SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY BANNON** **PART 42**

Justice

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BRICK LAW PLLC

Plaintiff,

- v -

ECONOMIC ALCHEMY LLC,

Defendant.

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INDEX NO. 650394/2021

MOTION DATE 1-11-22

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 31, 32

were read on this motion to/for SEAL.

In this breach of contract action to collect $15,479.00 in unpaid attorney's fees, the plaintiff moves pursuant to 22 NYCRR 216.1 (section 216.1 of the Uniform Rules for the New York State Trial Courts) to seal the affidavit of Giselle Guzman, principal of the defendant company, a former client. In the affidavit, which was submitted in opposition to the plaintiff's motion to dismiss the defendant's counterclaim for malpractice (MOT SEQ 001), Guzman alleges that during a Zoom conference in September 2020, counsel for the plaintiff, a principal in that firm, placed his phone on a table, walked to a nearby bathroom and urinated in full view of Guzman and another individual who was present with Guzman. Guzman further alleges that this incident was part of a pattern of "rude, offensive and harassing conduct" to which she was subjected. The plaintiff admits that he used the bathroom during a remote conference with Guzman and that he did not mute his phone but denies her allegation that she saw him urinate. The defendant filed no opposition and signed a stipulation to seal the affidavit. However, the defendant represents that it signed the stipulation under threat of further litigation by the plaintiff. In any event, the stipulation is not binding on the court. The motion is denied as the plaintiff has not established entitlement to the relief sought.

22 NYCRR 216.1(a) provides that "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 of the parties." In Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1, 6-7 (1st Dept. 2000), the First Department explained the basis for the rule and the broad right of the public's access to the courts and judicial records by stating, in part:

> We start by taking note of the broad constitutional proposition, arising from the First and Sixth Amendments, as applied to the States by the Fourteenth Amendment, that the public as well as the press are generally entitled to have access to court proceedings. Since the right is of constitutional dimension, any order denying access must be narrowly tailored to serve compelling objectives, such as the need for secrecy that outweighs the public's right to access (Globe Newspaper Co. v Superior Court, 457 U.S. 596, 605-607 [1982]) . . .
>
> Moreover, access may still be respected in keeping with constitutional requirements while sensitive information is restricted in keeping with "the State's legitimate concern for the well-being" of an individual (Globe Newspaper Co. v Superior Court, supra at 609) ...
>
> In New York, too, we have stated that "statutory and common law ... have 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" (Matter of Conservatorship of Ethel Brownstone, 191 AD2d 167, 168 [1st Dept. 1993]).

Thus, pursuant to 22 NYCRR 216.1, all court records and documents are presumptively open to the public absent a showing of "good cause" for sealing. See Mosallem v Berenson, 76 AD3d 345 (1st Dept. 2010). "Although the rule does not further define 'good cause', a standard that is 'difficult to define in absolute terms', a sealing order should rest on a 'sound basis or legitimate need to take judicial action,' a showing properly burdening the [moving party]." Danco Labs. v Chemical Works of Gedeon Richter, supra at 8. For example, "attendant publicity, the

potential embarrassment, stigma or humiliation suffered by the parties is not sufficient to justify sealing the file. See Liapakis v Sullivan, 290 AD2d 393 (1st Dept. 1993); Matter of Will of Benkert, 288 AD2d 147 (1st Dept. 2001); In re Will of Hofmann, 284 AD2d 92 (1st Dept. 2001)." .Matter of Marshall, 13 Misc 3d 1203(A) (Sup Ct, NY County 2006).

The First Department has observed that since "confidentiality is clearly the exception, not the rule" (Matter of Will of Hofmann, supra at 93-94) it has authorized sealing "only in strictly limited circumstances." Gryphon Domestic VI, LLC v APP International Finance Co., 28 AD3d 322, 325 (1st Dept. 2006); see Mosallem v Berenson, supra. "Generally, this Court has been reluctant to allow the sealing of court records (see Liapakis v Sullivan, supra; Matter of Brownstone, 191 AD2d 167 [1st Dept. 1993]), even where both sides to the litigation have asked for such sealing (Matter of Estate of Hofmann, [supra])." Gryphon Domestic VI, LLC v APP International Finance Co., supra at 324.

"On the other hand, confidentiality is, in certain circumstances, necessary in order to protect the litigants or encourage a fair resolution of the matter in controversy." Matter of Twentieth Century Fox Film Corp., 190 AD2d 483, 486 (1st Dept. 1993). For example, the state's compelling interest in protecting the safety and welfare of children may outweigh the public right to access and warrant a closed courtroom. See e.g. Matter of P.B. v C.C., 223 AD2d 294 (1st Dept. 1996); Matter of Katherine B., 189 AD2d 443 (2nd Dept. 1993); see also Matter of Twentieth Century Fox Film Corp., supra [privacy right of child preserved]. Sealing has also been authorized to protect the confidentiality of trade secrets. See Matter of Bernstein v On-Line Software Inter. Inc., 232 AD2d 336 (1st Dept. 1996) *lv denied* 89 NY2d 810 (1997). However, these circumstances are the exception, not the rule.

In entertaining an application to seal court records, the court is mindful that "public access to court proceedings is strongly favored, both as a matter of constitutional law (Richmond Newspapers v Virginia, 448 U.S. 555 [1980]) and as a statutory imperative (Judiciary Law § 4)." Anonymous v Anonymous, 158 AD2d 296, 297 (1st Dept. 1990); see also Herald Co. v Weisenberg, 59 NY2d 378 (1983) [closure of courtroom]. Moreover, "the public interest in openness is particularly important on matters of public concern, even if the issues arise in the context of a private dispute." Danco Labs. v Chemical Works of Gedeon Richter, supra at 7.

Applying these principles, the plaintiff has not demonstrated a basis to seal Guzman's affidavit. While some of the allegations therein may well be embarrassing to the plaintiff, and may ultimately found to be without merit, this alone does not warrant sealing. See In Re Will of Hofmann, supra at 94. The plaintiff also fails to show that any "prejudice to [its] reputation caused by the [defendant's] allegations" of inappropriate and offensive conduct "outweighs the clear public interest in such allegations." Liapakis v Sullivan, supra at 394.

Accordingly, and upon the foregoing papers, it is

ORDERED that the plaintiff's motion to seal is denied.

This constitutes the Decision and Order of the court.

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

1/12/2022
DATE

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