

**Cohen Tauber Spievack & Wagner P.C. v Mehulol Publications, LLC**

2022 NY Slip Op 30073(U)

January 7, 2022

Supreme Court, New York County

Docket Number: Index No. 652426/2021

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

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INDEX NO. 652426/2021

COHEN TAUBER SPIEVACK & WAGNER P.C.,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 003

- v -

MEHULOL PUBLICATIONS, LLC D/B/A AMI MAGAZINE,
YITZCHOK FRANKFURTER, RECHI FRANKFURTER

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for SEAL

The motion by defendants to seal the entire Court file or, in the alternative, to seal all documents related to motion sequence 002 (plaintiff's motion to dismiss the counterclaim) is granted in part and denied in part. The return date for motion sequence 002 is adjourned as described below.

Background

In this legal fees action, plaintiff seeks to recover allegedly unpaid legal fees arising out of its representation of defendants in an action in the Eastern District of New York. Plaintiff contends that defendants owe about \$95,000. Defendants have asserted a counterclaim for legal malpractice.

Defendants move to seal the entire file on the ground that this action involves confidential documents, including the settlement agreement for the federal case as well as communications between plaintiff and defendants that are subject to the attorney-client privilege.

Defendants also assert that plaintiff's invoices are confidential and should be sealed. They claim that they will be prejudiced in other litigation if the settlement agreement for the federal case is part of the public record.

Plaintiff did not bother to submit opposition or even an affirmation of "no" opposition. Instead, it sent in a letter saying it did not oppose.

### **Discussion**

The fact that the parties do not disagree about whether the file should be sealed does not end the Court's inquiry. "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).

As an initial matter, the Court denies defendants' request that the entire file be sealed. Simply because this case involves a dispute about unpaid legal bills and therefore necessarily involves the attorney-client relationship does not mean that the whole action must be shielded from public view. The fact is that defendants have asserted a legal malpractice counterclaim, which places their communications with plaintiff at issue in this case (*see e.g., Clark v Clark*, 93 AD3d 812, 816, 941 NYS2d 192 [2d Dept 2012] [finding that there can be a waiver of attorney client privilege where the client's claims put such communications at issue]). In other words, the attorney-client privilege is not an obstacle to adjudicating a legal malpractice claim nor is it a basis to seal an entire file under these circumstances.

Accordingly, the Court concludes that there is no basis to seal documents simply because they might be subject to the attorney-client privilege. Defendants have decided to seek affirmative relief against plaintiff arising out of plaintiff's representation of defendants. While the Court recognizes that defendants may not want to make certain communications available to the public, that does not meet the high burden required to restrict an entire file. Part of raising a claim in this Court involves filing documents that are publicly accessible. Moreover, the practical implication of defendants' argument is that every legal malpractice claim constitutes a basis to seal an entire file; that does not abide with the strong preference in favor of public access or with current practice in this jurisdiction. Similarly, defendants' assertion that plaintiff's invoices should be sealed is without merit. That is simply part of the evidence plaintiff intends to present in support of its prima facie case.

However, the Court finds that the settlement agreement for the federal action may be filed under seal (this appears to be exhibit C to defendants' opposition to plaintiff's motion to dismiss [part of NYSCEF Doc. No. 42]). Restricting access to this document is appropriate because the other parties to that action (the plaintiffs in that case) are not parties here and they believed the agreement would remain confidential. All other documents shall not be subject to any restrictions.<sup>1</sup>

The Court recognizes that defendants may wish to discuss certain portions of the settlement agreement in their opposition papers to plaintiff's motion to dismiss the counterclaim. But references to the settlement agreement are not the same as permitting the entire agreement to be subject to public view. And, in any event, this Court will likely have to address portions of

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<sup>1</sup> The Court observes that defendants need not file a hard copy version of sealed documents and can simply seek to restrict access to an e-filed document, which will facilitate a more efficient disposition of this matter.

the settlement agreement in a publicly available opinion to the extent that defendants make arguments about it in opposition to the pending motion to dismiss.

### Summary

Defendants want to assert a legal malpractice counterclaim against plaintiff which is, of course, their right. But this Court cannot seal an entire file simply because defendants also want to shield it from public view and plaintiff apparently has no opinion. Court dockets must be accessible to the public. Courts are, after all, funded by the taxpayer and public access plays a critical role in the functioning of the court system.

Only unique circumstances support sealing an entire file or even documents filed in connection with a motion. These might include proprietary information which, if disclosed, would ruin a business or deeply traumatic personal information. None of these situations is present here. This case involves a straightforward legal fees case where defendants are unhappy with the representation they received. They claim, in part, that they were not properly informed about certain terms of the settlement agreement and would not have settled had plaintiff done its job properly. That defendants do not want the public to know about this case or their counterclaim is not a sufficient reason to seal this action. There are alternative dispute methods (such as mediation or arbitration) where issues can remain private. Instead of exploring those options, the parties are suing each other in this Court, a venue which must be open to the public in most instances.

Accordingly, it is hereby

ORDERED that the motion by defendants is granted only to the extent that they may file (or keep) the settlement agreement under seal and denied as to the remaining relief requested and all other documents currently under seal shall have their restrictions removed; 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; and it is further

ORDERED that the motion sequence 002 (returnable on January 6, 2022) is hereby adjourned to January 31, 2022 to permit defendants to file their opposition in accordance with this decision and for plaintiff to file its reply (it if desires). Defendants shall file their opposition by January 21, 2022 by 4 p.m. and plaintiff shall file its reply by January 31, 2022 by 4 p.m.

1/7/2022  
DATE

  
ARLENE BLUTH, J.S.C.

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