

<b>Kramer-Wilson Co., Inc. v National Gen. Mgt. Corp.</b>
2022 NY Slip Op 30255(U)
January 4, 2022
Supreme Court, New York County
Docket Number: Index No. 655243/2021
Judge: Melissa Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M

Justice

-----X

Kramer-Wilson Company, Inc.

Plaintiff,

- v -

National General Management Corp.

Defendant.

-----X

INDEX NO. 655243/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 49, 50, 51, 52

were read on this motion to/for SEAL

This is an unopposed motion to seal certain documents and redact information from other documents. The documents and information concern the concluded arbitration proceeding between plaintiff and nonparty NG Holdings Corp. (NG Holdings), an entity related to defendant National General Management Corp. (NG Mgmt.).

Petitioner seeks to seal Exhibits 1, 2, and 4 annexed to the affirmation of Sean Thomas Keely (Docs 12, 13, 14). Exhibit 1 is an arbitration confidentiality agreement. Exhibit 2 is a copy of Kramer-Wilson's prior [withdrawn] petition challenging the arbitration award, which was sealed by prior order of this court (see Kramer-Wilson Co. v National General Holdings Corp.; Index No.: 652929/2019, Docs 55, 85 [James, J.]). Exhibit 4 is an affirmation of Edward K. Lenci in support of a motion to seal in the withdrawn prior action.

Petitioner also seeks to redact the portions of its memorandum of law in support of this motion that references the arbitration information and prior sealed court records (Doc 17).

Courts are empowered to seal documents upon a written finding of good cause pursuant to § 216.1(a) of the Uniform Rules for Trial Courts. It provides:

“(a) Except 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 (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted]). The movant must demonstrate good cause to seal records under Rule § 216.1 by submitting “an affidavit from a person with knowledge explaining why the file or certain documents should be sealed” (*Grande Prairie Energy LLC v Alstom Power, Inc.*, 2004 NY Slip Op 51156 [U], \*2 [Sup Ct, NY County 2004]). Good cause must “rest on a sound basis or legitimate need to take judicial action” (*Danco Labs.*, 274 AD2d at 9). Agreements to seal are insufficient as such agreements do not establish “good cause” (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], \* 9 [Sup Ct, NY County 2012]).

Petitioner has established good cause to have the documents and information identified in Motion Seq. No. 01 sealed and/or redacted. Exhibits 1, 2, and 4 contain confidential arbitration information. “New York courts have not hesitated to authorize sealing the records of Article 75 proceedings involving arbitrable disputes, stating that ‘the matter properly belongs in arbitration [and] the material filed with the court belongs not in the court, but in the files of the arbitrating body’ ” (*Jetblue Airways Corp. v Stephenson*, 31 Misc 3d 1241(A) [Sup Ct, NY County 2010], *affd* 88 AD3d 567 [1st Dept 2011], quoting *Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 814 (Sup Ct, NY County 1991), *affd* 183 AD2d 678 [1st Dept 1992]). “Sealing records may be particularly appropriate, moreover, when the parties wish to maintain the confidentiality of materials that for the most part involve the internal finances” of a party and do not implicate any matters of public interest” (*id.* [internal quotation marks omitted]).

Good cause exists to seal Exhibits 1, 2, and 4 and to redact references to and quotations from those documents. To the extent that the parties later file additional documents containing confidential arbitration information, they may redact that information applying this category of good cause shown set forth in this decision and order without further motion practice.

Accordingly, it is

ORDERED that Motion Seq. No. 01 is granted; and it is further

ORDERED that petitioner may file Doc 12, 13, and 14 under seal as those documents contain confidential arbitration information; and it is further

ORDERED that petitioner may file Doc 17 in the proposed redacted form to the extent that it references and/or quotes from the above documents that contain confidential arbitration information; and it is further

ORDERED that future submissions containing or referencing confidential arbitration information, as outlined in this decision, shall also be redacted prior to being filed publicly in NYSCEF, and shall also be filed in unredacted form under seal (the Confidential Chambers Copy); and it is further

ORDERED that the County Clerk, upon service on him of a copy of this order with notice of entry, is directed to seal NYSCEF Doc. Nos. 12, 13, and 14, and to accept Doc 17 in redated form; and it is further

ORDERED that, until further order of the court, the County Clerk shall deny access to the unredacted documents to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from the counsel; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial; and it is further

ORDERED that such service upon the County Clerk shall be made 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](http://www.nycourts.gov/supctmanh)).

1-4-2022  
DATE

MELISSA CRANE, 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"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: