

Shorenstein v Spiera
2022 NY Slip Op 31005(U)
March 21, 2022
Supreme Court, New York County
Docket Number: Index No. 805320/2017
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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ERIN SHORENSTEIN,

Plaintiff,

- v -

ROBERT SPIERA, PENNY TURTEL, and JODY STORCH,
AS EXECUTORS OF THE ESTATE OF HARRY SPIERA,
M.D. and RHEUMATOLOGY ASSOCIATES, P.C.,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 247, 249, 250, 256, 257

were read on this motion to/for SEAL

In this action to recover damages for medical malpractice, the plaintiff moves pursuant to 22 NYCRR 216.1 to seal certain documents filed in this action. Specifically, she seeks to seal more than 70 documents, including deposition transcripts, discovery requests, the preliminary conference order, compliance conference orders, and status conference orders. The plaintiff further seeks to seal affirmations and memoranda submitted in support of and in opposition to both her motion to impose discovery sanctions on the defendants and the defendants' motion to impose discovery sanctions upon her, orders disposing of those motions and other applications, and portions of the malpractice insurance policy issued to the deceased defendant, Harry Spiera, M.D., including a schedule of reimbursements for treatment that he rendered to the plaintiff. The request also encompasses miscellaneous mail and email correspondence between attorneys concerning outstanding discovery and scheduling, lists of authorizations previously provided by the plaintiff to the defendants, an affidavit of the defendant's attorney's paralegal concerning her processing of authorizations and an affidavit of the plaintiff's

psychologist concerning her receipt of authorizations requesting her to provide the plaintiff's records to the defendants. In addition, the plaintiff seeks to seal a proposed confidentiality stipulation, a so-ordered confidentiality stipulation, and the transcript of proceedings before the court on the plaintiff's application for a protective order prohibiting discovery, that was in fact resolved by the court's determination to permit discovery pursuant to that stipulation.

The plaintiff has shown that six of the documents---specifically, a deposition transcript, the bill of particulars, and authorization forms---identified her date of birth not only by year, but by month and day as well. Although some copies of these documents, as well as other authorizations, have been uploaded with the date of birth redacted, others have been uploaded with the full date of birth visible. These latter documents must be redacted so as to omit the month and date. All other requests to seal documents are denied.

The court notes that no document includes any person's full social security number. Where a filed document indicated a social security number, it was either already redacted, or only the last four numbers were visible.

22 NYCRR 202.5(e)(1)(i)-(iv) provides, in relevant part, that

"the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information ("CPI") means . . . the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof; . . . the date of an individual's birth, except the year thereof; . . . the full name of an individual known to be a minor, except the minor's initials; . . . a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof

(22 NYCRR 202.5[e][2]). "The court sua sponte or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of section 216.1 of this Title that any sealing be no broader than necessary to protect the CPI" (*id.*). Hence, the portions of documents uploaded to the New York State Court Electronic Filing

(NYSCEF) system under docket entries 28, 29, 40, 49, 54, and 148 that set forth the plaintiff's full date of birth shall be redacted.

A brief outline of the plaintiff's contentions is set forth in her complaint and bill of particulars. The crux of her claim is that the defendants failed to properly treat her for fibromyalgia, failed to refer her for a work-up for sleep abnormalities, and administered excessive amounts of corticosteroids. The plaintiff asserts that, due to her injuries, she not only sustained noneconomic loss, but also economic loss, including lost earnings. She now contends that numerous documents exchanged or filed in this action might reveal information that is embarrassing to herself or are too personal to be revealed to the public. These contentions are insufficient to support a request for a sealing order.

22 NYCRR 216.1(a) provides, in relevant part, that

"[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 . . . 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."

