

Pardee v Mercury Capital Advisors Group GP, LLC

2022 NY Slip Op 30154(U)

January 18, 2022

Supreme Court, New York County

Docket Number: Index No. 650693/2021

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY BANNON PART 42

Justice

-----X

ALAN PARDEE,
Plaintiff,

INDEX NO. 650693/2021

MOTION DATE 11-3-21

MOTION SEQ. NO. 001

- v -

MERCURY CAPITAL ADVISORS GROUP GP,
LLC, MERCURY CAPITAL ADVISORS, LLC, MERCURY
CAPITAL ADVISORS GROUP, LP

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18
were read on this motion to/for SEAL

In this action seeking damages for, inter alia, breach of contract, discrimination and
retaliation by the defendants, plaintiff's former employers, the plaintiff moves to seal the
affirmation of his attorney, Robert Glunt, submitted in support of the plaintiff's motion to dismiss
the defendants' counterclaims (MOT SEQ 002). The only basis asserted for sealing is by the
plaintiff's counsel himself who represents that the defendants consider two contracts attached to
the affirmation as exhibits (NYSCEF doc. numbers 13 and 14) to be "confidential." The
defendants' attorney submits a letter in which he states only that the "defendants agree that
these documents should be sealed and unavailable to the public." This is an insufficient basis
to seal court records. Indeed, in the Order to Show Cause dated September 13, 2021, the court
declined to grant the requested TRO seeking sealing pending the determination of this motion.

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 court finds that the plaintiff has not demonstrated a basis to seal NYSCEF documents #13 and #14, exhibits attached to the Glunt affirmation.

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff’s motion to seal court records is denied, and it is further

ORDERED that the Clerk shall remove NYSCEF documents #13 and #14 from temporary restricted status.

This constitutes the Decision and Order of the court.


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

1/18/2022
DATE

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