

Oliver v Boone

2021 NY Slip Op 32825(U)

December 29, 2021

Supreme Court, New York County

Docket Number: Index No. 651822/2020

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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JAMES OLIVER,	INDEX NO.	<u>651822/2020</u>
Plaintiff,	MOTION DATE	_____
- v -	MOTION SEQ. NO.	<u>004 006</u>
MARY BOONE, BOONE ASSOCIATES, L.P., and MARY BOONE GALLERY,	DECISION + ORDER ON MOTION	
Defendants.		

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 94, 95, 96, 97, 98, 108, 109, 110, 112, 113, 130, 131, 132, 133, 138

were read on this motion to/for _____ SEAL _____.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 139, 140, 141, 142, 143, 144, 148, 149, 150

were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 004, plaintiff James Oliver moves, by Order to Show Cause, to redact and seal NYCEF Doc. Nos. 100, 101, 102¹, 103, 104, 105², and 106³ as plaintiff designated those documents as containing confidential settlement information. Defendants join in the application and request to redact and seal NYSCEF Doc. Nos. 114, 115, and 117 as defendants designated those documents as containing confidential settlement information.

¹ This document has been publicly filed.

² This document has been publicly filed.

³ Sealed copies of these documents are also located at NYSCEF Doc. Nos. 123, 124, and 125.

In motion sequence number 006, nonparty Limited Partner Ronald Warren moves, by Order to Show Cause, to redact and seal NYSCEF Doc. Nos. 145 and 146 as these documents contain confidential settlement information, in compliance with the court's Interim Order.

NYSCEF 100 is plaintiff's Memorandum of Law in Support of Motion to Enforce the Memorandum of Understanding. NYSCEF 101 is the Oliver Affidavit in Support of Motion to Enforce Memorandum of Understanding. NYSCEF 102 is the Fifth Amendment to the Boone Associates Partnership Agreement. NYSCEF 103 is the Affirmation of Brett Gallaway. NYSCEF 104 is the Memorandum of Understanding. NYSCEF 105 is an email between the attorneys discussing settlement. NYSCEF 106 is the Proposed Order Granting Plaintiff's Motion to Enforce. Plaintiff seeks to redact portions of these documents that include confidential settlement information.

NYSCEF 114 is the Affirmation of Ted Poretz in Opposition to Motion to Enforce the Memorandum of Understanding. NYSCEF 115 is the Settlement Agreement and General Release. NYSCEF 117 is defendants' Memorandum of Law in Opposition to Plaintiff's Motion to Enforce the Memorandum of Understanding. Defendants seek to redact certain portions of these documents that contain confidential settlement information.

NYSCEF 145 is Limited Partner Ronald Warren's Objection to Plaintiff James Oliver's Motion to Enforce the Memorandum of Understanding. NYSCEF 146 is Limited Partner Ronald Warren's Affidavit. Warren seeks to redact certain portions of these documents that contain confidential settlement information pursuant to the court's interim order. (NYSCEF 113, Interim Order.)

Plaintiff argues that these documents contain confidential settlement information between the parties, including competitive and financial information. Specifically, plaintiff seeks to redact the terms of the settlement agreement. Defendants oppose the motion to the extent that they assert that the Partnership's other limited partners, including nonparty Ronald Warren and his counsel, must be permitted to access the motion papers. Defendants argue the terms of an alleged settlement cannot be confidential as against another limited partner. Nonparty Warren does not take a position on whether terms of the settlement should be sealed. He filed his seal motion to comply with the interim order. In response to Warren's motion, plaintiff's counsel filed an affirmation affirming that plaintiff does not object to Warren's motion.

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.

(*Mosalleem 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.)

There is a strong public interest in encouraging private litigation to settle. (*Matter of Crain Communications, Inc. v Hughes*, 135 AD2d 351, 352 [1st Dept 1987], *affd*, *Matter of Crain Communications*, 74 NY2d 626 [1989].) Policy, together with good cause, favors keeping settlement terms confidential to avoid compensation issues in future settlement negotiation. (*Matter of In re E. 51st St. Crane Collapse Litig.*, 31 Misc 3d 406, 416 [NY Sup Ct 2011].)

Here, plaintiff, defendants and nonparty Warren seek to redact document that contain settlement terms. Good cause exists to redact NYSCEF Doc. Nos. 100, 101, 103, 104, 106, 114, 115, 117, 145, and 146. These redactions pertain narrowly to settlement terms between the parties and contain sensitive financial information. However, unredacted versions of the documents must be made available to any of the limited partners upon submission of a signed affidavit by the individual, or their counsel, acknowledging that they have read the court’s prior decision and the documents remain confidential. Thus, plaintiff, defendants and nonparty Warren may redact these documents in accordance with this decision.

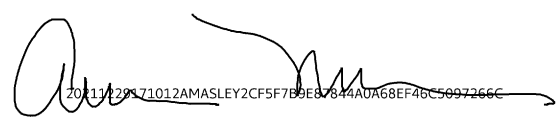
Accordingly, it is

ORDERED that the motion is granted. As redacted versions of NYSCEF 100, 101, 103, 104, 106, 114, 115, 117, 145, and 146 have already been filed publicly and unredacted copies under temporary seal, plaintiff, defendants and non-party Warren need not re-file duplicates; and

ORDERED that the County Clerk, upon service to him of this order, shall permanently seal NYSCEF Doc. Nos. 100, 101, 103, 104, 106, 114, 115, 117, 145, and 146; and it is further

ORDERED the New York County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel.

ORDERED that plaintiff is to serve a copy of this order on the County Clerk 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 – www.nycourts.gov/supctmanh).



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12/29/2021
DATE

ANDREA MASLEY, J.S.C.

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