

Schwebel v Meyer

2022 NY Slip Op 31083(U)

April 1, 2022

Supreme Court, New York County

Docket Number: Index No. 805218/2018

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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JONATHAN SCHWEBEL,

Plaintiff,

- v -

RICHARD MEYER, M.D., ARTHUR M. FIGUR,
RICHARD J. MEYER, M.D., P.C. and MDVIP, INC.,

Defendants.

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INDEX NO. 805218/2018

MOTION DATE 02/04/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 52

were read on this motion to/for SEAL.

In this settled action to recover damages for medical malpractice, the plaintiff moves pursuant to 22 NYCRR 216.1 to seal all of the documents filed in this action, including the bill of particulars and the papers constituting the instant motion. Although the parties stipulated to sealing these records, the motion nonetheless is denied.

A brief outline of the plaintiff's contentions is set forth in his complaint, as well as in the bills of particulars. The plaintiff, whose claims involve a failure to diagnose, inform him of, and properly treat prostate cancer, now contends that the claims that he made are of a sensitive nature, suggests that documents filed in this action might reveal information that is embarrassing to himself, and asserts that those document might subject him to "discrimination" if open to public scrutiny. 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], *rev'd 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] [emphasis added]; *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 at 93; *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]; *Matter of Soltesz*, NYLJ, Jun. 29, 2015, at 25 [Sur Ct, Bronx County]). The court notes that, in any event, the parties remain bound by any confidentiality agreement into which they entered or will enter, 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]).

To the extent that the plaintiff seeks to seal a settlement agreement, or documents that reveal the course of settlement negotiations or the amount for which an action is settled, such sealing also is disfavored (*see Matter of Hayes [Quigley]*, 59 Misc 3d 543, 548-550 [Surr Ct,

Essex County 2018], *mod other grounds* 172 AD3d 1516 [3d Dept 2019]; *Guardino v Graco Children's Products, Inc.*, 50 Misc 3d 645, 646-648 [Sup Ct, Suffolk County 2015]; *see also 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 the 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"]).

In *Matter of E. 51st St. Crane Collapse Litig.* (106 AD3d 473 [1st Dept 2013]), the First Department affirmed an order of the Supreme Court, New York County, that had granted a motion to unseal previously sealed documents setting forth the terms of a particular settlement agreement. The Supreme Court had temporarily sealed that settlement agreement until all of the many actions arising from the same incident had been resolved, but had thereafter directed its unsealing even though one action remained pending (*see Matter of E. 51st St. Crane Collapse Litigation*, 31 Misc 3d 406 [Sup Ct, N.Y. County 2011]). The First Department explained that there was no proof that the

"continued sealing of the court records in this case prevents the risk of parties' attempted use of prior settlement information as an artificial threshold in evaluating the value of their own cases. On the contrary, plaintiffs made a better argument that the unsealing of the settlement documents was necessary to enable them to ascertain the amount of available insurance coverage and thus make informed decisions as to the relative benefits and drawbacks of settling their own claims"

(*id.* at 474).

Inasmuch as the plaintiff has made no showing of good cause as to why the court file should be sealed in this action, his motion must be denied.

Accordingly, it is

ORDERED that the motion is denied.

This constitutes the Decision and Order of the court.



JOHN J. KELLEY, J.S.C.

4/1/2022

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