"[T]here is a broad presumption that the public is entitled to access to judicial proceedings and court records" (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). Although the public's right to access is not absolute (*see Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept. 2000]), "[t]he presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public's right to access" (*Applehead Pictures, LLC v Perelman*, 80 AD3d 181, 191 [1st Dept 2010]; *see Matter of East 51st St. Crane Collapse Litig.*, 106 AD3d 473, 474 [1st Dept 2013]; *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d at 6; *see also Schulte Roth & Zabel, LLP v Kassover*, 80 AD3d 500, 501-502 [1st Dept 2011]). As the Appellate Division, First Department, has explained, it has "been reluctant to allow the sealing of court records" (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d 322, 324 [1st Dept 2006]; *see Matter of Holmes v*

Winter, 110 AD3d 134, 138 [1st Dept 2013], *revd other grounds* 22 NY3d 300 [2013]; *Mosallem v Berenson*, 76 AD3d at 350; *see generally* *Davis v Nyack Hosp.*, 130 AD3d 455, 456 [1st Dept 2015]; *Matter of Brownstone*, 191 AD2d 167, 168 [1st Dept 1993]). “Thus, the court is required to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of [court] papers, even when both sides to the litigation request sealing” (*Applehead Pictures, LLC v Perelman*, 80 AD3d at 192 [citations omitted]; *see Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d at 324; *Liapakis v Sullivan*, 290 AD2d 393, 394 [1st Dept 2002]; *Matter of Hofmann*, 284 AD2d 92, 93 [1st Dept 2001] [denying request to seal court records despite the parties’ confidentiality agreement]).

The party seeking to seal court records has the burden of establishing “good cause” for the sealing order (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]). “Since confidentiality is the exception,” the movant must establish that “public access to the documents at issue will likely result in harm to a compelling interest of the movant and that no alternative to sealing can adequately protect the threatened interest” (*id.* [citations omitted]). This court has discretion, on a case-by-case basis, to determine if good cause exists (*see id.*). Hence, where a party fails to show the existence of a compelling reason to seal a record, sealing should be denied (*see Davis v Nyack Hosp.*, 130 AD3d at 456).

Neither a party’s embarrassment nor a general desire for privacy is sufficient, of itself, to establish good cause for sealing a court file (*see Matter of Holmes v Winter*, 110 AD3d at 138; *Mosallem v Berenson*, 76 AD3d at 351; *Liapakis v Sullivan*, 290 AD2d at 394; *Matter of Benkert*, 288 AD2d 247, 247 [1st Dept 2001]; *Matter of Hofmann*, 284 AD2d 92, 93 [1st Dept 2001]; *State of New York ex rel. Aniruddha Banerjee v Moody’s Corp.*, 54 Misc 3d 705, 708 [Sup Ct, N.Y. County 2016]). Rather, the remedy for preventing the potential for significant embarrassment is to permit a party to proceed anonymously (*see Doe v Yeshiva Univ.*, 195 AD3d 565, 566 [1st Dept 2021]).

Conclusory claims of the need for confidentiality, and even the existence of a confidentiality agreement between the parties, are insufficient bases upon which to seal court records (see *Matter of Benkert*, 288 AD2d at 247; *Matter of Hofmann*, 284 AD2d at 93; *Matter of Tram Thuy Nguyen*, NYLJ, Feb. 23, 2016, at 22, col 6, 2016 NYLJ LEXIS 2391 [Sur Ct, N.Y. County, Feb. 18, 2016]; *Matter of Golden*, NYLJ, Jul. 16, 2015, at 24, col 1 [Sur Ct, N.Y. County]; *Matter of Brown*, NYLJ, Apr. 10, 2013, at 23, col 6 [Sur Ct, Kings County] [denying sealing even if confidentiality asserted to be a "vital component" of a settlement]; *Matter of Soltesz*, NYLJ, Jun. 29, 2015, at 25 [Sur Ct, Bronx County] ["to allow sealing of a record solely based upon the 'desire' of the parties to keep secret the settlement amount would open the door to an application['s] being made in every tort action"])).

The court notes that, in any event, the parties remain bound by their confidentiality agreement, as that is a binding contract subject to generally applicable rules of contract construction (see generally *Garda United States v Sun Capital Partners*, 194 AD3d 545, 547-548 [1st Dept 2021]).

Accordingly, it is

ORDERED that the motion is granted to the extent that the plaintiff shall redact her date of birth from documents uploaded to the New York State Court Electronic Filing system under docket entries 28, 29, 40, 49, 54, and 148, and shall upload the redacted versions of those documents, and the Clerk of the court shall seal those docket entries, and the motion is otherwise denied.

This constitutes the Decision and Order of the court.

3/21/2022
DATE


JOHN J. KELLEY, J.S.C.

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