seal. Defendants are correct that plaintiffs submitted an affirmation (NYSCEF Doc. No. 12), although it was not uploaded correctly (it was not uploaded under MS001). That justifies the branch of the

motion to reargue. However, the Court adheres to its decision because neither that affirmation nor defendants' papers adequately explain why the documents should be sealed. That the parties wanted the documents to be kept confidential is understandable, but a desire is not enough to prevent public access to publicly filed litigation. And this Court never so-ordered the settlement agreement.

“Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records. This State has long recognized that civil actions and proceedings should be open to the public in order to ensure that they are conducted efficiently, honestly, and fairly” (*Mosallem v Berenson*, 76 AD3d 345, 348, 905 NYS2d 575 [1st Dept 2010] [internal quotations and citations omitted]). “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” (*id.* at 346).

The Court sees no reason to keep the settlement agreement, which appears to be a routine agreement, confidential. In fact, the settlement agreement contains a provision in which both sides agree that defendants do not admit to anything (NYSCEF Doc. No. 4, ¶ 13). Plus, if there wasn't a dispute about the payment under the agreement, then there would be no reason for plaintiffs to have to upload this document in order to seek payment now.

With respect to the branch of the motion to renew, defendants contend that it was not afforded a chance to offer its position on plaintiffs' motion to seal certain documents because certain defendants do not live in the United States and so they didn't receive the documents in time. This is a good reason for the Court to grant renewal and consider the merits of defendants' arguments with respect to sealing.

Defendants claim that because the underlying complaint involved sexual allegations, they want the settlement agreement to be kept under seal. They argue that the payout that was part of the settlement could be construed as an admission of wrongdoing. But, as stated above, the settlement agreement states that it does not constitute an admission of any kind. It is axiomatic that a settlement agreement will often involve a defendant paying a plaintiff sum some of money. There is no apparent reason to shield that fact from the public.

To the extent that defendants argue that New York law favors sealing of confidential settlement documents, the Court observes that the settlement documents would have remained sealed if the parties could have worked out their dispute and plaintiffs did not have to bring the instant action. Plaintiffs seek summary judgment in lieu of complaint because defendants have not paid the settlement amount. In other words, if defendants had paid (and the Court makes no finding about whether plaintiffs will ultimately be successful) the Court would not have to consider whether the documents should be sealed. The confidentiality was under defendants' control; if defendants had made the payments (or reached some agreement to avoid the instant suit), then plaintiffs would not have had to come to court to enforce the agreement and this issue would never have come up.

The fact is that this Court declines to keep documents sealed simply because the parties want them to be sealed. Courts are, by their very nature, designed to be open to the public. Court employees, services and buildings are all funded by the public; therefore, the public has an inherent right to access the records of each case, subject to certain limited exceptions. Of course, there are ways to resolve disputes and keep them entirely private (such as mediation or arbitration). But the parties here chose not to resolve disputes arising out of the settlement agreement with these forums. And so, this Court finds that this case, purportedly one based on

an instrument for the payment of money only, should be open for public inspection like any other contract case.

MS004

This motion seeks to seal NYSCEF Doc. No. 44 is denied for the reasons described above. This document is a supporting affirmation for Motion Sequence 003.

Accordingly, it is hereby

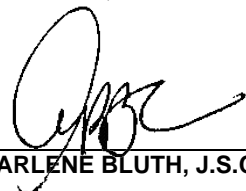
ORDERED that the motion by defendants (MS003) to reargue and renew is granted, and upon reargument and renewal, the Court adheres to its previous decision; and it is further

ORDERED that the motion by defendants (MS004) to seal NYSCEF Doc. No. 44 is denied; and it is further

ORDERED that defendants are directed to e-file a notice of entry in connection with this decision and order as well as an EF-22 (within 7 days) so that the County Clerk will effectuate the instant order.

Return Date for MS002, the CPLR 3213 application, is December 7, 2021.

10/29/2021
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	